

*These notes refer to the Welfare Reform Act (Northern Ireland)
2007 (c.2) which received Royal Assent on 27 June 2007*

Welfare Reform Act (Northern Ireland) 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 2: Housing benefit

Section 30: Local housing allowance

Section 30 provides for powers for a new way of calculating maximum housing benefit, known as local housing allowance, across the private rented sector.

The main secondary legislation dealing with housing benefit (referred to as “the housing benefit rules”) is contained in the Housing Benefit Regulations and the Housing Benefit (SPC) Regulations.

Under the current housing benefit rules for claimants in the private rented sector, the maximum amount of benefit that can be paid is the “appropriate maximum housing benefit”, subject to reductions to take account of income. The appropriate maximum housing benefit is the weekly amount of rent eligible to be met by housing benefit, less deductions made in relation to non-dependants. The eligible rent is determined by establishing whether the rent charged is considered appropriate for the particular area, property and the claimant’s particular needs. The Housing Executive decides whether rents are appropriate for the particular area or property and the claimant’s particular needs using a system of “rent restrictions”. Any charges included within the rent that are ineligible for housing benefit purposes, such as for the costs of fuel Acts or meals, must also be deducted.

The local housing allowance replaces the existing rent restrictions by providing a new way to determine the maximum amount of housing benefit payable. Non-dependant deductions and reductions to take account of higher incomes will still apply. Any given claimant would be eligible, as a maximum, to the local housing allowance rate that applies according to the number and mix of occupiers, and the area in which the claimant lives. The detailed rules on how the local housing allowance is set will be in regulations, as is the case under the current housing benefit rules.

Section 30 provides for powers that are more specifically appropriate for the local housing allowance approach to the determination of a claimant’s maximum housing benefit.

Subsection (1) removes section 129(4) of the Contributions and Benefits Act, which requires regulations to be made setting out how a claimant's appropriate maximum housing benefit should be determined in any case. This provision will be replaced by a new section 129A(2).

Subsection (2) inserts the new section 129A into the Contributions and Benefits Act which provides for the determination of a claimant's appropriate maximum housing benefit and enables regulations to provide that claimants may have their appropriate maximum housing benefit calculated by reference to Housing Executive determinations. These could be property specific determinations as now, or the generic determinations required under the local housing allowance, which apply to properties of a certain size in a particular area.

Section 129A(4) introduces an additional "treat as liable" power solely for the purpose of calculating the appropriate maximum housing benefit. This provides a more specifically appropriate power centred on the local housing allowance approach, providing for a claimant's housing benefit to exceed his rent liability if the appropriate local housing allowance is higher than his actual rent liability. Equivalent provision is made by subsection (5) for claimants who are "treated" as having a rent liability under regulations made under section 133(2)(j) of the Contributions and Benefits Act (e.g. because it is their partner who has the actual liability). This provides for their housing benefit to exceed their deemed liability, if the appropriate local housing allowance is higher than their deemed liability.

Section 30(3) provides for a power to prescribe when the Housing Executive must review a housing benefit award. This allows for the Housing Executive to apply a new local housing allowance rate each year to ensure that a claimant's award is updated.

Section 31: Loss of housing benefit following eviction for anti-social behaviour, etc

The intention is that this measure will not be introduced until piloting of the sanction in England has been fully evaluated.

Section 31(1) inserts sections 129B to 129F into the Contributions and Benefits Act. Section 129B provides for the reduction, or non-payment, of housing benefit where the following conditions are met:

- a relevant order for possession of the claimant's home has been made by a court on grounds relating to anti-social or criminal behaviour. The relevant orders are set out in section 129C.
- the claimant has ceased to live in that home as a result of that order.
- the claimant has failed to comply without good cause, with a warning notice from the Housing Executive about improving his behaviour (section 129B(2)).
- the claimant satisfies the conditions for entitlement to housing benefit.

It is intended that once a person has satisfied the first two conditions, the Housing Executive will make an attempt to engage with him, if it has not already, with the aim of ending, or preventing repetition of, his anti-social behaviour through the provision of rehabilitation. Where the person refuses to co-operate, the Housing Executive will have the option of using this sanction to encourage him to co-operate with the rehabilitation.

Section 129B(3) provides a power to prescribe the rate of benefit reduction and the circumstances in which it is payable. The intention is to reduce housing benefit by 10 per cent. for the first 4 weeks, followed by 20 per cent. for a further 4 weeks and then 100 per cent. for either a period of up to 5 years beginning with the date of the possession order (section 129B(6)) or until the Housing Executive considers that the sanction should no longer apply (section 129B(5)). Examples of circumstances where the Housing Executive might consider the sanction is no longer appropriate are where the person has begun co-operating with rehabilitation, where rehabilitation services are no longer available or where the person has, or his family have, become particularly vulnerable. It is intended that a lower rate of reduction will apply to those considered to be in hardship. This could include households where someone is seriously ill or pregnant and households with children or which include those with caring responsibilities.

The sanction, having been brought to an end by the Housing Executive can be restarted if the person fails to comply with a further warning notice. If the person stops co-operating with rehabilitation, a further warning can be issued or further action specified. If this is not complied with, without good cause, the sanction will start to run again (section 129B(5)).

Only one sanction can be applied in relation to a relevant order for possession, albeit the sanction can stop and start up to the date 5 years after the original possession order was made (section 129B(7)).

Section 129C sets out the relevant orders for possession. All the orders for possession specified in subsection (1) are made on grounds of behaviour causing a nuisance or annoyance to neighbours or criminal behaviour. It does not matter if the possession is made purely on those grounds or on those grounds coupled with other grounds (section 129C(2)).

The relevant orders for possession specified can be stayed or suspended with conditions attached. Those conditions may relate to behaviour and the payment of rent and rent arrears. If a relevant possession order is made and stayed or suspended with behaviour conditions, the sanction can only be applied if the order takes effect as a result of the breach of those behaviour conditions (section 129C(3) to (5)).

Section 129D(1) provides a power to prescribe circumstances in which benefit not paid due to the application of the sanction can be paid to the claimant. An example of such circumstances would be where a claimant has made a successful application for the relevant order for possession to be set aside.

Section 129D(2) provides a power to vary the definition of relevant orders for possession.

Section 129D(3) provides a power to prescribe the matters which should be taken into account when deciding whether or not a person has good cause, and circumstances in which a person is, or is not, to be regarded as having good cause, for not complying with a warning notice.

Section 129E makes provision for cases where the claimant is a member of a couple. Subsection (2) provides that where both members of a couple lived in a dwelling to which a relevant order for possession relates and left the dwelling as a result, housing benefit could be subject to a future sanction should either member of that couple fail to comply with a warning notice. If only one member of the couple resided in a dwelling to which a relevant order for possession relates the sanction is not to apply (section 129E(3)).

Section 129F(1) allows the Department, by regulations, to require courts to notify it when a relevant order for possession is made and provide relevant details of the order, and also enables the Department to require similar information to that required from a court from others who may be aware of the making of a relevant order for possession. Such people could include, for instance, the landlord. The intention is to place the obligation on the courts in the first instance.

Section 129F(2) enables the Department to provide information obtained under section 129F(1) to the Housing Executive, which will provide rehabilitation services, or to a person authorised by the Housing Executive to provide those services. It also allows the Department to provide information it holds relating to housing benefit to the Housing Executive or service providers.

Section 129F(3) provides for the Department to require, by regulations, relevant information for purposes relating to the administration of housing benefit to be provided by the Housing Executive (providing rehabilitation services) or a person authorised by the Housing Executive to provide those services. Information could include whether a person has satisfied some or all of the conditions of sections 129B(1) or (2).

Section 129F(4) allows the Department to require, by regulations, that relevant information may be shared within the Housing Executive or with other persons (in their roles of administering housing benefit and providing rehabilitation services) for purposes relating to the administration of housing benefit.

Section 129F(5) allows the Department to require, by regulations, that relevant information be shared within the Housing Executive or with other persons (in their roles of administering housing benefit and providing rehabilitation services) for purposes relating to the provision of rehabilitation services.

Section 129F(6) defines relevant information. The manner in which relevant information is to be supplied may be prescribed by the Department (section 129F(7)).

Section 31(2) provides that any regulations made under subsection 129B(3), relating to the rate of the benefit reduction, and regulations made under subsection 129D(2), relating to varying what constitutes a relevant order for possession, would be subject to the confirmatory procedure in the Assembly.

Section 31(3) limits the possible duration of the powers in this section by bringing the provisions of *section 31* to an end on 31 December 2010. Further primary legislation would be required to allow the scheme (or any replacement scheme) to operate after that date.

Section 31(3) is a safeguard to prevent anything done under *section 31* from having effect after 31 December 2010.

Section 32: Housing benefit for persons taking up employment

Section 33: Section 32: supplemental

Section 34: Interpretation

The housing benefit extended payment scheme provides access to a four week run-on of benefit in certain circumstances, after a qualifying person starts work or increases his hours/wages of current employment. There are two parallel schemes:

- for persons going off either income support or income-based jobseeker's allowance; and
- for persons leaving either incapacity benefit or severe disablement allowance.

Generally the four week extended payment will be at the same rate of benefit as the person was receiving in the week before he took up work. This is intended to bridge the gap between leaving benefits and the first pay packet.

In order to be entitled to an extended payment a number of criteria need to be satisfied, which are set out in secondary legislation. For example:

- the claimant or partner must have been entitled to and in receipt of the relevant qualifying benefit for 26 weeks immediately before taking up work or increasing hours/wages of current employment; and
- the claimant or partner must be entitled to housing benefit in the week before employment commenced.

Under the current scheme, a claimant's housing benefit award is ended when he moves off the qualifying benefit and meets the other criteria to enable payment of the extended payment. A new claim must be made in order to obtain any in-work entitlement to housing benefit.

These sections provide for a simpler method of making extended payments and remove the need for those who receive extended payments to submit a new claim for any in-work housing benefit. The move to employment (and entitlement

to an extended payment) would be treated like a change of circumstances in a continuing award.

The current extended payment provisions are set out in regulations primarily made under powers in sections 129(2) and (4) of the Contributions and Benefits Act. The detailed rules are in regulations 70, 71, 75 and 76 of, and Schedules 8 and 9 to, the Housing Benefit Regulations and regulations 50, 51 and 56 of, and Schedule 8 to, the Housing Benefit (SPC) Regulations.

Section 32 is designed to recast the underpinning powers for extended payments.

Subsections (1) and (2) provide for the basic underpinning entitlement conditions for extended payments of housing benefit, namely that a person entitled to housing benefit would be entitled to such a payment for a prescribed length of time when his own or his partner's entitlement to one of a number of prescribed benefits ends, in prescribed circumstances, and certain prescribed conditions are satisfied (e.g. he is liable to make payments for the dwelling he occupies as his home). The detailed rules are expected to remain the same or similar to the current scheme, and will remain in secondary legislation to provide the flexibility to keep these under review. The length of the extended payment period is likely to be four weeks as it is now.

Subsections (3) and (6) provide for the extended payment conditions of entitlement to take precedence over normal entitlement rules, in calculating the amount of housing benefit during the prescribed extended payment period.

Subsection (4) clarifies that where a person meets the qualifying conditions for an extended payment, there would be no need to make a separate claim for the extended payment. (There would still be a requirement for certain notifications to be made).

As now, the method of calculating the extended payment will be contained in regulations, which are provided for by *subsection (5)*. It is intended that the amount of the extended payment would be the higher of the out-of-work entitlement or the in-work entitlement. The effect of this is to ensure that the claimant is entitled to at least the amount of housing benefit he was receiving before he started work or increased his income from work, during the extended payment period.

Subsection (7) provides that regulations can prescribe how the entitlement under *subsection (2)* interacts with an entitlement of housing benefit, whether the housing benefit entitlement is claimed by the extended payment claimant or his partner. For example, regulations made under this provision could provide that the out-of-work award would continue during the extended payment period and what happens when the prescribed extended payment period finishes. If the claimant is part of a couple, regulations can provide whether the calculation of the extended payment will be based upon the claimants or the partner's housing benefit entitlement and how a partner's housing benefit entitlement will be treated when an extended payment is in payment.

Subsection (9) enables the Department to make special provision in regulations for a person who was not entitled to housing benefit when he stopped being entitled to any of the qualifying benefits, but had been so entitled until a week before he took up employment.

Section 33 supports those arrangements by providing in *subsections (1) and (2)* that the Department can prescribe by regulations any modifications to the housing benefit provisions contained in the Administration Act, or subordinate legislation made in pursuance of that Act, which it considers are required in relation to extended payments. The intention is that the secondary legislation under these subsections will avoid disrupting the normal method of benefit payment, and where appropriate, will complement the payment provisions under the new local housing allowance arrangements.

Subsections (4) to (11) relate to the proposed regulation-making powers, and ensure consistency with existing regulation-making powers in relation to housing benefit.

Subsection (12) provides that payments under *section 32* are classed as housing benefit, for example for cross-references in other legislation. For example, Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, which provides the revisions and appeals mechanism for housing benefit, would also apply to payments under *section 32*.

Section 34 provides specific details on the interpretation of terms used in *sections 32 and 33*, thereby clarifying specific terms and ensuring consistency with established legislation.

Section 35: Payment of housing benefit

Currently under section 126 of the Administration Act, and the housing benefit rules, housing benefit in the social sector must take the form of a rent rebate where the Housing Executive is the landlord. In other cases, it must take the form of a rent allowance. Both rent rebates and rent allowances can be paid by way of rebate to, or by payment to, the claimant (which includes someone on his behalf), or by a combination of rebate and payment. Where the Housing Executive is the landlord it has an effective choice as to the manner of payment. Where the Housing Executive is not the landlord it cannot rebate the claimant's rent account and has to pay the claimant or someone on his behalf (such as a landlord, or a third party). Regulations set out the circumstances in which payment must or may be made to someone other than the claimant.

Section 35 replaces section 126(2) of the Administration Act with new subsections (2), (2A) and (2B) to allow for regulations to be made specifying the manner in which payment must be made. This would, for example, enable secondary legislation to prescribe when payment is to be made directly to the claimant, or to someone on his behalf or in respect of the liability the claimant has; or by rebating the claimant's rent account; or by a combination of these

methods. This will ensure that the Department could ensure that payments were made to claimants, even where the Housing Executive was the landlord.

Section 36: Directions by Department

Under the present powers, when the Department receives a report under section 128C of the Administration Act, it may invite the Housing Executive to consider the report and respond setting out its proposals for improving performance or remedying failings. *Section 36(2)* amends section 128D(2) of that Act to allow the Department to require the Housing Executive to submit its proposals for improvement. *Subsection (3)* further enables the Department to specify the information (and the format and timescales for the information) it requires from the Housing Executive, to fully inform a decision on possible directions. This would not prevent the Housing Executive submitting other information it thinks relevant to the Department's considerations. To ensure that sufficient time is given to the Housing Executive to consider its response, the Department would be required to give the Housing Executive not less than one month to respond and could extend this, for example, where there were reasonable grounds for doing so following a request from the Housing Executive.

Subsection (4) allows the Department to also take into account any other relevant information it thought appropriate. This might include, for example, past statistical trends, or evidence of the Housing Executive's commitment to, and success in, the delivery of improvement. It also provides the Department with the power to direct the Housing Executive to take any action the Department thought necessary or expedient to improve the Housing Executive's performance and the timescales within which it must do so. The current powers, which allow the Department to specify the standards it expects the Housing Executive to attain and the timescales within which the Department expects it to attain them, remain by virtue of new subsection (3A). Where there are serious concerns in respect of a benefits administration matter, but a standard cannot be specified, the provision in the new subsection (3B) enables the Department to give a direction on that matter. The power allows it, for example, to require the Housing Executive to draw up a counter fraud strategy policy for benefits where none existed, or to review and make detailed proposals for improving a particular operational process about which there were serious concerns.

Subsection (5) is a consequential change to take into account the change in *subsection (4)* and allows the Department to continue to make recommendations to the Housing Executive about the actions it could take to attain the standards set out in a direction.

Subsection (6) places a requirement on the Department, before giving a direction, to give the Housing Executive an opportunity to make representations about the directions to it. However, *subsection (6)* permits the Department to issue directions without consulting the Housing Executive about their content if the Department considered it a matter of urgency. In such an urgent case, the

Department is required to inform the Housing Executive in writing of its reasons for not inviting representations from it before giving the directions.

Subsection (7) inserts a new section 128DA into the Administration Act, enabling the Department to vary or revoke a direction when it thinks it necessary to do so. It would be able to do so where it had received representations from the Housing Executive; to rectify an omission or error; or where there had been a material change of circumstances. For example, it might vary or end a direction where a change in legislation means that the direction was no longer relevant or needed to be changed in a material aspect. This subsection also requires the Department to write to the Housing Executive giving its reasons for making the variation and offer it the opportunity to make representations about the proposed variation.