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STATUTORY INSTRUMENTS

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**1995 No. 1644**

**SOCIAL SECURITY**

**The Housing Benefit (General) Amendment Regulations 1995**

*Made* - - - - *28th June 1995*  
*Laid before Parliament* *29th June 1995*  
*Coming into force* - - *2nd January 1996*

The Secretary of State for Social Security, in exercise of powers conferred upon him by sections 123(1)(d), 130(2) to (5), 135(1), 137(1) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992(1), sections 5(1), 63(1) to (3), 136(2), 189(1) and (4) to (6) and 191 of the Social Security Administration Act 1992(2) and of all other powers enabling him in that behalf, after reference to the Social Security Advisory Committee(3) and after consultation with organisations appearing to him to be representative of the authorities concerned(4), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit (General) Amendment Regulations 1995 and shall come into force on 2nd January 1996.

(2) In these Regulations—

- (a) “the Principal Regulations” means the Housing Benefit (General) Regulations 1987(5) and expressions used in these Regulations and in the Principal Regulations shall have, unless the context otherwise requires, the same meaning in these Regulations as they have in the Principal Regulations; and
- (b) a reference to a numbered regulation is to the regulation in these Regulations bearing that number and, unless the context otherwise requires, a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

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(1) 1992 c. 4; section 137(1) is cited because of the meaning there ascribed to “prescribed”.  
(2) 1992 c. 5; section 191 is cited because of the meaning there ascribed to “prescribe”.  
(3) See section 172(1) of the Social Security Administration Act 1992.  
(4) See section 176(1) of the Social Security Administration Act 1992.  
(5) S.I. 1987/1971; relevant amendments are S.I. 1988/1971, 1990/546, 1549, 1992/432, 1993/317, 518, 1249, 2118, 1994/578, 1995/560 and 625.

### **Amendment of regulation 2 of the Principal Regulations**

2.—(1) Regulation 2(1) of the Principal Regulations (interpretation) shall be amended in accordance with the following paragraphs.

(2) After the definition of “family” there shall be inserted the following definition—

““Housing Act functions” has the same meaning as in section 136(1) of the Administration Act;”.

(3) After the definition of “maternity leave”(6) there shall be inserted the following definition—

““maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 11 applies;”.

### **Amendment of regulation 8 of the Principal Regulations**

3. In regulation 8(1)(7) of the Principal Regulations (eligible housing costs) for the words “regulation 10(3) (rent)” there shall be substituted the words “regulations 10(3), (6A) and (6B) (rent) and 11 (maximum rent)”.

### **Amendment of regulation 10 of the Principal Regulations**

4.—(1) Regulation 10 of the Principal Regulations (rent)(8) shall be amended in accordance with the following paragraphs.

(2) In paragraph (3)—

(a) for the words “and to regulations 11 and 12 (restrictions on unreasonable payments and rent increases)” there shall be substituted the words “and to paragraphs (6A) and (6B) and regulations 11 (maximum rent) and 12 (restrictions on rent increases)”; and

(b) in sub-paragraph (b), after “with Schedule 1” there shall be inserted the words “except in a case where an amount in respect of that ineligible charge has been deducted from a relevant rent as defined in regulation 11(13) and a maximum rent has been determined by reference to that relevant rent”.

(3) After paragraph (6) there shall be inserted the following paragraphs—

“(6A) In no case shall the amount of a person’s eligible rent as determined in accordance with the preceding paragraphs of this regulation exceed the amount of the maximum rent.

(6B) In any case where it appears to the authority that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to that authority to be an appropriate rent in that particular case.”.

### **Substitution of regulation 11 of the Principal Regulations**

5. For regulation 11 of the Principal Regulations (restrictions on unreasonable payments) there shall be substituted the following regulation—

#### **“Maximum rent**

11.—(1) Where an authority has applied to the rent officer for a determination in accordance with regulation 12A (requirement to refer to rent officers)(9) and a rent officer

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(6) The definition was added by S.I. [1993/2118](#).

(7) Regulation 8(1) was amended by S.I. [1990/546](#) and [1993/518](#).

(8) Regulation 10 was amended by S.I. [1988/1971](#), [1990/546](#) and [1993/317](#).

(9) Regulation 12A was added by S.I. [1990/456](#) and amended by S.I. [1993/317](#) and [19995/560](#).

has made a determination or redetermination in exercise of the Housing Act functions, the maximum rent shall be determined in accordance with paragraphs (2) to (12).

(2) In a case where the rent officer has determined a relevant rent, but is not required to notify the authority of a local reference rent, the maximum rent shall be that relevant rent.

(3) In a case where the rent officer has determined and is required to notify the authority of a local reference rent, the maximum rent shall not exceed twice that local reference rent.

(4) Subject to the limit specified in paragraph (3), in a case where the rent officer has determined both a local reference rent of which he is required to notify the authority and a relevant rent, and—

(a) the relevant rent is higher than the local reference rent, the maximum rent shall be the local reference rent plus 50 per cent. of the amount by which the relevant rent exceeds the local reference rent;

(b) the local reference rent is higher than the relevant rent, the maximum rent shall be the relevant rent.

(5) Subject to the limit specified in paragraph (3), in a case where the rent officer has determined a local reference rent of which he is required to notify the authority, but has not determined a relevant rent and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent plus 50 per cent. of the amount by which that reckonable rent exceeds the local reference rent.

(6) In a case where—

(a) the authority has determined a maximum rent in respect of a dwelling; and

(b) during the benefit period the reckonable rent in respect of that dwelling is reduced to a sum which is less than the reckonable rent at the time that maximum rent was determined,

then on review—

(i) the maximum rent shall not be reduced during that benefit period where that sum is not less than the maximum rent; and

(ii) the maximum rent shall be reduced for the remainder of that benefit period to an amount equal to that sum where that sum is less than the maximum rent.

(7) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom paragraph (11)(b) to (d) applied or, had a claim been made, would have applied, the maximum rent shall be either—

(a) the maximum rent which applied before the death occurred; or

(b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(8) For the purposes of paragraph (7), a claimant shall be treated as occupying the dwelling if paragraph (8) of regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home<sup>(10)</sup>) is satisfied and for that purpose subparagraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(9) Subject to paragraph (10), where the appropriate authority is satisfied that a person to whom paragraph (11) applies was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant's benefit period.

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(10) Regulation 5(8) was amended by S.I. [1995/625](#).

(10) Paragraph (9) shall not apply where a claimant was previously entitled to benefit in respect of a benefit period which fell wholly or partly less than 52 weeks before the commencement of his current benefit period.

(11) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) subject to paragraph (12), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(12) Paragraph (11)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

(13) In this regulation—

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order;

“property-specific rent” means the rent determined by a rent officer under paragraph 1(2) of Schedule 1 to the Rent Officers Order, except in a case where a rent officer has made a rent determination under paragraph 3 of that Schedule, when it shall be the latter determination;

“reckonable rent” means those payments, which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for this regulation, be eligible for housing benefit;

“the Rent Officers Order” means the Rent Officers (Additional Functions) Order 1995(11) or, as the case may be, the Rent Officers (Additional Functions) (Scotland) Order 1995(12);

“relevant rent” means

- (a) in a case where the rent officer has determined both a property-specific rent and a size-related rent, whichever rent is the lower of the two, or
- (b) in a case where the rent officer has determined only a property-specific rent or a size-related rent, as the case may be, that rent,

less any amount of such a rent which the rent officer has determined, pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order, is attributable to the provision of services which are ineligible to be met by housing benefit; and

“size-related rent” means the rent determined by a rent officer under paragraph 2(2) of Schedule 1 to the Rent Officers Order.”.

### **Amendment of regulation 12A of the Principal Regulations**

6.—(1) Regulation 12A of the Principal Regulations (requirement to refer to rent officers)(13) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1), at the end, there shall be added a new sub-paragraph (c)—

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(11) S.I. 1995/1642.

(12) S.I. 1995/1643.

(13) Regulation 12A was added by S.I. 1990/546 and amended by S.I. 1993/317 and 1995/560.

“or

(c) except in the case where any liability to make payments in respect of a dwelling would be to a housing authority, a request from a person (“the prospective occupier”), on a properly completed form approved for the purpose by the appropriate authority, signifying that he is contemplating occupying a dwelling as his home and that if he does so, he is likely to claim housing benefit, but only where that form—

(i) is signed by the prospective occupier;

(ii) is countersigned by the person to whom the prospective occupier would incur liability to make such payments; and

(iii) indicates that the person countersigning agrees to the application being made for that determination.”.

(3) After paragraph (2), there shall be inserted a new paragraph (2A)—

“(2A) Where an appropriate authority receives a request pursuant to paragraph (1)(c) and it is a case where, by reason of paragraph (2), an application to a rent officer is not required, the authority shall—

(a) return it to the prospective occupier, indicating why no such application is required; and

(b) where it is not required by reason of either paragraph (2)(a) of this regulation or paragraph 2 of Schedule 1A(14) (cases where the rent officer has already made a determination), shall also send him a copy of that determination within 4 days of the receipt of that request by the authority.”.

(4) In paragraph (3), at the end, there shall be added the phrase—

“except that, in the case of a request to which paragraph (1)(c) applies, the application shall be made within 2 days of the receipt of that request by the authority.”.

(5) For paragraph (4) there shall be substituted—

“(4) For the purpose of calculating any period of days mentioned in paragraphs 2A or 3, no regard shall be had to a day on which the offices of the appropriate local authority are closed for the purposes of receiving or determining claims.”.

(6) In paragraph (8) the definition of “Housing Act functions” shall be omitted and, after the definition of “pre-commencement case”, there shall be inserted the following definition—

““prospective occupier” shall include a person currently in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new agreement to occupy that dwelling, but not in a case where his current agreement commenced less than 11 months before such a request.”.

### **Amendment of regulation 61 of the Principal Regulations**

7.—(1) Regulation 61 of the Principal Regulations(15) maximum housing benefit) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) for “Subject to paragraph (2)” there shall be substituted the words “Subject to the following provisions of this regulation”.

(3) After paragraph (2) there shall be added the following paragraphs—

“(3) Where in any case—

(a) regulation 11 applies;

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(14) Schedule 1A was added by S.I. 1990/546 and paragraph 2 was amended by S.I. 1991/235, 1993/317, 1249 and 1995/560.

(15) Regulation 61 was amended by S.I. 1990/546 and S.I. 1994/578.

- (b) the maximum rent is less than the amount which would be the claimant’s eligible rent if regulation 11 did not apply (“his reckonable rent”); and
- (c) the appropriate authority is satisfied that—
  - (i) an amount by way of housing benefit would fall to be payable to the claimant; and
  - (ii) unless that amount is increased, the claimant or a member of his family will suffer exceptional hardship;

the authority may determine that the amount of the person’s appropriate maximum housing benefit calculated in accordance with paragraph (1) shall be such increased amount as it considers appropriate in the particular circumstances of the case, but so that the amount of housing benefit payable to that person, including any such increase, shall not exceed his reckonable rent calculated on a weekly basis in accordance with regulations 69 and 70 (calculation of weekly amounts and rent free periods), after any deduction made in accordance with section 130(3)(b) of the Contributions and Benefits Act (taper) and regulation 63 (non-dependant deductions) and for the purposes of this paragraph “eligible rent” in those regulations shall be taken to mean his reckonable rent.

(4) In a case where paragraphs (2) and (3) both apply an authority may pay an increased amount under both those paragraphs.”.

#### **Amendment of regulation 79 of the Principal Regulations**

**8.—**(1) Regulation 79 of the Principal Regulations (review of determinations)(**16**) shall be amended in accordance with the following paragraphs.

- (2) In paragraph (3)(b) for the words “or (2)” there shall be substituted the words “(2) or (5B)(b)”.
- (3) After paragraph (4) there shall be inserted a new paragraph (4A)—

“(4A) Where paragraph (3) applies and the representations referred to in that paragraph relate, in whole or in part, to a rent officer’s determination or redetermination in exercise of the Housing Act functions, the authority shall, within 7 days of receiving those representations, request the rent officer to make a redetermination or, as the case may be, a further redetermination in exercise of those functions and

- (a) a copy of those representations shall accompany the local authority’s request; and
- (b) the period of 14 days referred to in paragraph (2) shall not begin to run until the authority has received a redetermination in response to that request.”.

- (4) After paragraph (5A)(**17**) there shall be inserted a new paragraph (5B)—

“(5B) Where a determination has been revised in consequence of a redetermination by a rent officer in exercise of the Housing Act functions and that redetermination has led to—

- (a) a reduction in the maximum rent, the redetermination shall be a change of circumstance;
- (b) an increase in the maximum rent, the redetermination shall have effect in place of the original determination.”.

#### **Amendment of Schedule 1A to the Principal Regulations**

**9.—**(1) Schedule 1A to the Principal Regulations shall be amended in accordance with the following paragraphs.

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(16) Relevant amendments are S.I. 1990/1549 and 1992/432.

(17) Paragraph (5A) was added by S.I. 1990/1549.

(2) For paragraph 3 there shall be substituted—

“**3.**—(1) This paragraph applies where the landlord is a registered housing association, none of the other paragraphs of this Schedule apply, and the local authority consider that either

- (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or
- (b) the rent payable for that dwelling is unreasonably high.

(2) Where this paragraph applies, the authority shall state in the application for a determination that the circumstances set out in sub-paragraph (1) above exist.”.

(3) In paragraph 12(**18**) there shall be added, at the end, the phrase—

“and, in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 12A(1)(c), any reference to a “tenancy” shall be taken as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.”.

### **Saving Provision**

**10.**—(1) Subject to the following provisions of this regulation, the eligible rent of a person—

- (a) who was entitled to housing benefit on both the first date and the second date; or
- (b) who is liable to make payments in respect of a dwelling occupied by him as his home, which is exempt accommodation,

shall be determined in accordance with regulations 10 and 11 of the Principal Regulations as in force on 1st January 1996.

(2) Paragraph (1)(a) shall only apply in a case where—

- (a) either—
  - (i) the dwelling occupied as his home by a person to whom paragraph (1)(a) refers is the same on both the first date and the second date; or
  - (ii) the dwelling so occupied was not the same by reason only that the change was caused by a fire, flood, explosion or natural catastrophe rendering the dwelling occupied as the home on the first date uninhabitable; and
- (b) the person was either—
  - (i) continuously entitled to and in receipt of housing benefit between the first date and the second date in respect of the dwelling to which sub-paragraph (a) above applies; or
  - (ii) not entitled to or receiving housing benefit for a period not exceeding 4 weeks, but was in continuous occupation of the dwelling to which sub-paragraph (a) above refers between the first date and the second date.

(3) A person shall be deemed to fulfil the requirements of paragraphs (1)(a) and (2), where—

- (a) he occupies the dwelling which he occupied on the relevant date;
- (b) this regulation applied to the previous beneficiary on the relevant date, and
- (c) the requirements of paragraphs (4) and (5) are satisfied in his case.

- (4) The requirements of this paragraph are that the person was, on the relevant date,
- (a) the partner of the previous beneficiary; or
  - (b) in a case where the previous beneficiary died on the relevant date, was a person to whom paragraph (7)(b), (c) or (d) of regulation 11 of the Principal Regulations, as in force on 1st January 1996, applied and for the purposes of this paragraph “claimant” in that paragraph of that regulation shall be taken to be a reference to the previous beneficiary.
- (5) The requirements of this paragraph are that a claim for housing benefit is made within 4 weeks of the relevant date and where such a claim is made it shall be treated as having been made on the relevant date.
- (6) In this regulation—
- “the first date” means 1st January 1996, except in a case to which paragraph (3) applies, when it shall be the relevant date;
- “the second date” means any day after the first date for which a claimant’s entitlement to housing benefit is to be determined;
- “the relevant date” means the date—
- (i) of the death of a previous beneficiary;
  - (ii) on which a previous beneficiary who was the claimant’s partner left the dwelling so that he and the claimant ceased to be living together as husband and wife; or
  - (iii) on which a previous beneficiary, other than a beneficiary to whom regulation 5(8)(**19**) of the Principal Regulations applied, was imprisoned, but only where on that date he was the partner of the claimant,
- as the case may be;
- “exempt accomodation” means accomodation which is—
- (i) a place provided by a voluntary organisation or by a local authority in respect of which the Secretary of State has given assistance by way of grant pursuant to paragraph 4 of Schedule 5 to the Supplementary Benefits Act 1976(**20**) (grants for organisations providing places for purposes similar to resettlement units) and for this purpose “voluntary organisation” and “local authority” shall have the same meanings as they have in that paragraph; or
  - (ii) provided by a housing association, registered charity or voluntary organisation where care, support or supervision is provided by, or on behalf of, that body to the occupants of that accommodation;
- “imprisoned” means detained in custody pending sentence upon conviction or under a sentence imposed by a court;
- “previous beneficiary” means a person—
- (i) who died, left the dwelling or was imprisoned, as the case may be;
  - (ii) who was on that date in receipt of housing benefit; and
  - (iii) to whom this regulation applied on that date;
- and, in this regulation, a reference to a person occupying a dwelling as his home shall be taken to include a person who is treated as occupying a dwelling as his home by virtue of regulation 5 of the Principal Regulations(**21**).

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(19) Regulation 5(8) was amended by S.I. 1995/625.

(20) 1976 c. 71; paragraph 4 was substituted by paragraph 13(2) of Schedule 6 to the Social Security Act 1990 (c. 27).

(21) Relevant amendments are S.I. 1989/1017, 1990/1549, 1991/387, 1992/3147, 1993/317, 1995/560 and 625.



### **Transitional Provisions**

**11.**—(1) Subject to the following provisions of this regulation, in any case where, pursuant to the provisions of either—

(a) paragraph 2 of Schedule 1A (excluded tenancies) to the Principal Regulations; or

(b) regulation 12A(2)(a) of the Principal Regulations (requirement to refer to rent officers),

an application to a rent officer for a determination in exercise of the Housing Act functions is not required, an authority shall nonetheless apply to a rent officer for such a determination.

(2) Paragraph (1) shall not apply in a case where that application to a rent officer would be due to the receipt of a claim for a rent allowance from a person to whom regulation 10 (saving provision) applies.

(3) Paragraph (1) shall not apply in a case where the rent officer has already made a determination in the exercise of the Housing Act functions, pursuant to an application made under paragraph (1), in respect of that dwelling or of a dwelling in a hostel which is a similar dwelling to the dwelling in respect of which such an application to the rent officer would be made.

Signed by authority of the Secretary of State for Social Security.

28th June 1995

*Roger Evans*  
Parliamentary Under-Secretary of State,  
Department of Social Security

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Housing Benefit (General) Regulations 1987 (S.I.1987/1971). These Regulations make and further amend provisions relating to maximum eligible rent in cases where housing benefit is payable, including conferring a discretion on local authorities to pay a lesser sum in appropriate cases (regulations 3, 4 & 5). They also require local authorities to make certain requests for determinations and redeterminations from rent officers and provide for their consequences (regulations 6 & 8) and add a discretion to pay more benefit than would otherwise be payable by reason of these Regulations (regulation 7).

These Regulations also make saving provisions in relation to housing benefit claimants whose entitlement to housing benefit commenced before these Regulations come into force (regulation 10) and extend this protection to the partners of such claimants, members of the household of deceased claimants in certain circumstances and occupants of exempt accommodation. They also make transitional provision for additional circumstances in which local authorities shall apply to rent officers for determinations (regulation 11).

These Regulations do not impose a charge on business.

The Report of the Social Security Advisory Committee dated 11th May 1995 on the proposals referred to them, together with a statement showing the extent to which these Regulations give effect to the Report and, in so far as they do not give effect to it, the reasons why not, are contained in Command Paper Cm. 2902, published by Her Majesty's Stationery Office.