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**Update briefing 18<sup>th</sup> November 2005**  
**Re: transitional protection for lesbian, gay and bisexual (LGB)**  
**people on means tested benefits after the introduction of the**  
**Civil Partnerships Act**

**What will change for LGB people on benefits?**

The welfare benefits legislation is due to change on 5<sup>th</sup> December 2005. After this date, people of the same sex living together will be deemed to be a couple for means-tested benefits purposes, rather than 2 single individuals, as has always been the case. This is **irrespective of whether people have entered into a civil partnership**. Some people may argue that this provides parity with heterosexual couples; however this argument ignores some major issues, which are outlined below.

**LGB people will be penalised by previous unequal treatment in the law**

Everybody needs to plan their lives based on their expected income. This includes people on benefits, particularly disabled people, older people and some parents who may expect to be on benefits in the long-term. This legislation change was unexpected and therefore will have a big impact on people. People may have bought homes, relying on receiving Income Support Housing Costs or rented homes, relying on Housing Benefit. If they lose these benefits in December, it could leave older or disabled lesbian and gay people homeless. People may have taken on other financial commitments, such as loans, on the basis of their projected income. The legislation could leave people with insufficient income to meet their financial commitments and could therefore lead to the stress and worry caused by mounting debts. Because lesbian and gay couples were previously ignored in the law, low income lesbian and gay couples are now being penalised by this change that people could not be expected to plan for.

**The government argues that the changes are not “unexpected”, yet they have failed to inform benefit claimants of the changes**

The under-secretary of State has told Rainbow Ripples that “I do not think it is fair to say that this (change in benefits entitlement) is unexpected.” However, The HB/CTB circular A16/2005 paragraph 6 states that “The couples affected must be given a reasonable period to become aware of the change in the law”. Thus the Department of Work and Pensions (DWP) have accepted that not all couples affected will be aware of the change, even after the Act is implemented.

The DWP have decided not to inform all claimants of the change (Para 24 of the above circular). This means that existing claimants may be completely unaware of the imminent reduction to their income. Although the under-secretary of state said that "The Department of Work and Pensions has mounted a publicity campaign to ensure that existing customers are aware... (of the changes)" this has centred on the distribution of publicity material to DWP offices, other statutory organisations and LGB events. Many older or disabled people will not have access to this information.

### **LGB people will be subject to a new "living together" test that many will find intrusive or inappropriate to their circumstances**

Many people may live in the same household but be economically independent, lesbian and gay people in particular tend to live in less traditional household structures; for example living with ex-partners or living with friends. Many disabled people, in particular, live with someone that provides them with support. This ruling may mean that people in these situations lose their entire income.

The government has told Rainbow Ripples that the "Living Together as Husband and Wife Test" (LTAHAWT) has been reviewed and would be applied with "sensitivity and parity to same-sex couples". We do not agree that it is possible to deal with these extremely personal issues "sensitively". The Pensions Service have already indicated that they are concerned that older lesbian and gay people will not claim benefits that they are entitled to under the new rules, because of concerns about having to disclose their sexual identity. The test is included in HB/CTB circular A16/2005 as Appendix A. We feel that some of the test questions are insensitive or intrusive, for example "How do you spend your time at home when you are both there?" or "Would one of you provide long-term financial support to the other if they had no income?" This last question may be particularly distressing when the benefit claimant is a disabled person, as the other person may feel morally obliged to support the person currently on benefits. Some of the questions seem irrelevant in determining whether people are LTAHAW, for example whether people watch television together or collect children from school.

We are far from convinced that DWP staff and Local Authority staff will have adequate training and understand LGB culture in relation to some of these questions.

### **Local Authority Housing Benefit departments may cause LGB people to have to "out" themselves to private landlords**

Where Housing Benefit is reduced as a result of these changes to the law, the Local Authority administering the benefit will have to inform the benefit recipient's landlord of the reduction in Housing Benefit, though not the reason for this reduction (HTB/CTB circular A16/2005 Para. 13). The landlord is then likely to ask the tenant of the reason for the reduction in Housing Benefit. We do not think this is at all sensitive and may leave people vulnerable to harassment or possibly eviction because of their sexual orientation.

### **LGB people are not being treated equally to other groups that could potentially have lost benefits as a result of changes to the law**

In other situations where benefit rules have been changed, often **transitional protection is put in place for current claimants**. This was the case with recent changes to Working Families Tax Credit and previous changes to Incapacity Benefit. Transitional protection often ensures that, for the length of their current claim, people claiming the benefit on the date that it changes, are considered under the “old rules”. This would have provided some protection for people who have made financial commitments on the basis of their current benefit levels.

The government’s response to this point was that “Transitional protection would mean the continuation of discrimination against opposite sex couples who are currently treated less advantageously than same sex couples... furthermore members of same sex couples who established entitlement to income-related benefits prior to the introduction of civil partnerships would be treated differently from those whose entitlement may arise later”. This is an argument against transitional protection per se: in all situations transitional protection treats different groups of people differently; this is its purpose. The government has not addressed the point that, in many previous cases transitional protection has been provided. This is despite their assertion in the HB/CTB circular that they expect the changes to affect “quite a small proportion” of DWP customers.

### **Instead, plans for reviewing the benefits of existing claimants are confused and inadequate**

The transitional arrangements for the implementation of these changes seem confused and inadequate. For example, it is stated in the above HTB/CTB circular (Para 7) that the new rules will be applied by the DWP from “the first intervention” on or after 5.12.05. It is unclear whether a regular review is classed as an “intervention”. If it is, then some people will have no or very little protection, without any change in circumstances. Even if a change in circumstances triggers a review, claimants will have no warning of potentially large reductions in benefits.

Furthermore, if people who may be affected by these changes learn that a change in circumstances may trigger a review of benefits; this may prevent them from moving house, which may be necessary for them due to harassment or inadequate or inaccessible housing. People may have to choose between poverty and unsuitable housing.

The position for lesbians and gay men claiming tax credits is even more draconian: not only will they have to pay back any overpaid credits but they may have to pay a financial penalty if they do not declare that they are a couple within 3 months (Tax Credits update, HM revenue and Customs, Summer 2005)

### **What we asking for**

It seems that the Civil Partnerships Legislation has been framed so that the financial advantages assist lesbian, gay and bisexual people on higher incomes, for example with inheritance tax advantages. This equality is, of course welcome. However, the legislation unfairly penalises those on low incomes, especially people on means-tested benefits.

Rainbow Ripples is asking the government to reconsider the issue of transitional protection for existing claimants and give people protection for the length of their claim, not just until review or change in circumstances.