

DRAFT STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

The Housing Benefit (Amendment) Regulations 2012

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2), (3) and (5), 137(1) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992(a), section 79(4) of the Social Security Act 1998(b) and paragraphs 4(4A) and (6), 20(1) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(c).

A draft of this Order was laid before Parliament in accordance with section 176(1)(ab)(d) of the Social Security Contributions and Benefits Act 1992 and approved by a resolution of each House.

This instrument contains only regulations made by virtue of, or consequential upon, section 69 of the Welfare Reform Act 2012(e) and is made before the end of the period of six months beginning with the coming into force of that section.

In accordance with section 176(1) of the Social Security Administration Act 1992(f), the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Housing Benefit (Amendment) Regulations 2012.
- (2) Subject to paragraph (3), these Regulations come into force on 1st January 2013.
- (3) Regulations 3(2)(a), 4(2)(a), 5 and 6 come into force on 1st April 2013.
- (4) In these Regulations—

(a) 1992 c.4. Section 130A was inserted by s. 30(2) of the Welfare Reform Act 2007 (c.5) and amended by s. 69 of the Welfare Reform Act 2012 (c.5). Section 137 is an interpretation provision and is cited for the definition of “prescribed”.

(b) 1998 c.14. Section 79(4) is applied to the provisions of the Child Support, Pensions and Social Security Act 2000 (c.19) by paragraph 20(3) of Schedule 7 to that Act.

(c) 2000 c.19. Paragraph 4(4A) was inserted by s. 30(3) of the Welfare Reform Act 2007. Paragraph 23(1) is an interpretation provision and is cited for the definition of “prescribed”.

(d) Section 176(1) was amended by s. 69(4) of the Welfare Reform Act 2012.

(e) 2012 c.5.

(f) 1992 c.5. Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c.52) and s. 69(6) of the Child Support, Pensions and Social Security Act 2000.

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(a); and
“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(b).

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

2.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(c) are amended as follows.

(2) In regulation 8 (date from which a decision superseding an earlier decision takes effect) for paragraph (15)(d) substitute—

“(15) A decision to which regulation 7A(2) applies shall take effect—

- (a) from 1st April in a case where the claimant’s weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) or (c) of the Housing Benefit Regulations or, as the case may be, regulation 61(2)(b) or (c) of the Housing Benefit (State Pension Credit) Regulations; and
- (b) in any other case, from the first Monday in April.”

Amendment of the Housing Benefit Regulations relating to the determination of the maximum rent (LHA)

3.—(1) The Housing Benefit Regulations are amended as follows.

(2) In regulation 13C(e) (when a maximum rent (LHA) is to be determined)—

(a) in paragraph (2)(d)—

- (i) at the end of paragraph (ii) omit “or”; and
- (ii) after paragraph (iii) add—

“or

- (iv) notification of a change of a kind which affects the amount of the claimant’s cap rent as determined in accordance with regulation 13D (determination of a maximum rent (LHA)).”;

(b) for paragraph (3) substitute—

“(3) This paragraph applies on 1st April in any year.”;

(c) omit paragraph (4); and

(d) in paragraph (6) omit the definition of “the LHA date”.

Amendment of the Housing Benefit (State Pension Credit) Regulations relating to the determination of the maximum rent (LHA)

4.—(1) The Housing Benefit (State Pension Credit) Regulations are amended as follows.

(2) In regulation 13C(f) (when a maximum rent (LHA) is to be determined)—

(a) in paragraph (2)(d)—

- (i) at the end of paragraph (ii) omit “or”; and
- (ii) after paragraph (iii) add—

“or

(a) S.I. 2006/213.
(b) S.I. 2006/214.
(c) S.I. 2001/1002.
(d) Paragraph (15) was inserted by S.I. 2003/2399 and substituted by S.I. 2007/2870 (as amended by S.I. 2008/586).
(e) Regulation 13C was inserted by S.I. 2007/2868. There are amendments not relevant to this instrument.
(f) Regulation 13C was inserted by S.I. 2007/2869. There are amendments not relevant to this instrument.

- (iv) notification of a change of a kind which affects the amount of the claimant's cap rent as determined in accordance with regulation 13D (determination of a maximum rent (LHA)).";
- (b) for paragraph (3) substitute—
“(3) This paragraph applies on 1st April in any year.”;
- (c) omit paragraph (4); and
- (d) in paragraph (6) omit the definition of “the LHA date”.

Amendment of the Housing Benefit Regulations relating to the determination of the maximum rent (social sector)

5.—(1) The Housing Benefit Regulations are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “eligible rent”(a), in paragraph (a) after “regulations 12B (eligible rent),” insert “12BA (eligible rent and maximum rent (social sector)),”; and
- (b) in the definition of “registered housing association”(b)—
 - (i) in paragraph (b) after “Housing Act 1996” add “or a registered social landlord within the meaning of Part 1 of that Act”; and
 - (ii) in paragraph (c) after “Housing (Scotland) Act 2010” add “or a registered social landlord within the meaning of section 165 of that Act”.

(3) In regulation 11(1)(c) (eligible housing costs) after sub-paragraph (a) insert—

“(ab) regulations 12BA (eligible rent and maximum rent (social sector)), A13 (when a maximum rent (social sector) is to be determined) and B13 (determination of a maximum rent (social sector));”.

(4) In regulation 12B(d) (eligible rent) for paragraph (1) substitute—

“(1) The amount of a person's eligible rent shall be determined in accordance with the provisions of this regulation except where any of the following provisions applies—

- (a) regulation 12BA (eligible rent and maximum rent (social sector));
- (b) regulation 12C (eligible rent and maximum rent);
- (c) regulation 12D (eligible rent and maximum rent (LHA));
- (d) paragraph 4 of Schedule 3 to the Consequential Provisions Regulations.”.

(5) After regulation 12B insert—

“Eligible rent and maximum rent (social sector)

12BA.—(1) This regulation applies where a maximum rent (social sector) has been, or is to be, determined in accordance with regulation A13 (when a maximum rent (social sector) is to be determined).

(2) Except where paragraph (3) or (6) applies, the amount of a person's eligible rent is the maximum rent (social sector).

(3) Where the claimant occupies a dwelling which is the same as that occupied by the claimant at the date of death of a linked person, the eligible rent is—

- (a) the eligible rent which applied on the day before the death occurred; or
- (b) in a case where no eligible rent applied on that day, an eligible rent determined in accordance with regulation 12B(2),

(a) The definition of “eligible rent” was substituted by S.I. 2007/2868.

(b) The definition of “registered housing association” was substituted by S.I. 2010/671 and amended by S.I. 2012/700.

(c) Regulation 11(1) was substituted by S.I. 2007/2868.

(d) Regulation 12B was inserted by S.I. 2007/2868.

where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(4) For the purpose of paragraph (3), a claimant is treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.

(5) Where a person's eligible rent has been determined in accordance with paragraph (3) (protection on death), it shall apply until the first of the following events occurs—

- (a) the period of 12 months from the date of death has expired;
- (b) the determination of an eligible rent in accordance with paragraph (3) (protection on death) in relation to a subsequent death;
- (c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (3);
- (d) there is a change of dwelling; or
- (e) the determination of an eligible rent under regulation 12B.

(6) Where the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for the dwelling when they were entered into, the eligible rent is an eligible rent determined in accordance with regulation 12B(2) where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(7) Paragraph (6) shall not apply where the claimant or the claimant's partner was previously entitled to benefit in respect of an award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of the claimant's current award of housing benefit.

(8) Where a person's eligible rent has been determined in accordance with paragraph (6) (13 week protection), it shall apply until the first of the following events occurs—

- (a) the first 13 weeks of the claimant's award of housing benefit have expired;
- (b) the determination of an eligible rent in accordance with paragraph (3) (protection on death);
- (c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (6);
- (d) there is a change of dwelling; or
- (e) the determination of an eligible rent under regulation 12B.”.

(6) In regulation 12D(a) (eligible rent and maximum rent (LHA)), in paragraph (7)(a)(iv) and (b)(iv) after “regulation 13” insert “, a maximum rent (social sector) by virtue of regulation A13”.

(7) After regulation 12M(b) (transitional protection – reduction in LHA) insert—

“When a maximum rent (social sector) is to be determined

A13.—(1) Subject to paragraph (2), the relevant authority must determine a maximum rent (social sector) in accordance with regulation B13 (determination of a maximum rent (social sector)) where the relevant authority has not determined, and is not required to determine—

- (a) a maximum rent in accordance with regulation 13 (maximum rent); or
- (b) a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined).

(a) Regulation 12D was inserted by S.I. 2007/2868. There are amendments not relevant to this instrument.

(b) Regulation 12M was inserted by S.I. 2010/2835. There are amendments not relevant to this instrument.

- (2) This regulation does not apply—
- (a) in a rent allowance case where the tenancy is an excluded tenancy of a type mentioned in any of paragraphs 4 to 11 of Schedule 2 (excluded tenancies) and the landlord is not a registered housing association;
 - (b) in respect of shared ownership tenancies;
 - (c) in respect of mooring charges for houseboats and payments in respect of the site on which a caravan or mobile home stands;
 - (d) where the claimant or the claimant’s partner has attained the qualifying age for state pension credit, or where both have attained that age; or
 - (e) where the dwelling is temporary accommodation.
- (3) In this regulation “temporary accommodation” means accommodation of a kind listed in paragraph (4) which the relevant authority makes available to the claimant, or which a registered housing association makes available to the claimant in pursuance of arrangements made with it by the authority—
- (a) to discharge any of the authority’s functions under Part 3 of the Housing Act 1985, Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987; or
 - (b) to prevent the claimant being or becoming homeless within the meaning of Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987.
- (4) The accommodation referred to in paragraph (3) is—
- (a) accommodation—
 - (i) provided for a charge, where that charge includes the provision of that accommodation and some cooked or prepared meals which are also cooked or prepared, and consumed, in that accommodation or associated premises; or
 - (ii) provided in a hotel, guest house, lodging house or similar establishment, but does not include accommodation which is provided in a care home, an independent hospital or a hostel;
 - (b) accommodation which the authority or registered housing association holds on a lease and, in the case of an authority in England, is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years;
 - (c) accommodation which the authority or registered housing association has a right to use under an agreement other than a lease with a third party.

Determination of a maximum rent (social sector)

B13.—(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).

- (2) The relevant authority must determine a limited rent by—
- (a) determining the amount that the claimant’s eligible rent would be in accordance with regulation 12B(2) without applying regulation 12B(4) and (6);
 - (b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in accordance with paragraph (5), reducing that amount by the appropriate percentage set out in paragraph (3); and
 - (c) where more than one person is liable to make payments in respect of the dwelling, apportioning the amount determined in accordance with sub-paragraphs (a) and (b) between each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each person.
- (3) The appropriate percentage is—

- (a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and
- (b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.

(4) Where it appears to the relevant authority that in the particular circumstances of any case the limited rent is greater than it is reasonable to meet by way of housing benefit, the maximum rent (social sector) shall be such lesser sum as appears to that authority to be an appropriate rent in that particular case.

(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant’s dwelling as their home (and each person shall come within the first category only which is applicable)—

- (a) a couple (within the meaning of Part 7 of the Act);
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child,

and one additional bedroom in any case where the claimant or the claimant’s partner is a person who requires overnight care (or in any case where each of them is).”.

(8) In Schedule 2(a) (excluded tenancies) in paragraph 3—

- (a) omit sub-paragraph (2)(a); and
- (b) in sub-paragraph (3) omit “(a) or”.

(9) In Part 2 (application of the regulations) of Schedule 10(b) (former pathfinder authorities) for paragraph 4 substitute—

“4. In regulation 12B(1) (eligible rent) after sub-paragraph (c) insert—

“(ca) any of regulations 12E to 12K (transitional protection for pathfinder cases);”.

Amendment of the Housing Benefit (State Pension Credit) Regulations

6.—(1) The Housing Benefit (State Pension Credit) Regulations are amended as follows.

(2) In regulation 2(1) (interpretation) in the definition of “registered housing association”(c)—

- (a) in paragraph (b) after “Housing Act 1996” add “or a registered social landlord within the meaning of Part 1 of that Act”; and
- (b) in paragraph (c) after “Housing (Scotland) Act 2010” add “or a registered social landlord within the meaning of section 165 of that Act”.

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

Name
Parliamentary Under-Secretary of State,
Department for Work and Pensions

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state

(a) Schedule 2 was substituted by S.I. 2007/2868. Paragraph 3 was substituted by 2008/2824 and amended by S.I. 2010/671.
 (b) Schedule 10 was substituted by S.I. 2007/2868.
 (c) The definition of “registered housing association” was substituted by S.I. 2010/671 and amended by S.I. 2012/700.

pension credit) Regulations 2006 (“the Housing Benefit (State Pension Credit) Regulations”) and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”). The amendments do two things. First, they make changes to the time when, and circumstances in which, a case subject to the local housing allowance (“LHA”) is reviewed. Second, they introduce a new method of calculating the eligible rent when determining the appropriate maximum housing benefit of a claimant in the social rented sector whose housing benefit is determined under the Housing Benefit Regulations.

Regulation 3 amends regulation 13C of the Housing Benefit Regulations, which sets out the circumstances when a local authority must determine a maximum rent (LHA) in cases to which the local housing allowance provisions apply. Instead of making a determination on the anniversary of the last determination, the local authority must make a determination on 1st April each year. It must also make a determination when the claimant’s rent changes.

Regulation 4 makes equivalent amendments to the Housing Benefit (State Pension Credit) Regulations.

Regulation 2 amends the Decisions and Appeals Regulations to make provision for the effective date of a supersession that is made as a consequence of the determination of the maximum rent (LHA) that the local authority is required to make on 1st April. This will take effect on 1st April or the first Monday in April if the claimant’s rent is payable in weekly intervals. This ensures that any change will link into changes to other parts of the housing benefit calculation affected by the annual up-rating of benefit.

Regulation 5(5) and (7) insert new regulations 12BA, A13 and B13 into the Housing Benefit Regulations. Regulation 12BA provides that where a maximum rent (social sector) is to be calculated in accordance with regulation B13 by virtue of regulation A13, the eligible rent will be the maximum rent (social sector). Regulation 12BA provides for a protected eligible rent based upon the actual rent for up to 13 weeks where the claimant has not previously been awarded housing benefit in the past 52 weeks and was able to meet their rent obligation when they entered into it. It also provides for a protected eligible rent for up to 12 months where certain members of the claimant’s household have died. This is based either upon the actual rent or, in the case of an existing award of housing benefit, the previous eligible rent.

Regulation A13 makes provision for the cases where a maximum rent (social sector) must be determined by the local authority. It includes exceptions for certain tenancies that are contained within Schedule 2 to the Housing Benefit Regulations, shared ownership tenancies, mooring charges for houseboats and site charges for caravans and mobile homes, claimants who have reached the qualifying age for state pension credit, or whose partner has reached that age, and claimants placed in temporary accommodation by the local authority.

Regulation B13 makes provision for the calculation of the maximum rent (social sector). The local authority must determine how many bedrooms are necessary for the claimant’s household, in accordance with the criteria set out in paragraph (5), and how many bedrooms the claimant has. The local authority must then determine the claimant’s limited rent. If the claimant has one bedroom in excess of the number that is necessary, 14% of the limited rent is deducted to give the maximum rent (social sector). If the claimant has two or more bedrooms in excess of the number that is necessary, the deduction is 25%.

The other paragraphs in regulation 5 contain consequential amendments. These include an amendment (made by paragraph (2)) to the definition of “registered housing association” to ensure that all tenants of registered social landlords whose rent is not unreasonably high have their eligible rent determined by reference to a maximum rent (social sector). Regulation 6 amends the definition of “registered housing association” in the Housing Benefit (State Pension Credit) Regulations to ensure consistency.

A full impact assessment has not been published for this instrument. However, an assessment of the impact of the provisions in these Regulations is included in the impact assessment that accompanied the Welfare Reform Bill which is available in the libraries of both Houses of Parliament. An updated version of the relevant extract is annexed to the Explanatory

Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies of the impact assessment may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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