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STATUTORY INSTRUMENTS

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**2007 No. 2868**

**SOCIAL SECURITY**

**The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007**

*Made - - - - 2nd October 2007*

*Laid before Parliament 8th October 2007*

*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), 130(2), 130A(2) to (6), 137(1) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992(1) and sections 5(1)(p), (2A) to (2C) and (6), 189(4) to (6) and 191 of the Social Security Administration Act 1992(2).

This instrument contains only regulations made by virtue of, or consequential upon, sections 30 and 35 of the Welfare Reform Act 2007(3) and is made before the end of the period of six months beginning with the coming into force of those sections.

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

**Citation and commencement**

1.—(1) These Regulations may be cited as the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007.

(2) This regulation and regulations 2 (amendment of the Housing Benefit Regulations 2006(4)) and 3 (amendments relating to information sharing) shall come into force on 7th April 2008.

(3) Subject to paragraph (6) (which relates to non-local housing allowance cases), regulations 4 to 19 (amendment of the Housing Benefit Regulations 2006 relating to determination of appropriate maximum housing benefit) shall come into force on 7th April 2008 immediately following the coming into force of regulation 3.

(4) Regulation 20 (substitution of Part 15 of and Schedule 10 to the Housing Benefit Regulations 2006 in relation to former pathfinder authorities) shall come into force immediately following the

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(1) 1992 c. 4. Section 130A was inserted by s. 30 of the Welfare Reform Act 2007 (c. 5).

(2) 1992 c. 5. Section 5(2A), (2B) and (2C) were inserted by section 35 of the Welfare Reform Act 2007.

(3) 2007 c. 5.

(4) S.I. 2006/213.

coming into force of regulations 4 to 19 and in this paragraph “former pathfinder authorities” means those relevant authorities specified in Part 1 of Schedule 10 of the Housing Benefit Regulations.

(5) This paragraph applies to a case where no reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008 and in this paragraph—

“eligible rent” shall be construed in accordance with—

- (i) regulations 12 or 12A(5) of the Housing Benefit Regulations 2006 as in force immediately before 7th April 2008; or
- (ii) in a case to which paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(6) applies, regulations 12 and 13 of those Regulations as set out in paragraph 5 of that Schedule as in force immediately before 7th April 2008; and

“maximum rent (standard local rate)” means a maximum rent (standard local rate) determined in accordance with regulation 13A(7) of the Housing Benefit Regulations 2006 as in force immediately before 7th April 2008.

(6) In a case to which paragraph (5) applies regulations 4 to 19 shall come into force on the day when, on or after 7th April 2008, the first of the following sub-paragraphs applies—

- (a) a relevant authority is required to apply to a rent officer by virtue of regulation 14 of the Housing Benefit Regulations;
- (b) sub-paragraph (a) would apply but for the case falling within regulation 14(4)(a) of, or 14(4)(b) of and paragraph 2 of Schedule 2 to, the Housing Benefit Regulations (no application to rent officer required as an existing rent officer determination may be used);
- (c) a relevant authority is required to determine an eligible rent in accordance with regulation 12(3)(b) of the Housing Benefit Regulations; or
- (d) a relevant authority is required to determine an eligible rent in accordance with regulation 12(3) of the Housing Benefit Regulations 2006 as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations,

and in this paragraph “relevant authority” means an authority administering housing benefit.

(7) Where paragraph (6) does not apply before 6th April 2009, regulations 4 to 19 shall come into force on that date.

(8) In this regulation—

- (a) “the Housing Benefit Regulations” means the Housing Benefit Regulations 2006 as in force immediately before the coming into force of regulations 4 to 19 in that case; and
- (b) “the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 as in force immediately before the coming into force of regulations 4 to 19 in that case.

## **Amendment of the Housing Benefit Regulations 2006**

2. The Housing Benefit Regulations 2006 shall be amended in accordance with the following provisions of these Regulations.

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(5) Regulation 12A was inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations.

(6) [S.I. 2006/217](#); the relevant amending instrument is [2007/2870](#).

(7) Regulation 13A was inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 and Schedule 10 of those Regulations.

### **Amendment of the Housing Benefit Regulations 2006 relating to information sharing**

3.—(1) In regulation 14 (requirement to refer to rent officers)—

- (a) omit paragraphs (2), (3) and (9);
- (b) after paragraph (4) insert—

“(4A) The provision of information to the rent officer in accordance with regulation 114A(6) shall be treated as an application to the rent officer under paragraph (1).”.

(2) After regulation 113 (interpretation) insert—

#### **“Information to be provided to rent officers**

**114A.**—(1) This paragraph applies to every claim for or award of housing benefit in the form of a rent allowance where the eligible rent has been, or is to be determined, in accordance with—

- (a) regulation 12(3)(a) (rent) or 12C (eligible rent and maximum rent), as the case may require;
- (b) regulation 12A (eligible rent and the maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases), as the case may require; or
- (c) regulations 12 (rent) and 13 (maximum rent) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations.

(2) No earlier than the first, and no later than the fifth, working day of every month a relevant authority shall provide the following information to the rent officer in relation to every claim for or award of housing benefit to which paragraph (1) applied in the preceding month—

- (a) the address, including any room or unit number, house or flat number or name, and the postcode of the dwelling to which the claim or award relates;
- (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
- (c) the date on which the tenancy began;
- (d) the amount of rent and the rental period, whether calendar monthly, four weekly, weekly or some other period;
- (e) where the claimant has the use of two or more bedrooms, the number of bedrooms and rooms suitable for living in that there are in the dwelling, and in this subparagraph “bedroom” does not include a bedroom which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
- (f) whether the tenant (together with his partner where he has one) has exclusive use of only one bedroom, and if so, whether they have exclusive use of a kitchen, bathroom, toilet and a room suitable for living in;
- (g) whether the tenant has exclusive use of only one bedroom, and if so, which, if any, of the following the tenancy provides for him to share—
  - (i) a kitchen;
  - (ii) a bathroom;
  - (iii) a toilet; or
  - (iv) a room suitable for living in;

- (h) the date on which entitlement to housing benefit began; and
- (i) where applicable, the date on which entitlement to housing benefit ended.

(3) Where the relevant authority is required to apply to the rent officer for a board and attendance determination by virtue of regulation 13D(10) (determination of a maximum rent (LHA)), it shall provide the following information in the application to the Rent Officer—

- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling to which the claim or award relates;
- (b) the date on which the tenancy began;
- (c) the length of the tenancy;
- (d) the total amount of those payments referred to in regulation 12(1) (rent) which the claimant is liable to make in respect of the dwelling which he occupies as his home;
- (e) whether those payments include any charges for water, sewerage or allied environmental services or charges in respect of meals or fuel which are ineligible for housing benefit; and
- (f) where those payments include any charges that are ineligible for housing benefit by reason of paragraph 1(a)(iv) and (c) to (f) of Schedule 1 (ineligible service charges), that such charges are included, and the value of those charges as determined by that authority pursuant to regulation 12B(2) and that Schedule.

(4) Where the relevant authority has identified charges to which paragraph (3)(f) applies, it shall—

- (a) deduct those charges from the total amount of those payments which, in accordance with paragraph (3)(d), it has stated that the claimant is liable to make in respect of the dwelling which he occupies as his home; and
- (b) notify that total so reduced to the rent officer in its application.

(5) Where a relevant authority has received notification from the rent officer that a substantial part of the rent is attributable to board and attendance, it shall provide the information referred to in paragraphs (7) and (8), except for such information as it has already provided in accordance with paragraphs (3) and (4).

(6) Where the relevant authority is required to apply to the rent officer for a determination by virtue of regulation 14(1) (requirement to refer to rent officers), it shall provide the information referred to in paragraphs (7) to (9) in the application to the rent officer.

(7) In relation to the dwelling to which the claim or award relates, the relevant authority shall provide the following information—

- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling;
- (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
- (c) whether the dwelling is—
  - (i) a detached house;
  - (ii) a semi-detached house;
  - (iii) a terraced house;
  - (iv) a maisonette;
  - (v) a detached bungalow;
  - (vi) a semi-detached bungalow;

- (vii) a flat in a house;
  - (viii) a flat in a block;
  - (ix) a flat over a shop;
  - (x) a bedsit or rooms or a studio flat;
  - (xi) a hostel;
  - (xii) a caravan, mobile home or houseboat;
  - (xiii) board and lodgings;
  - (xiv) a hotel;
  - (xv) a care home;
  - (xvi) an independent hospital; or
  - (xvii) some other description of dwelling, and if so what;
  - (d) whether the dwelling has central heating, a garden, a garage or a parking space;
  - (e) how many rooms suitable for living in there are—
    - (i) in the dwelling;
    - (ii) in the dwelling which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
  - (f) how many bedsitting rooms there are in the categories (e)(i) and (ii);
  - (g) how many bedrooms there are in the categories (e)(i) and (ii);
  - (h) how many bathrooms or toilets there are in the categories (e)(i) and (ii); and
  - (i) such other information as the rent officer may reasonably require to make a determination.
- (8) In relation to the tenancy to which the claim or award relates, the relevant authority shall provide the following information—
- (a) the information referred to in paragraphs (3)(d) to (f) and (4);
  - (b) if the tenancy is furnished, and if so, to what extent;
  - (c) the rental period, whether calendar monthly, four weekly, weekly or some other period;
  - (d) the length of the tenancy;
  - (e) when the tenancy began and, if appropriate, when it ended;
  - (h) the landlord's or letting agent's name;
  - (i) the landlord's or letting agent's business address;
  - (j) whether the landlord is a housing association or registered social landlord; and
  - (k) such other information as the rent officer may reasonably require to make a determination.
- (9) In relation to the claimant and the other occupiers of the dwelling to which the claim or award relates, the relevant authority shall provide the following information—
- (a) such information regarding the relationship of the claimant to the occupiers and the occupiers to each other, as is necessary for the rent officer to make the determination;
  - (b) the age and sex of each occupier under 18;
  - (c) whether the claimant is or may be a young individual; and

(d) any other information that is relevant to the rent officer in making the determination, including visits to the dwelling.

(10) Where a rent officer serves a notice under article 5 (insufficient information) of the Rent Officers Order the relevant authority shall supply the further information required under this regulation, or confirm whether information already supplied is correct and, if it is not, supply the correct information.

(11) Where the relevant authority refers a case to the rent officer in accordance with regulation 14 as in force before the coming into force of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007<sup>(8)</sup>, it shall notify the rent officer that the referral is made in accordance with regulation 14 as in force before the coming into force of regulation 8 of those Regulations.

(12) In this regulation—

“tenancy” includes—

(a) in Scotland, any other right of occupancy; and

(b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(9)</sup> in the jurisdiction in which the area of the relevant authority is situated.”.

(3) Omit regulation 114 (evidence and information required by rent officers).

#### **Amendments to regulations 2, 3, 11 and 12 of the Housing Benefit Regulations 2006**

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

(a) for the definition of “eligible rent” substitute—

““eligible rent” means, as the case may require, an eligible rent determined in accordance with—

(a) regulations 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)); or

(b) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;”;

(b) for the definition of “housing association” substitute—

““housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>(10)</sup>;”;

(c) for the definition of “maximum rent” substitute—

““maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 13 applies;”;

(d) for the definition of “non-dependant deduction” substitute—

““non-dependant deduction” means a deduction that is to be made under regulation 74 (non-dependant deductions);”;

(e) for the definition of “Rent Officers Order” substitute—

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<sup>(8)</sup> S.I. 2007/ 2868.

<sup>(9)</sup> 1971 c.80.

<sup>(10)</sup> 1985 c. 69.

““Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997(11) or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(12);”;

(f) for the definition of “young individual” substitute—

““young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant—

- (a) whose landlord is a registered housing association;
- (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989(13) which had previously been made in respect to him either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;
- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children’s hearing under section 70 of the Children (Scotland) Act 1995(14) (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
- (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age;”;

(g) at the appropriate places insert—

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(11) S.I. 1997/1984; relevant amending instruments are S.I. 2000/1, 2001/1325, 2001/2317, 2003/2398, 2006/217 and 2007/2871.

(12) S. I. 1997/1995; relevant amending instruments are S.I. 2000/3, 2001/1236, 2001/2318, 2003/2398, 2006/217 and 2007/2871.

(13) 1989 c. 41.

(14) 1995 c. 36.

““amended determination” means a determination made in accordance with article 7A(15) of the Rent Officers Order;

“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B(16) to the Rent Officers Order;

“broad rental market area determination” means a determination made in accordance with article 4B(1A)(17) of the Rent Officers Order;

“change of dwelling” means, for the purposes of regulations 13C and 14, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;

“linked person” means—

- (a) any member of the claimant’s family;
- (b) 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; or
- (c) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it;

“local housing allowance” means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers Order;

“maximum rent (LHA)” means the amount determined in accordance with regulation 13D;

“reckonable rent” means 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 regulation 13, be eligible for housing benefit;

“registered housing association” means a housing association which—

- (a) is registered in a register maintained by the Corporation or the National Assembly for Wales under chapter 1 of Part 1 of the Housing Act 1996(18); or
- (b) in Scotland, is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001(19);

“relevant information” means information or evidence forwarded to the relevant authority by an appropriate DWP office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate DWP office relating to that claim;

“single room rent” means the rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order;”.

(2) In regulation 3(4) (definition of non-dependant) for “and regulation 9” substitute “, regulations 9 and 13(6)(c) and the definition of “linked person” in regulation 2”.

(3) In regulation 11 (eligible housing costs)—

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(15) Article 7A was inserted into the Rent Officers (Housing Benefit Functions) Order 1997 by S.I. 2000/1 and into the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 by S.I. 2000/3. It was amended in both instruments by S.I. 2003/2398.

(16) Schedule 3B is inserted by S.I. 2007/2871.

(17) Article 4B was inserted by S.I. 2003/2398. Paragraph (1A) is inserted by S.I. 2007/2871.

(18) 1996 c. 52.

(19) 2001 asp 10.



- (a) for paragraph (1) substitute—
  - “(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant’s maximum housing benefit shall be calculated under Part 8 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with—
    - (a) regulation 12B (eligible rent);
    - (b) regulations 12C (eligible rent and maximum rent), 13 (maximum rent), 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent);
    - (c) regulations 12D (eligible rent and maximum rent (LHA)), 13C (when a maximum rent (LHA) is to be determined) and 13D (determination of a maximum rent (LHA)); or
    - (d) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations, whichever is applicable in his case.”;
  - (b) in paragraph (3) for “paragraphs (1) to (3) of that regulation” substitute “paragraphs (1) or (2) of that regulation or paragraph (2) of regulation 12B”.
- (4) In regulation 12 (rent)—
  - (a) omit paragraphs (3) to (7);
  - (b) in paragraph (8) after “regulation” insert “, regulation 12B (eligible rent)”.

### **Insertion of regulations 12B, 12C and 12D into the Housing Benefit Regulations 2006**

#### **5. After regulation 12 (rent)(20)insert—**

##### **“Eligible rent**

**12B.**—(1) The amount of a person’s eligible rent shall be determined in accordance with the provisions of this regulation except where regulations 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) apply, or paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies.

(2) Subject to paragraphs (3), (4) and (6), the amount of a person’s eligible rent shall be the aggregate of such payments specified in regulation 12(1) as that person is liable to pay less—

- (a) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (5);
- (b) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1; and
- (c) where he is liable to make payments in respect of any service charges to which regulation 12(1)(e) does not apply, but to which paragraph 3(2) of Part 1 of Schedule 1 (unreasonably low service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Part 1 of Schedule 1.

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(20) Regulation 12A was inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations. A new Schedule 10 is substituted by regulation 20 of these Regulations. The new Schedule 10 does not include regulation 12A.

(3) Where the payments specified in regulation 12(1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion of those payments as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(4) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in regulation 12(1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.

(5) The amount of the deduction referred to in paragraph (2) shall be—

- (a) if the dwelling occupied by the claimant is a self-contained unit, except in a case to which sub-paragraph (c) applies, the amount of the charges;
- (b) in any other case, except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing the area of the dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;
- (c) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.

(6) In any case where it appears to the relevant 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.

#### **Eligible rent and maximum rent**

**12C.—**(1) This regulation applies where a maximum rent has been, or is to be, determined in accordance with regulation 13 (maximum rent).

(2) Where this regulation applies, except where paragraph (3) applies, the amount of a person's eligible rent shall be the maximum rent, subject to paragraphs (3), (4) and (6) of regulation 12B.

(3) In a case where the maximum rent is derived from a single room rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order the eligible rent shall be the maximum rent subject to paragraphs (3) and (6) of regulation 12B.

#### **Eligible rent and maximum rent (LHA)**

**12D.—**(1) This regulation applies where, by virtue of paragraphs (2) or (3) of regulation 13C (when a maximum rent (LHA) is to be determined), a maximum rent (LHA) has been, or is to be, determined in accordance with regulation 13D (determination of a maximum rent (LHA)).

(2) Where this regulation applies, except where paragraphs (3)(a) (protection on death) or (5)(a) (13 week protection) apply,—

- (a) the amount of a person's eligible rent shall be the maximum rent (LHA); and
- (b) it shall apply until the earlier of—
  - (i) the determination of a maximum rent (LHA) by virtue of regulation 13C(2)
  - (d) (change of category of dwelling, death or change of dwelling for an LHA case);

- (ii) the determination of a maximum rent (LHA) by virtue of regulation 13C(3) (anniversary of LHA date); or
  - (iii) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.
- (3) Subject to paragraph (7), where the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a), (b) (new claim on or after 7th April 2008) or (d)(i) or (ii) (change of category of dwelling or death relating to an LHA case) and the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any linked person, the eligible rent shall be—
- (a) either—
    - (i) the eligible rent which applied on the day before the death occurred; or
    - (ii) in a case where there was no eligible rent, subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent), the reckonable rent due on that day; or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent determined in accordance with sub-paragraph (a).
- (4) For the purpose of paragraph (3), a claimant shall be 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) Subject to paragraphs (6) and (7), where a relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a) or (b) (new claim on or after 7th April 2008) and the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, the eligible rent shall be—
- (a) an eligible rent determined in accordance with regulation 12B(2); or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent referred to in sub-paragraph (a).
- (6) Paragraph (5) shall not apply where a 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.
- (7) Where a person's eligible rent has been determined in accordance with—
- (a) paragraph (3)(a) (protection on death), it shall apply until the first of the following events occurs—
    - (i) the period of 12 months from the date of death has expired;
    - (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
    - (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death) in relation to a subsequent death; or
    - (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.

(b) paragraph (5)(a) (13 week protection), it shall apply until the first of the following events occurs—

- (i) the first 13 weeks of the claimant’s award of housing benefit have expired;
- (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
- (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death); or
- (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.

(8) Where an eligible rent ceases to apply by virtue of paragraph (7)(a)(i) (expiry of protection on death) or (7)(b)(i) (expiry of 13 week protection), the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (3)(a) and (5)(a).”

### **Substitution of regulations 13, 13ZA and 13ZB for regulation 13 of the Housing Benefit Regulations 2006**

6. For regulation 13(21) (maximum rent) substitute—

#### **“Maximum rent**

**13.—**(1) The maximum rent shall be determined in accordance with paragraphs (2) to (8) where—

- (a) a local authority has applied for a determination in accordance with regulation 14 (requirement to refer to rent officers), a redetermination in accordance with regulation 15 or 16, or a substitute determination or substitute redetermination in accordance with regulation 17 and a rent officer has made a determination, redetermination, substitute determination or substitute redetermination in exercise of the Housing Act functions; or
- (b) an authority is not required to apply to the rent officer for a determination because—
  - (i) regulation 14(2)(a) applies; or
  - (ii) regulation 14(2)(b) applies because paragraph 2(2) of Schedule 2 applies.

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

(3) Subject to the limit specified in paragraph (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the relevant authority and a claim-related rent, the maximum rent shall be the local reference rent.

(4) In a case to which paragraph 8 of Schedule 3 to the Consequential Provisions Regulations applies, where the rent officer has determined and is required to notify the relevant authority of a local reference rent the maximum rent shall not exceed twice that local reference rent.

(5) Subject to paragraph (6), in the case of a young individual—

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(21) The relevant amending instrument is [S.I. 2007/1356](#).

- (a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the relevant authority of it, the maximum rent shall not exceed that single room rent;
- (b) where—
  - (i) the rent officer has determined a single room rent and a claim-related rent and is required to notify the authority of them;
  - (ii) the claim-related rent includes payment in respect of meals; and
  - (iii) the single room rent is greater than the claim-related rent less an amount in respect of meals determined in accordance with paragraph 2 of Part 1 of Schedule 1 (ineligible service charges),the maximum rent shall not exceed the claim-related rent less that amount in respect of meals.
- (6) Paragraph (5) shall not apply in the case of a claimant—
  - (a) to whom paragraph 4 of Schedule 3 to the Consequential Provisions Regulations (saving provision) applies;
  - (b) to whom paragraph 14 of Schedule 3 (severe disability premium) applies; or
  - (c) where a non-dependant resides with him.
- (7) Where the maximum rent is derived from—
  - (a) a claim-related rent and the notification under paragraph 9(1)(c) of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that claim-related rent; or
  - (b) a local reference rent and the notification under paragraph 9(1)(da)(22) of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that local reference rent,

in determining the maximum rent the relevant authority shall deduct an amount determined in accordance with paragraph 2 of Schedule 1 to these Regulations in respect of meals.

(8) This regulation is subject to regulations 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent).

- (9) In this regulation—
  - “claim-related rent” means the rent notified by the rent officer under paragraph 9(1) of Schedule 1 to the Rent Officers Order;
  - “local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order.

### **Protection on death and 13 week protection**

**13ZA.**—(1) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of a linked person, 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.

(2) For the purposes of paragraph (1), a claimant shall be 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 subparagraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(3) Subject to paragraph (4), where the relevant authority is satisfied that the claimant or a linked person 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 award of housing benefit.

(4) Paragraph (3) shall not apply where a 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.

### **Change in reckonable rent**

**13ZB.**—(1) In a case where—

- (a) the authority has determined a maximum rent under regulation 13 or 13ZA; and
- (b) during the period for which that maximum rent applies the reckonable rent in respect of the dwelling by reference to which that maximum rent was determined is reduced to a sum which is less than that maximum rent,

the maximum rent shall be reduced to an amount equal to the reduced reckonable rent.

(2) This paragraph applies in a case where—

- (a) a rent officer has made a determination in exercise of the Housing Act functions pursuant to an application by an authority under regulation 14(1)(e) (pre-tenancy determination);
- (b) subsequent to that determination the reckonable rent for that dwelling is changed; and
- (c) a maximum rent is to be determined in relation to a claim for housing benefit by a claimant.

(3) In a case to which paragraph (2) applies, where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if the reckonable rent had not changed, the maximum rent shall be the reckonable rent as so reduced.

(4) In any other case to which paragraph (2) applies, the authority shall treat the reckonable rent to be that applicable to the determination by the rent officer referred to in paragraph (2)(a).”.

### **Insertion of regulations 13C, 13D and 13E into the Housing Benefit Regulations 2006**

7. After regulation 13ZB (change in reckonable rent) (23), as substituted by regulation 6, insert—

#### **“When a maximum rent (LHA) is to be determined**

**13C.**—(1) A relevant authority shall determine a maximum rent (LHA) in accordance with regulation 13D (determination of a maximum rent (LHA)) in any case where paragraphs (2) or (3) apply.

(2) This paragraph applies where a relevant authority has received—

- (a) a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;

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(23) Regulations 13A and 13B were inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations. A new Schedule 10 is substituted by regulation 20 of these Regulations. The new Schedule 10 does not include regulations 13A and 13B.

- (b) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;
- (c) in relation to an award of housing benefit where the eligible rent was determined without reference to regulation 13A or 13D, a notification of a change of dwelling (as defined in regulation 2) where the change occurs on or after 7th April 2008; or
- (d) in relation to an award of housing benefit where a maximum rent (LHA) was determined in accordance with regulation 13D—
  - (i) notification of a change of a kind which affects the category of dwelling applicable to the claim;
  - (ii) notification of the death of a linked person, where the notification does not fall within head (i); or
  - (iii) notification of a change of dwelling.
- (3) This paragraph applies on the anniversary of the LHA date.
- (4) Where the LHA date is 29<sup>th</sup> February, the anniversary of the LHA date shall be 28<sup>th</sup> February.
- (5) This regulation does not apply in a case where—
  - (a) the landlord is a registered social landlord;
  - (b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (savings provision) applies;
  - (c) the tenancy is an excluded tenancy of a type falling within any of paragraphs 4 to 10 of Schedule 2;
  - (d) the claim or award relates to—
    - (i) periodical payments of kind falling within regulation 12(1) (rent) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home; or
    - (ii) rent payable in relation to a hostel; or
  - (e) rent under the tenancy is attributable to board and attendance, and—
    - (i) the relevant authority has made an application to the rent officer in accordance with regulation 13D(10) (board and attendance determination), regulation 15 (applications to the rent officer for determinations) or regulation 17 (substitute determinations or substitute redeterminations); and
    - (ii) the rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance and has notified the relevant authority of this in accordance with article 4C, 4D or 4E of the Rent Officers Order.
- (6) In this regulation—
  - “the LHA date” means the date by reference to which the local housing allowance used to determine the maximum rent (LHA) was identified;
  - “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996<sup>(24)</sup> or, in Scotland, sections 57 and 59 of the Housing (Scotland) Act 2001<sup>(25)</sup>.

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<sup>(24)</sup> 1996 c. 52.

<sup>(25)</sup> 2001 asp 10.

### **Determination of a maximum rent (LHA)**

**13D.**—(1) Subject to paragraph (3) to (11), the maximum rent (LHA) shall be the local housing allowance determined by the rent officer by virtue of article 4B(2A)(26) or (4) of the Rent Officers Order which is applicable to—

- (a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and
- (b) the category of dwelling which applies at the relevant date in accordance with paragraph (2).

(2) The category of dwelling which applies is—

- (a) the category specified in paragraph 1(1)(a) of Schedule 3B to the Rent Officers Order (one bedroom shared accommodation) where—

- (i) the claimant is a young individual who has no non-dependant residing with him and to whom paragraph 14 of Schedule 3 (severe disability premium) does not apply; or
- (ii) paragraph (b) does not apply because neither sub-paragraph (b)(i) nor (ii) are satisfied in the claimant's case and neither the claimant nor his partner (where he has one) is a person to whom paragraph 14 of Schedule 3 (severe disability premium) applies, or to whom the circumstances in any of paragraphs (b) to (f) of the definition of young individual applies (certain care leavers);

- (b) except where paragraph (a)(i) applies, the category specified in paragraph 1(1)(b) of Schedule 3B to the Rent Officers Order (one bedroom self-contained accommodation) where that applies in the claimant's case at the relevant date in accordance with the size criteria and—

- (i) the claimant (together with his partner where he has one) has the exclusive use of two or more rooms; or
- (ii) the claimant (together with his partner where he has one) has the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking, and in this sub-paragraph "room" means a bedroom or room suitable for living in except for a room which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;

- (c) in any other case, the category which corresponds with the number of bedrooms to which the claimant is entitled in accordance with paragraph (3).

(3) The claimant shall be entitled to one bedroom for each of the following categories of occupier (and each occupier shall come within the first category only which applies to him)—

- (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.

(4) The relevant authority shall determine —

- (a) the cap rent (in accordance with the definition in paragraph (12)); and



- (b) whether the cap rent exceeds the applicable local housing allowance.
- (5) Where the applicable local housing allowance exceeds the cap rent, for the purpose of determining the appropriate maximum housing benefit, the amount of the claimant's liability shall be the amount of the applicable local housing allowance.
- (6) Where paragraph (5) applies, the maximum rent (LHA) shall be the lower of—
  - (a) the applicable local housing allowance; or
  - (b) the amount equal to the cap rent determined in accordance with paragraph (4)(a) plus £15.
- (7) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (2)(c) has been determined, the relevant authority shall—
  - (a) apply to the rent officer for local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market area falling within its area, in whole or in part, at the relevant date, which shall be specified in the application; and
  - (b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.
- (8) Subject to paragraph (9), where—
  - (a) the relevant authority receives a request from a person stating that—
    - (i) he is contemplating occupying as his home a dwelling within the area of the relevant authority which contains a specified number of bedrooms, exceeding five, and
    - (ii) that if he does so, he is likely to claim housing benefit; and
  - (b) no local housing allowance determination is in effect for a broad rental market area falling within, in whole or in part, the area of the relevant authority for the category of dwelling containing the number of bedrooms specified in the request, the relevant authority shall apply to the rent officer for local housing allowance determinations for each broad rental market area falling within its area, in whole or in part, for the category of dwelling containing the number of bedrooms specified in the request, and in this sub-paragraph “bedroom” means has the meaning specified in paragraph 1(2) of Schedule 3B to the Rent Officers Order.
- (9) The request must—
  - (a) be made on a form approved by the relevant authority for the purpose of making a request under paragraph (8);
  - (b) be properly completed; and
  - (c) contain the following matters—
    - (i) the signature of the prospective occupier;
    - (ii) the signature of the person to whom the prospective occupier would incur liability to make such payments;
    - (iii) a statement that the person in paragraph (ii) agrees to the application being made for that determination; and
    - (iv) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit.

(10) The relevant authority shall apply to the rent officer for a board and attendance determination to be made in accordance with article 4C of the Rent Officers Order where—

- (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C; and
- (b) part of the rent under the tenancy appears to the relevant authority to be likely to be attributable to board and attendance.

(11) Where an application to a rent officer is required in accordance with paragraph (10) it shall be made within the same period following the day on which the relevant authority becomes obliged to determine a maximum rent (LHA) by virtue of regulation 13C as would be required if the application were to be made under regulation 14(1).

(12) In this regulation—

“cap rent” means the aggregate of such payments specified in regulation 12(1) (rent which the claimant is liable to pay, or is treated as liable to pay by virtue of regulation 8 (circumstances in which a person is treated as liable to make payments in respect of a dwelling), subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent);

“occupiers” means the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household;

“relevant date” means, as the case may require—

- (a) the date of the claim to which the claim or relevant information referred to in regulation 13C(2)(a) or (b) relates;
- (b) the date of the change of dwelling, change which affects the category of dwelling, or date of death, to which a notification referred to in regulation 13C(2) (c) or (d) relates; or
- (c) the date on which the anniversary of the LHA date referred to in regulation 13C(3) falls.

“tenancy” includes

- (a) in Scotland, any other right of occupancy; and
  - (b) in any other case, a licence to occupy premises,
- and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly.

### **Publication of local housing allowances**

**13E.**—(1) A relevant authority shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas falling in whole or in part within its area, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the authority.”.

### **Substitution of regulation 14 of the Housing Benefit Regulations 2006**

**8.** For regulation 14 (requirement to refer to rent officers)(27), substitute—

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(27) Regulation 14 is amended by regulation 3 of these Regulations. That amendment comes into force before the substitution by this regulation of a new regulation 14.

**“Requirement to refer to rent officers**

**14.—(1)** Subject to the following provisions of this regulation, a relevant authority shall apply to a rent officer for a determination to be made in pursuance of the Housing Act functions where—

- (a) it has received a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(5)(a) to (e) (rent allowance cases for which a maximum rent (standard local rent) is not to be determined) apply;
- (b) it has received relevant information regarding a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(5)(a) to (e) apply;
- (c) it has received a notification of a change relating to a rent allowance and a maximum rent (LHA) does not fall to be determined under regulation 13C (determination of a maximum rent (LHA));
- (d) it has received a notification of a change of dwelling and any of the circumstances specified in regulation 13C(5)(a) to (e) apply;
- (e) it has received, 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 relevant authority, which includes the specified matters and any of the circumstances specified in regulation 13C(5)(a) to (d) apply;
- (f) 52 weeks have expired since it last made an application under sub-paragraph (a), (b), (c), (d) or (e) in relation to the claim or award in question and—
  - (i) a maximum rent (LHA) determined under regulation 13D does not apply; and
  - (ii) a maximum rent (LHA) is not to be determined under regulation 13D; or
- (g) 52 weeks have expired since an application was made under sub-paragraph (f) or a previous application was made under this sub-paragraph, whichever last occurred, and—
  - (i) a maximum rent (LHA) determined under regulation 13D does not apply; and
  - (ii) a maximum rent (LHA) is not to be determined under regulation 13D.

(2) An application shall not be required under paragraph (1) where a claim, relevant information regarding a claim, notification or request relates to either—

- (a) a dwelling in a hostel if, during the period of 12 months ending on the day on which that claim, relevant information regarding a claim, notification or request is received by the relevant authority—
  - (i) a rent officer has already made a determination in the exercise of the Housing Act functions in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the claim, relevant information regarding a claim, notification or request relates; and
  - (ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made; or
- (b) an “excluded tenancy” within the meaning of Schedule 2 (excluded tenancies).

(3) The provision of information to the rent officer in accordance with regulation 114A(5) shall be treated as an application to the rent officer under paragraph (1).

(4) Where a relevant authority receives a request pursuant to paragraph (1)(e) (request from prospective occupier) and it is a case where, by reason of paragraph (2) (hostels or excluded tenancies), 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) (hostels) of this regulation or paragraph 2 of Schedule 2 (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.

(5) Where an application to a rent officer is required by paragraph (1) it shall be made within 3 days, or as soon as practicable after that date, of—

- (a) the relevant authority receiving a claim on which rent allowance may be awarded;
- (b) the relevant authority receiving relevant information regarding a claim on which rent allowance may be awarded;
- (c) the relevant authority receiving a notification of a change relating to a rent allowance;
- (d) the relevant authority receiving a notification of a change of dwelling; or
- (e) the day on which the period mentioned in paragraph (1)(f) or (g) expired,

except that, in the case of a request to which paragraph (1)(e) (request from prospective occupier) applies, the application shall be made within 2 days of the receipt of that request by the authority.

(6) In calculating any period of days mentioned in paragraphs (4) or (5), no regard shall be had to a day on which the offices of the relevant authority are closed for the purposes of receiving or determining claims.

(7) For the purpose of this regulation a dwelling in a hostel shall be regarded as similar to another dwelling in that hostel if each dwelling provides sleeping accommodation for the same number of persons.

(8) In this regulation—

“change relating to a rent allowance” means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 2 applies;

“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 only where his current agreement commenced 11 months or more before the request under paragraph (1)(e);

“specified matters” means—

- (a) the signature of the prospective occupier;
- (b) the signature of the person to whom the prospective occupier would incur liability to make such payments;
- (c) a statement that the person in paragraph (b) agrees to the application being made for that determination; and
- (d) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit;

“tenancy” includes—

- (a) in Scotland, any other right of occupancy; and
- (b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;

“the Corporation” has the same meaning as in section 56 of the Housing Act 1996.”

### **Substitution of regulations 15 to 18 of the Housing Benefit Regulations 2006**

9. For regulations 15 (applications to the rent officer for redetermination) to 18 (application of provisions to substitute determinations or substitute redeterminations) substitute—

#### **“Application to the rent officer for redeterminations**

15.—(1) Subject to paragraph (2) and regulation 16 (application for redetermination by rent officer), where a relevant authority has obtained from a rent officer either or both of the following—

- (a) a determination on a reference made under regulation 13D(10) (board and attendance determination) or regulation 14 (requirement to refer to rent officers);
- (b) a redetermination on a reference made under regulation 16(2) (application for redetermination by rent officer),

the authority may apply to the rent officer for a redetermination of any determination or redetermination he has made which has effect at the date of the application.

(2) No application shall be made for a further redetermination of a redetermination made in response to an application under paragraph (1).

#### **Application for a redetermination by a rent officer**

16.—(1) This paragraph applies where—

- (a) a person affected makes written representations which are signed by him, to a relevant authority concerning a decision which it makes in relation to him;
- (b) those representations relate, in whole or in part, to a rent officer’s determination or redetermination in exercise of the Housing Act functions except for functions relating to broad rental market area determinations and local housing allowance determinations or amended determinations; and
- (c) those representations are made no later than one month after the day on which the person affected was notified of the decision by the relevant authority.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, the relevant authority shall, within 7 days of receiving the representations, apply to the rent officer for a redetermination or, as the case may be, a further redetermination in exercise of the Housing Act functions and a copy of those representations shall accompany the local authority’s application.

(3) Except where paragraph (4) applies, a relevant authority, in relation to any determination by a rent officer of an application under regulation 13D(10) (board and attendance determination) or 14(1) (requirement to refer to rent officers), shall not apply for a redetermination under paragraph (2) more than once in respect of an individual claimant’s dwelling to which that determination relates.

(4) Paragraph (2) shall operate so as to require a relevant authority to make a second application where the following conditions are met in addition to those imposed by that paragraph—

- (a) the written representations made under paragraph (1) relate to a redetermination by a rent officer made in response to an application by the relevant authority under regulation 15 (application to the rent officer for redetermination);
  - (b) by the time of that application, the rent officer has already provided a redetermination under this regulation of a determination made in response to an application under regulation 13D(10) or 14(1); and
  - (c) both the application under this regulation referred to in sub-paragraph (b) and the second application for which this paragraph provides relate to the same claimant.
- (5) Where a decision has been revised in consequence of a redetermination, substitute determination or substitute redetermination by a rent officer in exercise of the Housing Act functions (except for those relating to broad rental market area determinations and local housing allowance determinations or amended determinations) and that redetermination, substitute determination or substitute redetermination has led to—
- (a) a reduction in the maximum rent, the redetermination, substitute determination or substitute redetermination shall be a change of circumstances;
  - (b) an increase in the maximum rent, the redetermination, substitute determination or substitute redetermination shall have effect in place of the original determination.

### **Substitute determinations or substitute redeterminations**

17.—(1) In a case where either—

- (a) the appropriate authority discovers that an application it has made to the rent officer contained an error in respect of any of the following—
  - (i) the size of the dwelling;
  - (ii) the number of occupiers;
  - (iii) the composition of the household;
  - (iv) the terms of the tenancy; or
- (b) the rent officer has, in accordance with article 7A(1) or (2)(28) of the Rent Officers Order, notified an appropriate authority of an error he has made (other than in the application of his professional judgement),

the authority shall apply to the rent officer for a substitute determination, substitute redetermination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination, as the case may be.

(2) In its application to the rent officer the relevant authority shall state the nature of the error and withdraw any previous application relating to the same case for a redetermination or substitute determination or substitute redetermination, which it has made but to which the rent officer has not yet responded.

### **Application of provisions to substitute determinations or substitute redeterminations**

18. Regulations 15, 16 and 17 apply to a substitute determination or substitute redetermination as they apply to the determination or redetermination it replaces.”

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(28) Article 7A was inserted into the Rent Officers (Housing Benefit Functions) Order 1997 by S.I. 2000/1 and into the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 by S.I. 2000/3. It was amended in both instruments by S.I. 2003/2398 and 2007/2871.

### **Insertion of regulation 18A into the Housing Benefit Regulations 2006**

10. After regulation 18 (application of provisions to substitute determinations or substitute redeterminations) insert—

#### **“Amended determinations**

**18A.**—(1) This regulation applies where a decision has been revised in consequence of an amended broad rental market area determination or amended local housing allowance determination by a rent officer.

(2) Where that amended determination has led to a reduction in the maximum rent (LHA) applicable to a claimant, the amended determination shall be a change of circumstances in relation to that claimant.

(3) Where that amended determination has led to an increase in the maximum rent (LHA) applicable to a claimant, the amended determination shall have effect in place of the original determination.”.

### **Amendment of regulation 50 of the Housing Benefit Regulations 2006**

11. In regulation 50(4)(a) (diminishing notional capital rule) for “regulation 80(4)(a)” substitute “regulation 80(3)(a)”.

### **Substitution of regulation 70 of the Housing Benefit Regulations 2006**

12. For regulation 70 (maximum housing benefit) substitute—

“**70.** The amount of a person’s appropriate maximum housing benefit in any week shall be 100 per cent. of his eligible rent calculated on a weekly basis in accordance with regulations 80 and 81 (calculation of weekly amounts and rent free periods) less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).”

### **Amendment of regulations 72 and 73 of the Housing Benefit Regulations 2006**

13. In regulations 72(4) (extended payments) and 73(4) (extended payments (severe disablement allowance and incapacity benefit)) for “regulation 80(7)” substitute “regulation 80(6)”.

### **Substitution of regulation 74 of the Housing Benefit Regulations 2006**

14. For regulation 74(29) (non-dependant deductions) substitute—

“**74.**—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 70 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £47.75 per week;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £7.40 per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than £111.00, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than £111.00 but less than £164.00, the deduction to be made under this regulation shall be £17.00;
- (c) not less than £164.00 but less than £213.00, the deduction to be made under this regulation shall be £23.35;
- (d) not less than £213.00 but less than £283.00, the deduction to be made under this regulation shall be £38.20;
- (e) not less than £283.00 but less than £353.00, the deduction to be made under this regulation shall be £43.50.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 3 (additional condition of the higher pensioner and disability premiums); or
- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(30); or
- (c) he is a full-time student during a period of study within the meaning of Part 7 (Students); or
- (d) he is a full-time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
- (e) he is a full-time student and the claimant or his partner has attained the age of 65; or



- (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—
- (i) “patient” has the meaning given in paragraph (18) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home);
  - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods; and
  - (iii) “prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983<sup>(31)</sup>, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(32)</sup> or the Criminal Procedure (Scotland) Act 1995<sup>(33)</sup>.
- (8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker’s allowance.
- (9) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income—
- (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) would have been disregarded under paragraph 23 of Schedule 5 (income in kind); and
  - (c) any payment which had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 35 of Schedule 5 (payments made under certain trusts and certain other payments).
- (10) No deduction shall be made in respect of a non-dependant who is on state pension credit.”.

### **Amendment of regulation 79 of the Housing Benefit Regulations 2006**

**15.** In regulation 79(1) and (3)<sup>(34)</sup> (date on which change of circumstances is to take effect) for “regulation 80(6)” substitute “regulation 80(5)”.

### **Substitution of regulations 80 and 81 of the Housing Benefit Regulations 2006**

**16.** For regulations 80<sup>(35)</sup> (calculation of weekly amounts) and 81<sup>(36)</sup> (rent free periods) substitute—

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<sup>(31)</sup> 1983 c. 20.

<sup>(32)</sup> 2003 asp 13.

<sup>(33)</sup> 1995 c. 46.

<sup>(34)</sup> Relevant amending instruments are [S.I. 2005/2502](#) (as amended by [S.I. 2006/217](#)) and [2007/294](#).

<sup>(35)</sup> Relevant amending instruments are [S.I. 2005/2502](#) (as amended by [S.I. 2006/217](#)) and [2006/2378](#).

<sup>(36)</sup> The relevant amending instrument is [S.I. 2005/2502](#) (as amended by [S.I. 2006/217](#)).

**“Calculation of weekly amounts**

**80.—(1)** A person’s entitlement to housing benefit in any benefit week shall be calculated in accordance with the following provisions of this regulation.

(2) The weekly amount of a claimant’s eligible rent shall be—

- (a) subject to paragraph (3), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable; or
- (b) subject to paragraph (3), where the rent is payable at intervals of a calendar month or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of calendar months in respect of which it is payable, multiplying by 12 and dividing by 52;
- (c) subject to paragraph (3), where the rent is payable at intervals of a day or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of days in respect of which it is payable and multiplying by 7.

(3) In a case—

- (a) to which regulation 76(2) or (3) (date on which entitlement is to commence) applies, his eligible rent for the benefit week in which he becomes liable to make payments in respect of a dwelling which he occupies as his home shall be calculated by multiplying his daily rent by the number equal to the number of days in that benefit week for which he is liable to make such payments;
- (b) where a change of circumstances takes effect in a benefit week under regulation 79(2A), (but is not a change described in sub-paragraph (c)(ii) of this regulation), (2B), (8) or (9) other than on the Monday of a benefit week then the claimant’s eligible rent for that benefit week shall be calculated by multiplying his daily rent by the appropriate number of days in that benefit week;

(c) where—

- (i) the amount of eligible rent which the claimant is liable to pay in respect of a dwelling is altered and that change of circumstances takes effect under regulation 79(2); or

(ii) the claimant—

- (aa) moves to a new dwelling occupied as the home,
- (bb) he is not entitled to be treated, immediately after that move, as occupying two dwellings as his home or as occupying his former dwelling as his home, and

(cc) that change of circumstances takes effect under regulation 79(2A), other than on the Monday of a benefit week, then the claimant’s eligible rent for that benefit week shall be calculated by multiplying his old and new daily rent by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay.

(4) In the case of a claimant whose weekly eligible rent falls to be calculated in accordance with paragraph (3)(a) or (b) by reference to the daily rent in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent by reference to the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit).

(5) Where a change in the amount of a claimant's applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent to which paragraph (3)(c) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent.

(6) In any case where a claimant has received an extended payment or an extended payment (severe disablement allowance and incapacity benefit), his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in Part 3 of Schedule 7 or paragraph 9 of Schedule 8, as the case may be.

(7) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

(8) In this regulation "daily rent" shall mean the amount determined by dividing by 7 the amount determined under whichever sub-paragraph of paragraph (2) is appropriate in each case.

(9) Where a claimant is entitled to benefit in respect of two (but not more than two) dwellings in accordance with regulation 7(6) his eligible rent shall be calculated in respect of each dwelling in accordance with this regulation.

### **Rent free periods**

**81.**—(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent free period) in, or in respect of, which he is not liable to pay rent except for any period to which regulation 8(1)(d) (waiver of rent by landlord in return for work done) applies.

(2) In the case of the beginning or ending of a claimant's rent-free period, his eligible rent for the benefit week in which the rent free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 80(3) applies.

(3) For the purpose of determining the weekly applicable amount and income of a claimant to whom this regulation applies, the weekly amount of any non-dependant deductions and the minimum amount payable in his case—

(a) in a case to which regulation 80(2)(a) applies, the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit) shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;

(b) subject to paragraph (4), in a case to which regulation 80(2)(b) or (c) applies, the amounts determined in his case in accordance with Parts 5 to 8 shall be multiplied by 365 or 366, whichever is appropriate and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 80(4) or (5) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3) shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent."

### **Amendment of regulations 95 and 96 of the Housing Benefit Regulations 2006**

**17.**—(1) In regulation 95 (circumstances in which payment is to be made to a landlord) after paragraph (2) insert—

“(2A) In a case where—

- (a) a relevant authority has determined a maximum rent (LHA) in accordance with regulation 13D; and
- (b) the rent allowance exceeds the amount which the claimant is liable to pay his landlord by way of rent,

any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 96 may include all or part of any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent but shall not include any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent and arrears of rent.”.

(2) In regulation 96 (circumstances in which payment may be made to a landlord)—

- (a) in paragraph (1) for “paragraph (3)” substitute “paragraphs (3) and (3A)”;
- (b) in paragraph (3) after “paragraph (1)” insert “, (3A) or (3B)”;
- (c) after paragraph (3) insert—

“(3A) In a case where a relevant authority has determined a maximum rent in accordance with regulation 13D—

- (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply; and
- (b) payment of a rent allowance to a person’s landlord may be made where—
  - (i) the relevant authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs;
  - (ii) the relevant authority considers that it is improbable that the claimant will pay his rent; or
  - (iii) a direct payment has previously been made by the relevant authority to the landlord in accordance with regulation 95 in respect of the current award of housing benefit.

(3B) Where the relevant authority suspects that the grounds in paragraph (3A)(b)(i) or (ii) apply and is considering whether to make payments on one of those grounds, it may make a payment of a rent allowance to the person’s landlord for a period not exceeding 8 weeks.”.

## **Substitution of Schedule 2 to the Housing Benefit Regulations 2006**

**18.** For Schedule 2(37) (excluded tenancies) substitute—

“SCHEDULE 2

Regulation 14

### Excluded tenancies

**1.** An excluded tenancy is any tenancy to which any of the following paragraphs applies.

**2.—(1)** Subject to the following sub-paragraphs, where a rent officer has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—

- (a) the tenancy in respect of which that determination was made; and
- (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.

(2) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer’s determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—

- (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
- (b) the earlier application was made more than 52 weeks before the later application was made.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—

- (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;
- (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
- (c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;
- (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (size and rent determinations), but since the date of the application for that determination—
  - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years; or
  - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years; or
  - (iii) there is a change in the composition of the household occupying the dwelling;
- (e) the claimant is a young individual, except in a case where the determination mentioned in sub-paragraph (1) was, or was made in conjunction with, a determination of a single room rent pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order on or after 2nd July 2001.

3.—(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority considers that—

- (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 the circumstances set out in head (a) or (b) of sub-paragraph (1) above exist, the authority shall so state in their application for a determination.

4. This paragraph applies to a tenancy entered into before—

- (a) in Scotland, 2nd January 1989; and
- (b) in any other case, 15th January 1989.

5. This paragraph applies to a regulated tenancy within the meaning of—

- (a) in Scotland, the Rent (Scotland) Act 1984(38); and

- (b) in any other case, the Rent Act 1977**(39)**.
6. This paragraph applies to a housing association tenancy which—
- (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
- (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.
7. This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976**(40)**.
8. This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954**(41)** or Schedule 10 to the Local Government and Housing Act 1989**(42)**.
9. This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000**(43)**.
10. This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988**(44)**.
- 11.—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—
- (a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985**(45)** or section 12 of the Housing (Scotland) Act 1987**(46)**;
- (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985 or section 12 of the Housing (Scotland) Act 1987;
- (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996**(47)**, otherwise than from a housing action trust within the meaning of Part 3 of the Housing Act 1988**(48)**, or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988**(49)**; or
- (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990**(50)** to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968**(51)** to a housing association.
- (2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—
- (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and

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**(39)** 1977 c. 42.

**(40)** 1976 c. 80.

**(41)** 1954 c. 56.

**(42)** 1989 c. 42.

**(43)** 2000 c. 43.

**(44)** 1988 c. 50.

**(45)** 1985 c. 68; section 32 was amended by section 140 of and Schedule 7 to the Housing Act 1988 (c. 50), section 227 of and Schedule 19 to the Housing Act 1996 (c. 52) and S.I. 1997/74. Section 43 was amended by section 132 and 140 of and Schedule 17 to the Housing Act 1988 (c. 50); section 194 of and Schedule 12 to the Local Government and Housing Act 1989 (c. 42), section 78 of and Schedule 10 to the Environment Act 1995 (c. 25) and section 227 of and Schedule 9 to the Housing Act 1996.

**(46)** 1987 c. 26.

**(47)** 1996 c. 52.

**(48)** 1988 c. 50; section 14 was amended by section 104 of and Schedule 8 to the Housing Act 1996 (c. 52) and S.I. 1993/651.

**(49)** 1988 c. 43; section 25 was amended by S.I. 1993/658.

**(50)** S.I. 1990/1700; amended by S.I. 1990/2366 and 1991/1281.

**(51)** 1968 c. 16. Relevant amendments are contained in the Enterprise and New Towns (Scotland) Act 1990 (c. 35) section 33.

- (b) the local authority stated in the application for determination that—
  - (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or
  - (ii) the rent payable for that dwelling is unreasonably high.

(3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

**12.** This paragraph applies to a shared ownership tenancy.

**13.** In this Schedule, “rent” shall be construed in accordance with paragraph (8) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;
- (b) in any other case, as in section 14 of the Housing Act 1988, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,

and—

- (i) other expressions have the same meanings as in regulation 14(8);
- (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), 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.”.

#### **Amendment of Schedules 7 and 8 to the Housing Benefit Regulations 2006**

**19.** In paragraph 3(2) of Schedule 7 (extended payments of housing benefit) and paragraph 2(3) of Schedule 8 (extended payments (severe disablement allowance and incapacity benefit) of housing benefit) for “regulation 80(4)(c)” substitute “regulation 80(3)(c)”.

#### **Substitution of Part 15 of and Schedule 10 to the Housing Benefit Regulations 2006**

**20.**—(1) For Part 15 substitute—

### **“PART 15**

#### **Former pathfinder authorities**

##### **Modifications in respect of former pathfinder authorities**

**122.**—(1) In this regulation and in Schedule 10, “former pathfinder authority” means a relevant authority specified in Part 1 of that Schedule.

(2) The provisions of Part 2 of Schedule 10 apply in relation to the area of a former pathfinder authority.”.

(2) For Schedule 10 (pathfinder authorities) substitute—

“SCHEDULE 10

Regulation 122

Former pathfinder authorities

**PART 1**

**Former pathfinder authorities**

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Argyll and Bute  
Blackpool  
Brighton and Hove  
Conwy  
Coventry  
East Riding of Yorkshire  
Edinburgh  
Guildford  
Leeds  
Lewisham  
North East Lincolnshire  
Norwich  
Pembrokeshire  
St Helens  
Salford  
South Norfolk  
Teignbridge  
Wandsworth

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**PART 2**

**Application of the Regulations**

1. These Regulations shall apply to former pathfinder authorities subject to the provisions of this Part of this Schedule.

**Amendment of regulation 2**

2. In regulation 2(1) (interpretation)—
- (a) in the definition of “eligible rent”, in sub-paragraph (a) for “or 12D (eligible rent and maximum rent (LHA))” substitute “, 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases)”;
  - (b) after the definition of “maximum rent (LHA)” insert—



““maximum rent (standard local rent)” means a maximum rent (standard local rate) determined in accordance with regulation 13A;”.

#### **Amendment of regulation 11**

3. In regulation 11(1)(52) (eligible housing costs)—
- (a) in paragraph (c) omit “or”; and
  - (b) after sub-paragraph (d) insert—  
“; or
  - (e) any of regulations 12E to 12K (transitional protection for pathfinder cases) and regulations 13C (when a maximum rent (LHA) is to be determined) and 13D (determination of a maximum rent (LHA)),”.

#### **Amendment of regulation 12B**

4. In regulation 12B(1)(53) (eligible rent) for “or 12D (eligible rent and maximum rent (LHA))” substitute “, 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases)”.

#### **Amendment of regulation 12D**

5. In regulation 12D(54) (eligible rent and maximum rent (LHA)) before paragraph (1) insert—  
“(A1) This regulation shall not apply where any of regulations 12E to 12K (transitional protection for pathfinder cases) apply.”

#### **Insertion of regulations 12E to 12K**

6. After regulation 12D (eligible rent and maximum rent (LHA)) insert—

##### **“Basic transitional protection for pathfinder cases**

- 12E.—(1) This regulation applies where—
- (a) reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008;
  - (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a)(55); and
  - (c) regulations 12F (cases where the claimant enjoyed protection on death before 7th April 2008) and 12G (cases where the claimant enjoyed 13 week protection before 7th April 2008) do not apply.
- (2) Where this regulation applies, the claimant’s eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
  - (b) the amount of the eligible rent which applied immediately before 7th April 2008.

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(52) Regulation 11(1) is substituted by regulation 4(3)(a) of these Regulations.

(53) Regulation 12B is inserted by regulation 5 of these Regulations.

(54) Regulation 12D is inserted by regulation 5 of these Regulations.

(55) Regulation 13C is inserted by regulation 7 of these Regulations. Paragraph (4A) is inserted into regulation 13C by paragraph 7 of Schedule 10 to the Housing Benefit Regulations 2006 as inserted by regulation 20 of these Regulations.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs—

- (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is higher than that eligible rent;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person;
- (e) the relevant authority determines a maximum rent (LHA) on 7th April 2009 by virtue of regulation 13C(4A)(b).

(4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

#### **Cases where the claimant enjoyed protection on death before 7th April 2008**

**12F.**—(1) This regulation applies where—

- (a) immediately before 7th April 2008 the claimant enjoyed protection on death in accordance with regulation 12A(4)(a)(ii) (pathfinder protection on death based on reckonable rent); and
- (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a).

(2) Where this regulation applies, the claimant's eligible rent is—

- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
- (b) the amount of the eligible rent which applied immediately before 7th April 2008.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs —

- (a) the end of 12 months after the death to which the protection relates;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person;

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

### **Cases where the claimant enjoyed 13 week protection before 7th April 2008**

**12G.**—(1) This regulation applies where—

- (a) immediately before 7th April 2008 the claimant enjoyed 13 week protection in accordance with regulation 12A(6)(a) (local housing allowance pathfinder 13 week protection); and
- (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a).

(2) Where this regulation applies, the claimant's eligible rent is—

- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
- (b) the amount of the eligible rent which applied immediately before 7th April 2008.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs —

- (a) the end of the day when the protection expires, namely 13 weeks after the date of the claim;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person.

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

### **Cases where a death occurs in the first year on or after 7th April 2008**

**12H.**—(1) This regulation applies where—

- (a) the eligible rent is that specified in regulation 12E(2)(b) (basic transitional protection for pathfinder cases), 12F(2)(b) (transitional protection where the claimant enjoyed protection on death before 7th April 2008), 12G(2)(b)

- (transitional protection where the claimant enjoyed 13 week protection before 7th April 2008) or paragraph (2)(b) of this regulation;
- (b) a linked person dies on or after 7th April 2008 and before 7th April 2009;
  - (c) the claimant occupies the same dwelling as the linked person at the date of death; and
  - (d) the relevant authority determines a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (ii) (change of category of dwelling or death of a linked person).
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death; or
  - (b) the amount of the eligible rent which applied immediately before the date of the death.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before the date of death, it will continue to apply until, on or after the date of the death, the first of the following events occurs —
- (a) the end of 12 months from the date of the death;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with this regulation following the death of another linked person.
- (4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).
- (5) For the purposes of paragraph (1)(c), a claimant shall be treated as occupying the dwelling if regulation 7(13) is satisfied and for that purpose paragraph (13) of regulation 7 shall have effect as if sub-paragraph (b) were omitted.

### **Basic transitional protection in the second year and subsequent years after 7th April 2008**

- 12I.**—(1) This regulation applies where—
- (a) immediately before 7th April 2009 the claimant was enjoying basic transitional protection under regulation 12E; and
  - (b) the local authority determines a maximum rent (LHA) by virtue of 13C(4A)(b) on 7th April 2009.
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where it is higher than the eligible rent applying immediately before 7th April 2008; or
  - (b) in any other case, the lower of—
    - (i) the amount of the eligible rent applying immediately before 7th April 2008;
    - or

- (ii) the amount of the cap rent by reference to which the maximum rent (LHA) was determined, plus £15.
- (3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b), it continues to apply until, on or after 7th April 2009, the first of the following events occurs—
- (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling or 13C(3) (anniversary of the LHA date) and the maximum rent (LHA) is higher than that eligible rent;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12K (protection on death in the second and subsequent years after 7th April 2008) following the death of a linked person.
- (4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

**Transitional protection in the second year after 7th April 2008 where the claimant is already enjoying protection on death**

- 12J.**—(1) This regulation applies where—
- (a) immediately before 7th April 2009 the claimant was enjoying transitional protection on death under regulation 12H (cases where a death occurs in the first year on or after 7th April 2008); and
  - (b) the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(b) on 7th April 2009 .
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death to which the protection relates; or
  - (b) the amount of the eligible rent which applied immediately before the date of the death.
- (3) Where the eligible rent which applies is the one that applied immediately before the date of the death, it continues to apply until, on or after the date of the death, the first of the following events occurs—
- (a) the end of 12 months after the date of the death to which the protection relates;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;

(d) the relevant authority is required to determine an eligible rent in accordance with regulation 12K (protection on death in the second and subsequent years after 7th April 2008) following the death of a linked person.

(4) Where the eligible rent ceases to apply because of paragraph (3)(a) the eligible rent is the one that would have applied if the relevant authority not determined an eligible rent in accordance with regulation 12H(2)(b) (transitional protection where a death occurs in the first year on or after 7th April 2008).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

### **Protection on death in the second and subsequent years after 7th April 2008**

**12K.**—(1) This regulation applies where—

- (a) the claimant's eligible rent is that specified in regulation 12I(2)(b) (basic transitional protection in the second and subsequent years after 7th April 2008), 12J(2)(b) (transitional protection in the second year after 7th April 2008 where the claimant is already enjoying protection on death) or paragraph (2)(b) of this regulation;
- (b) a linked person dies on or after 7th April 2009;
- (c) the claimant occupies the same dwelling as the linked person at the date of death; and
- (d) the relevant authority determines a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (ii) (change of category of dwelling or death of a linked person).

(2) Where this regulation applies, the claimant's eligible rent is—

- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death; or
- (b) the amount of eligible rent which applied immediately before the death.

(3) Where the eligible rent which applies is the one that applied immediately before the date of the death, it will continue to apply until, on or after the date of the death, the first of the following events occurs—

- (a) the end of 12 months from the date of the death;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (3) (change of category of dwelling or anniversary of the LHA date) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with this regulation following the death of another linked person.

(4) Where the eligible rent ceases to apply because of paragraph (3)(a) the eligible rent is the one that would have applied but had the relevant authority not determined an eligible rent in accordance with this regulation.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

(6) For the purposes of paragraph (1)(c), a claimant shall be treated as occupying the dwelling if regulation 7(13) is satisfied and for that purpose paragraph (13) of regulation 7 shall have effect as if sub-paragraph (b) were omitted.”.

#### **Amendment of regulation 13C**

7. In regulation 13C(56) (when a maximum rent (LHA) is to be determined)—
- (a) in paragraph (1) for “paragraphs (2) or (3)” substitute “paragraphs (2), (3) or (4A)”;
  - (b) in paragraph (3) after “LHA date” insert “except where paragraph (4A)(b) applies”;
  - (c) after paragraph (4) insert—
    - “(4A) This paragraph applies where it is—
    - (a) 7th April 2008 and reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008; or
    - (b) 7th April 2009 and the eligible rent which applies on that date was determined in accordance with regulation 12E(2)(b) (basic transitional protection for pathfinder cases) or 12H(2)(b) (transitional protection where a death occurs in the first year on or after 7th April 2008).”.

#### **Amendment of regulation 13D**

8. In regulation 13D(12)(57) (determination of a maximum rent (LHA)) in the definition of “relevant date” after sub-paragraph (c) insert—
- “(d) 7th April 2008;
  - (e) 7th April 2009.”.

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

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

2nd October 2007

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(56) Regulation 13C is inserted by regulation 7 of these Regulations.

(57) Regulation 13D is inserted by regulation 7 of these Regulations.

*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 amend the Housing Benefit Regulations 2006.

These Regulations, together with the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2869), the Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendments Regulations 2007 and the Rent Officers (Housing Benefit Functions) Amendment Order 2007, provide for the national rollout of a modified version of the local housing allowance arrangements using new powers in the Social Security Contributions and Benefits Act 1992 following commencement of section 30 of the Welfare Reform Act 2007. These powers are also used to remake some regulations (with amendments in some cases) as the existing regulations will cease to have effect (subject to savings) when the current powers are repealed. These Regulations also make provision in relation to the provision of information to rent officers.

The local housing allowance arrangements are a way of determining housing costs eligible to be met by housing benefit for certain cases (“local housing allowance cases”) using local housing allowances determined by rent officers. The local housing allowance arrangements have applied to the areas of 18 local authorities (“former pathfinder authorities”).

Regulation 3 omits paragraphs (2), (3) and (9) of regulation 14, and regulation 114 which relates to the provision of information to rent officers. It inserts a new regulation 114A which requires local authorities to provide information to rent officers to enable them to carry out their functions in relation to housing benefit. This includes the provisions formerly contained in regulation 14(2), (3) and (9). It also inserts a new paragraph (4A) in regulation 14 which provides that the provision of certain information to the rent officers under regulation 114A shall be treated as an application to a rent officer under regulation 14(1). These amendments come into force on 7th April 2008.

Regulations 4 to 19 make amendments which will come into force on 7th April 2008 immediately following the information sharing amendments in regulation 3, except for those cases to which regulation 1(5) applies. These cases are non-local housing allowance cases and will continue to be dealt with under the regulations as in force immediately before 7th April 2008, subject to the information sharing amendments in regulation 3, until one of the triggers for determining the amount of rent eligible to be met by housing benefit referred to in regulation 1(6) applies, or it is 6th April 2009.

Regulation 4 makes minor and consequential amendments to regulations 2 and 3. It also remakes regulation 11(1) with minor and consequential amendments. It omits paragraphs (3) to (7) of regulation 12 and makes a minor consequential amendment to paragraph (8).

Regulation 5 remakes paragraphs (3) to (7) of regulation 12 with minor and consequential amendments as regulations 12B and 12C. It inserts regulation 12B which makes provision for eligible rent for cases where it is based on the claimant’s actual rent and regulation 12C which makes provision for eligible rent where a maximum rent is calculated in accordance with regulation 13. Regulation 4 also inserts regulation 12D which makes provision for eligible rent where a maximum rent (LHA) is calculated in accordance with regulation 13D.

Regulation 6 remakes regulation 13, with minor amendments, as substituted regulations 13, 13ZA and 13ZB.

Regulation 7 inserts regulation 13C, which provides when a maximum rent (LHA) is to be determined and regulation 13D, which makes provision about the way in which a maximum rent



(LHA) is to be determined. It also remakes regulation 13B, which applied to former pathfinder authorities and provided for the publication of local housing allowances, as inserted regulation 13E, which applies to all local authorities.

Regulation 8 remakes regulation 14, as amended by regulation 2, as substituted regulation 14.

Regulation 9 substitutes regulations 15 to 18, with minor and consequential amendments and ensures that the provisions which applied to former pathfinder authorities will now apply to all local authorities.

Regulation 10 inserts regulation 18A which applied to former pathfinder authorities and which will now apply to all local authorities.

Regulations 11 to 16 remake regulations 70, 74, 80 and 81 and make minor and consequential amendments to those regulations and regulations 50, 72, 73 and 79.

Regulation 17 amends regulations 95 and 96 to apply the direct payment to landlord provisions for local housing allowance cases, which applied to former pathfinder authorities, to all local authorities, with minor amendments. Regulation 96 also includes a new provision allowing local authorities to make direct payments to landlords for up to 8 weeks while determining whether the claimant falls within one of the categories that allows direct payment.

Regulation 18 remakes Schedule 2 using the new powers with minor and consequential amendments.

Regulation 19 makes minor consequential amendments to Schedule 7 and Schedule 8.

Regulation 20 substitutes a new Part 15 and a new Schedule 10. This regulation comes into force on 7th April 2008 immediately following the coming into force of regulations 4 to 19. Schedule 10 applies to former pathfinder authorities. It makes amendments to regulations 2, 11, 12B, 12D and 13C. It inserts regulations 12E to 12K, which provide transitional protection for local housing allowance cases in former pathfinder authorities.

A full regulatory impact assessment has not been published for this instrument as it has no direct impact on the costs of businesses, charities and the voluntary sector.