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## STATUTORY INSTRUMENTS

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### 1991 No. 587

#### The Housing Benefit and Community Charge Benefit (Subsidy) Order 1991

##### PART II

##### HOUSING BENEFIT SUBSIDY

##### **Deductions to be made in calculating housing benefit subsidy in respect of rebates or allowances**

**13.—**(1) The deductions referred to in article 2(2) are, subject to paragraph (2), to be of the following amounts where—

- (a) a tenant of an authority, who is in receipt of a rent rebate, while continuing to occupy, or when entering into occupation of, a dwelling as his home, either under his existing tenancy agreement or by entering into a new tenancy agreement—
  - (i) is during, or was at any time prior to, the relevant year able to choose whether or not to be provided with any services, facilities or rights and chooses or chose to be so provided; or
  - (ii) is during, or was at any time prior to, the relevant year able to choose either to be provided with any services or facilities or, whether or not in return for an award or grant from the authority, to provide such services or facilities for himself; or
  - (iii) would be able during, or would have been able at any time prior to, the relevant year to exercise the choice set out in sub-paragraph (i) or (ii) of this paragraph if he were not or had not at that time been in receipt of a rent rebate,the amounts attributable during the relevant year to such services, facilities or rights whether they are or would be expressed as part of the sum fixed as rent, otherwise reserved as rent or expressed as an award or grant from the authority;
- (b) during the relevant year a person becomes entitled to a rent-free period which has not been, or does not fall to be, taken into account in calculating the amount of rent rebate to which he is entitled under the Housing Benefit Regulations, the amount of rebate which is or was payable to him in respect of such rent free period;
  - (i) made to a tenant for a reason unrelated to the fact that he is a tenant;
  - (ii) made under a statutory obligation;
  - (iii) made under section 137 of the Local Government Act 1972<sup>(1)</sup> (power of local authorities to incur expenditure for expenditure for certain purposes not otherwise authorised);

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<sup>(1)</sup> 1972 c. 70; section 137 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 44; the Local Government Finance Act 1982 (c. 32), section 34, Schedule 5, paragraph 5; and by the Local Government Act 1986 (c. 10), section 3.

- (iv) except where sub-paragraph (a)(ii) applies, made as reasonable compensation for reasonable repairs or redecoration the tenant has, or has caused to be, carried out whether for payment or not and which the authority would otherwise have carried out or have been required to carry out; or
- (v) of a reasonable amount made as compensation for loss, damage or inconvenience of a kind which occurs only exceptionally suffered by the tenant by virtue of his occupation of his home;
- (d) during the relevant year the weekly amount of rebate or allowance is increased under paragraph (8) of regulation 69 of the Housing Benefit Regulations or, as the case may be, regulation 57 of the Scottish Regulations (calculations of weekly amounts), the amount of such increase;
- (e) during the relevant year it is discovered that a payment of community charge rebate has been overpaid in the relevant year as a result of the reduction in the amount a person is liable to pay in consequence of regulations made under section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987, the amount of the overpayment;
- (f) during the relevant year it is discovered that a rebate or allowance has been paid under the Social Security and Housing Benefits Act 1982<sup>(2)</sup> in excess of entitlement, the amount of such overpayment;
- (g) during the relevant year an amount is recovered in relation to an overpayment of a rebate or allowance which was caused by official error within the meaning of article 11(3) where the overpayment had occurred and been discovered in a year earlier than the relevant year, the amount so recovered;
- (h) during the relevant year it is discovered that an overpayment of rebate or allowance has been made in either of or both the years ending 31st March 1989 and 31st March 1990, as the case may be the amount of such overpayment, but only to the extent that—
  - (i) the amount of the overpayment or any part of it has not been deducted from qualifying expenditure under article 3 of the Housing Benefit Subsidy Order 1989<sup>(3)</sup> or of the Housing Benefit Subsidy Order 1990<sup>(4)</sup>; and
  - (ii) the amount of the overpayment or any part of it does not include an amount to which paragraph (15) of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations (time and manner in which claims are to be made) applied.
- (2) Where in relation to any amount of a rebate or allowance a deduction falls to be made under two or more sub-paragraphs of paragraph (1) only the higher or highest or, where the amounts are equal, only one amount, shall be deducted.

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(2) 1982 c. 24.  
 (3) S.I. 1989/607.  
 (4) S.I. 1990/785.