
STATUTORY INSTRUMENTS

2009 No. 2608

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit
(Miscellaneous Amendments) Regulations 2009**

Made - - - - 25th September 2009

Laid before Parliament 30th September 2009

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 123(1)(d) and (e), 136(5)(b), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and sections 75(1), 189(1) and (4) to (6) and 191 of the Social Security Administration Act 1992(2), makes the following Regulations.

In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

In accordance with section 176(1) of the Social Security Administration Act 1992, consultation has taken place with organisations which appear to the Secretary of State to be representative of the authorities concerned.

Citation and commencement

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009.

(2) Subject to paragraph (3) these Regulations shall come into force on 1st April 2010.

(3) Regulations 2 and 3 shall come into force on 5th April 2010 in relation to any case where rent is payable at intervals of a week or any multiple of a week.

(1) 1992 c. 4. Section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14). Section 137(1) is an interpretation provision and is cited for the definition of “prescribed”. Section 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(2) 1992 c. 5. Section 75(1) was amended by paragraph 3 of Schedule 1 and Schedule 2 to the Social Security Administration (Fraud) Act 1997 (c. 47). Section 189(1) and (4) to (6) were amended by paragraph 109 of Schedule 7 to the Social Security Act 1998 (c. 14). Section 189(1) was amended by paragraph 57 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 191 is an interpretation provision and is cited for the meaning of “prescribe”.

Amendment of the Housing Benefit Regulations 2006

- 2.—(1) The Housing Benefit Regulations 2006(3) are amended as follows.
- (2) In regulation 102(4) (method of recovery)—
- (a) omit paragraph (1A);
 - (b) in paragraph (2) omit “(1A),”;
 - (c) in paragraph (4) after “Schedule 4 (sums to be disregarded in the calculation of earnings)” insert “, or paragraph 10A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations 1995(5),”; and
 - (d) in paragraph (5) omit “, except as made under paragraph (1A),”.
- (3) After regulation 104(6) (sums to be deducted in calculating recoverable overpayments) insert—

“Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling

104A.—(1) This regulation applies where an overpayment has occurred in the following circumstances—

- (a) a claimant has moved from the dwelling previously occupied as his home (“dwelling A”) to another dwelling which he occupies as his home (“dwelling B”);
- (b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home;
- (c) housing benefit is paid to the same person in respect of the claimant’s occupation of dwelling B as it was paid to in respect of dwelling A; and
- (d) the same relevant authority is responsible for paying the housing benefit in respect of dwelling A and dwelling B.

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant’s weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant’s entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.”.

- (4) In Schedule 4(7) (sums to be disregarded in the calculation of earnings)—
- (a) after paragraph 10 insert—

“10A.—(1) Where—

(3) [S.I. 2006/213](#).
(4) The amending instruments are [S.I. 2005/2904](#) (as amended by [S.I. 2006/217](#)) and [2008/2824](#).
(5) [S.I. 1995/311](#). Relevant amending instruments are [S.I. 2006/757](#), [2008/2365](#) and [2008/2683](#).
(6) The amending instrument is [S.I. 2005/2904](#) (as amended by [S.I. 2006/217](#)).
(7) Relevant amending instruments are [S.I. 2008/1042](#), [2008/1082](#) (as amended by [S.I. 2008/2428](#)) and [2009/497](#).

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 12 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 3 to 10 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 4, then paragraph 4 applies instead of this paragraph.

(3) Notwithstanding regulation 25 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975⁽⁸⁾.

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995⁽⁹⁾,

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”; and

- (b) in paragraph 17(1), for “paragraphs 3 to 10” substitute “paragraphs 3 to 10A”.

⁽⁸⁾ S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367. Relevant amending instruments are S.I. 2000/3120, 2003/521, 2007/1749 and 2008/1554.

⁽⁹⁾ S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(10) are amended as follows.

(2) In regulation 27(4) (calculation of claimant’s income and capital in savings credit only cases) in sub-paragraph (d) for “paragraph 9(1)” substitute “paragraph 5A or 9(1)”.

(3) In regulation 83(11) (method of recovery)—

(a) omit paragraph (1A);

(b) in paragraph (2) omit “(1A),”;

(c) in paragraph (4) after “Schedule 4 (sums to be disregarded in the calculation of earnings)” insert “, or paragraph 5A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations 1995(12),”; and

(d) in paragraph (5) omit “, except as made under paragraph (1A),”.

(4) After regulation 85(13) (sums to be deducted in calculating recoverable overpayments) insert—

“Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling

85A.—(1) This regulation applies where an overpayment has occurred in the following circumstances—

(a) a claimant has moved from the dwelling previously occupied as his home (“dwelling A”) to another dwelling which he occupies as his home (“dwelling B”);

(b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home;

(c) housing benefit is paid to the same person in respect of the claimant’s occupation of dwelling B as it was paid to in respect of dwelling A; and

(d) the same relevant authority is responsible for paying the housing benefit in respect of dwelling A and dwelling B.

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant’s weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant’s entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.”.

(5) In Schedule 4(14) (sums disregarded from claimant’s earnings) after paragraph 5 insert—

(10) S.I. 2006/214.

(11) The amending instruments are S.I. 2005/2904 (as amended by S.I. 2006/217), 2008/1042 and 2008/2824.

(12) S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

(13) The amending instrument is S.I. 2005/2904 (as amended by S.I. 2006/217).

(14) Relevant amending instruments are S.I. 2008/1082, 2008/3157 and 2009/583.

“5A.—(1) Where—

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) regulation 26 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 1 to 5 and 7 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 2, then paragraph 2 applies instead of this paragraph.

(3) Notwithstanding regulation 23 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975⁽¹⁵⁾.

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995⁽¹⁶⁾,

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”

Amendment of the Council Tax Benefit Regulations 2006

4.—(1) The Council Tax Benefit Regulations 2006⁽¹⁷⁾ are amended as follows.

⁽¹⁵⁾ S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367. Relevant amending instruments are S.I. 2000/3120, 2003/521, 2007/1749 and 2008/1554.

⁽¹⁶⁾ S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

⁽¹⁷⁾ S.I. 2006/215.

(2) In Schedule 3(18)(sums to be disregarded in the calculation of earnings)—

(a) after paragraph 10 insert—

“10A.—(1) Where—

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 12 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 3 to 10 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 4, then paragraph 4 applies instead of this paragraph.

(3) Notwithstanding regulation 15 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(19).

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995(20),

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”; and

(b) in paragraph 16(1), for “paragraphs 3 to 10” substitute “paragraphs 3 to 10A”.

(18) Relevant amending instruments are S.I. 2008/1042, 2008/1082 and 2009/497.

(19) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367. Relevant amending instruments are S.I. 2000/3120, 2003/521, 2007/1749 and 2008/1554.

(20) S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

5.—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 1996(21) are amended as follows.

(2) In regulation 17(4) (calculation of claimant’s income in savings credit only cases) after sub-paragraph (g) add—

“(h) any amount to be disregarded by virtue of paragraph 5A of Schedule 2.”.

(3) In Schedule 2(22) (sums disregarded from claimant’s earnings) after paragraph 5 add—

“5A.—(1) Where—

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) regulation 16 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 1 to 5 and 7 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 2, then paragraph 2 applies instead of this paragraph.

(3) Notwithstanding regulation 13 (calculation of income and capital of members claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(23).

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995(24),

(21) S.I. 2006/216.

(22) Relevant amending instruments are S.I. 2008/1082, 2008/3157 and 2009/583.

(23) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367. Relevant amending instruments are S.I. 2000/3120, 2003/521, 2007/1749 and 2008/1554.

(24) S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

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and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”; and

(4) In Schedule 4 (capital disregards) paragraph 26B as inserted by the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005(25) is renumbered 26C.

Signed by authority of the Secretary of State for Work and Pensions

25 September 2009

Jim Knight
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 (S.I. 2006/213) (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Council Tax Benefit Regulations 2006 (S.I. 2006/215) and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216).

Regulation 2(3) inserts a new provision, regulation 104A, into the Housing Benefit Regulations. This applies where there has been an overpayment of housing benefit in the form of a rent allowance because a claimant has moved out of the dwelling which he occupied as his home, to another dwelling which he occupies as his home. It only applies where housing benefit is payable to the same person, by the same local authority, in respect of both dwellings. In these cases, the amount of the overpayment which is recoverable is the difference between the amount of housing benefit overpaid in respect of the first property and the amount of housing benefit the claimant would have been entitled to in respect of the second property for the same period.

Regulation 2(2)(a) revokes paragraph (1A) of regulation 102 which makes provision for the recovery of an overpayment in the circumstances now included in the new regulation 104A. Regulation 2(2)(b) and (d) make consequential amendments to regulation 102.

Schedule 4 to the Housing Benefit Regulations sets out sums which are to be disregarded in the calculation of a person’s earnings for the purpose of determining their eligibility for housing benefit. Regulation 2(4) amends Schedule 4 to provide an additional earnings disregard where a claimant or their partner is in receipt of (or being awarded credits to protect their National Insurance record whilst claiming) a contributory employment and support allowance or incapacity benefit, or is in receipt of severe disablement allowance, and undertaking work which is classified as exempt work under regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) or regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I. 1995/311).

The level of the disregard is set at the same level as the amount of money they are permitted to earn through exempt work (currently £20 or £92 a week depending on the circumstances), unless they are entitled to a higher sum under the existing earnings disregard for a lone parent (currently £25 a week). Where a claimant or their partner is in receipt of income support, an income-based jobseeker’s allowance, an income-related employment and support allowance or the guarantee element of state pension credit, they will already have all their earnings disregarded under other provisions.

Where the claimant is part of a couple, the disregard is shared between them. So if one member of the couple earns less than the amount of the disregard, the earnings of the other may be disregarded to bring the total amount disregarded up to the appropriate level. However where one of them is not undertaking any exempt work, the amount of that person’s earnings which may be disregarded is subject to a maximum limit of £20.

Regulation 2(2)(c) makes an amendment consequential to the amendment of Schedule 4.

Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 in respect of overpayments and the earnings disregard.

Regulations 4 and 5 make equivalent amendments to the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension

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credit) Regulations 2006 in respect of the earnings disregard only. Regulation 5(4) makes a minor amendment to correct an error in numbering.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.