Annex B

Explanatory Memorandum For

The Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004 No.2327

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This package of regulations contains a number of amendments to Housing Benefit (HB), Council Tax Benefit (CTB), Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)), State Pension Credit (Pension Credit), Social Security and Child Support (Decisions and Appeals) and Social Security (Claims and Payments) provisions. Most of the regulations are consequent on measures announced in the Budget Report 2004 (HC 301, 4.47), but there are also some tidying up amendments, to clarify the original policy intention.

3. Matters of special interest to the JCSI

3.1. None.

4. Legislative Background

4.1. The Budget announced a package of measures that are the first step on the way to simplifying the rules for Housing Benefit and Council Tax Benefit to provide greater alignment with tax credits and Pension Credit. Most of the regulations described below will come into force on 4th April 2005, but in addition, they include changes to Pension Credit income and capital rules (with corresponding amendments to the HB and CTB legislation) in regulations 2(10)(a)(iii) and (iv) and (b) and (22), 3(4), (10)(a)(iii) and (iv) and (b) and (22) and 7(1) to (4) and (6), which will come into force on 4th October 2004. This package also includes an amendment to the Social Security (Claims and Payments) Regulations at regulation 8, regarding the date on which a claim to Pension Credit may be treated as made: this measure will come into force on 6th October 2004.

4.2. The amendment to the notional capital rules in HB and CTB reflect changes made to notional capital rules in state pension credit by regulation 3(5) of The State Pension Credit (Miscellaneous Amendments) Regulations 2004 (SI 2004/647).

5. Extent

5.1. These Regulations extend to Great Britain.

6. European Convention on Human Rights

6.1. Not applicable.

7. Policy Background

7.1. Simplification of the non-dependant rules[1] where the non-dependant is on Pension Credit.

Regulations 2(4), 2(14), 3(5), 3(14), 5(b), 6(b) and 7(5)(b) – these amend non-dependant rules in the income-related benefits as they apply to non-dependants who are in receipt of Pension Credit. They provide that no non-dependant deduction shall be made where the non-dependant is in receipt of Pension Credit.

7.2. Bail hostels

Currently people who are released on bail but are required to stay in bail hostels can, under these circumstances, have their housing costs (HB/CTB for renters; IS/JSA(IB)/CTB/Pension Credit for owner occupiers) met for up to 52 weeks. This is not the case for people required to live away from home but for whom a bail hostel place is not available.

The amendments in **Regulations 2(5), 5(a), 6(a) and 7(5)(a)** are designed to give the same treatment to people who are required, as a condition of bail, to live away from home, but not necessarily in a bail hostel.

7.3. Childrens' income and capital

Currently, the income or capital of a child or young person can decrease a parent's HB/CTB in prescribed circumstances. **Regulations 2(6), 2(7), 2(8), 2(11), 2(12) 2(17), 2(19), 2(20), 2(21), 3(6), 3(7), 3(8), 3(11), 3(12), 3(17), 3(19), 3(20) and 3(21)** provide that income, earnings and/or capital of a child or young person are ignored when calculating HB and CTB.

7.4. Income relating to children for pensioners.

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[1] A non-dependant is a person who resides with the claimant and is not a partner or a dependant child of the claimant and/or the claimant's partner.

Where the claimant is in receipt of HB or CTB and/or has housing costs paid as part of their IS, JSA(IB) or Pension Credit, and there is a non-dependant present in the claimant's household, deductions from the claimant's benefit are made. These non-dependant deductions represent an expected contribution to the claimant's housing costs. Where the non-dependant is in remunerative work, the greater the income level of the non-dependant, the higher the rate of deduction.

Currently, where a pensioner is looking after a child, any income paid in benefits or Tax Credits for that child is totally ignored for the purposes of calculating entitlement to Pension Credit. For example, Child Benefit or Child Tax Credit. However, the same payments are taken fully into account in HB and CTB, unless the pensioner is in receipt of the guarantee element of Pension Credit, when all income and capital is ignored. Amendments in **Regulations 2(9), 2(10)(a)(i) and (ii), 3(9) and 3(10)(a)(i) and (ii)** mean that such payments made for a dependent child paid to all pensioners in HB/CTB will be ignored.

7.5. Effective date of changes of circumstance in HB/CTB for Pension Credit (Savings Credit Only) cases.

Currently HB/CTB regulations relating to changes of circumstances in Pension Credit "savings credit only" cases deal with changes in the Assessed Income Figure (AIF)[2] and changes to the savings credit itself under different and separate provisions. This means that although for the purposes of the Pension Credit calculation the AIF determines the savings credit, changes to the AIF and to the savings credit cannot always be given effect to in HB/CTB from the same date (effective date).

The amendments in **Regulations 2(16) and 3(16)** tie the HB/CTB effective date of AIF changes into the existing HB/CTB effective date for savings credit changes.

7.6. Equity Release Schemes

Currently, payments made at regular intervals under an equity release scheme are not taken into account in Pension Credit or HB/CTB for pensioners unless they result from the purchase of an annuity.

Regulation 7(3) amends regulation 15(5) of the State Pension Credit Regulations (SPC Regulations) so that payments made at regular intervals under non-annuity equity release schemes are taken into account. This brings Pension Credit into line with other income-related benefits. (Like annuity income, this income is qualifying income for savings credit as neither are included in the list of exceptions at regulation 9 of the State Pension Credit Regulations).

Regulation 7(4) amends regulation 16 of the State Pension Credit Regulations to add this income to the definition of retirement pension income. This ensures that the provisions of section 7 of the State Pension Credit Act 2002 relating to the assessed income period apply to this income as they do to annuity income.

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[2] Such figure being the calculation or estimate of the claimant's (and partner's, if applicable) income and capital by the Secretary of State used for the purposes of determining the award of Pension Credit as required by HB regulation 23/CTB regulation 15 (as modified for those of the qualifying age for Pension Credit), provided by The Pension Service to the Local Authority.

Regulation 7(2) defines the term "equity release scheme".

Corresponding amendments are made by **Regulations 2(10)(a)(iii) to (iv) and (b) and 3(10)(a)(iii) to (iv) and (b)** to HB/CTB for those who have attained the qualifying age for Pension Credit.

7.7. Disregard of second property occupied by an elderly or disabled relative

Regulation 7(6) amends paragraph 4(a) of Schedule V to the State Pension Credit Regulations. This has the effect of clarifying the treatment of second properties to ensure Pension Credit is at least as generous as Income Support.

It was always the intention that the Income Support capital disregard concerning second properties occupied by a relative would apply in Pension Credit. The way the regulations are currently drafted means that the claimant's partner's relatives and those who are not 'close' relatives are not covered under the capital disregard. The amendments close up the gap.

Corresponding amendments are made by **Regulations 2(22) and 3(4) and (22)** to HB/CTB for those who have attained the qualifying age for Pension Credit.

7.8. The date on which claims for Pension Credit may be treated as made

Regulation 8 amends regulation 4F(3) of the Social Security (Claims and Payments) Regulations to allow claims to be treated as made on the date on which a claimant or a third party acting on the claimant's behalf notifies a specified office of an intention to claim.

Current provisions regarding when a claim for Pension Credit may be treated as made are contained in transitional provisions which cease to apply on 5th October 2004. Under these provisions eligible claims could automatically be treated as made from 6th October 2003 or from a later date on which the conditions of entitlement were satisfied, irrespective of whether the notification of an intention to claim was made by the claimant or a third party. From 6th October 2004, the transitional regulations cease to apply and regulation 4F of the Claims and Payments Regulations applies. This provision only allows claims to be treated as made on the date the claimant notifies a specified office of the intention to claim, and makes no provision for claims to be treated as made on the date on which the initial notification of an intention to claim is made by a third party acting on behalf of the claimant.

It has always been the intention that Pension Credit claims may be treated as made on the date on which either the claimant themselves or a third party acting on their behalf notifies a specified office of the intention to make a claim, provided that a valid claim is subsequently made by the claimant within a prescribed time. This amendment is intended to ensure that the regulations achieve the policy aim

7.9. Tidying Up Measures

7.9.1. Notional Capital Rules.

Regulations 2(13) and 3(13) amend the notional capital rules in HB regulation 42/CTB regulation 34 respectively. These amendments reflect changes made to notional capital rules in state pension credit by regulation 3(5) of The State Pension Credit (Miscellaneous Amendments) Regulations 2004 (SI 2004/647).

The current regulations provide that in certain situations a person may be treated as having capital they do not actually have. Regulations 42/34 allows Local Authorities to treat people as having capital if they have deliberately disposed of money to secure or increase HB/CTB entitlement. However, the policy intention is that this should not apply in every case. From 6th October 2003, Pension Credit and HB/CTB (for people who have attained the qualifying age for state pension credit) have taken a more relaxed approach to this than other income–related benefits. It is expected that pensioners will draw on capital to repay debts or to purchase goods and services as part of their normal financial planning and expenditure. Where capital has been used for this purpose, and provided any expenditure on goods and services was reasonable, notional capital is not considered.

Regulations 42(2)(b)/34(2)(b) already provides for these exceptions, but the opening words of the provision ("Without prejudice to the generality of paragraph (1)") do not fit with the intention that these are exceptions to the notional capital rule. The words seem to suggest that in some cases exceptions under paragraph (2)(b) may still be caught by 42(1)/34(1), which is not the policy intention. In addition, regulations 42(2)(a)/34(2)(a) provide that gifts to third parties will always constitute deprivation of capital. This is not considered necessary. The policy intention is that someone will only be assumed to have capital they do not have if they have disposed of it to maximise HB/CTB entitlement – regulation 42(2)(a)/34(2)(a) does not add anything to this principle as gifts to third parties are merely one type of disposal to which the rule may apply. The amendments therefore restore the original policy intention.

7.9.2. amendment to the non-dependant deduction (NDD) concession.

Currently, where the claimant is 65 or over (or who has a partner aged 65 or over) and an existing non-dependant's income increases sufficiently to trigger a rise in the rate of the NDD, that rise is delayed by 26 weeks.

These deferral provisions specifically refer to the non-dependant's *income* increasing so triggering the deferred NDD increase. This means that the concession can apply only if the non-dependant is in remunerative work.

The amendments provide that the concession will apply to <u>any</u> change of circumstances that would give rise to an increased deduction.

Regulations 2(15) and 3(15) amend HB Regulation 68(9)(b)(ii)/CTB 59(10)(b)(ii) respectively. **Regulation 4** makes an equivalent amendment to regulation 17B of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, which governs the operation of the deferral in Pension Credit.

7.9.3. Addition to applicable amounts specified for a single person, for pensioners in receipt of HB/CTB

The legislation which prescribes the applicable amounts for those of qualifying age for state pension credit is contained in Schedules 2A/1A of the HB and CTB (General) Regulations (respectively) as modified by the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (SI 2003/325)) makes references only to single people and couples, but the definitions in the interpretation regulations refer to lone parents as well.

The amendments in **Regulations 2(18) and 3(18)** will add "lone parents" to the categories of persons with the specified applicable amounts for single pensioners in receipt of HB/CTB to be consistent with the definitions and the other income-related benefits.

7.10. Consultation

The regulations were considered by the Social Security Advisory Committee at its meeting on 4th August 2004. The Committee agreed that proposals in respect of these regulations should not be referred to it. Local Authority representatives have been consulted and expressed their support.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

8.2. Impact on the public sector. The only significant benefit costs relate to the simplification of the nondependent rules where the non-dependant is on Pension Credit which has an anticipated annual cost of £5 million from April 2005, ignoring childrens' income/capital for pensioners of £15 million from April 2005, and the bail hostel amendment of £5 million also from April 2005.

9. Contact

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