

2008 No. 100

HOUSING

**The Housing Benefit (Executive Determinations) Regulations
(Northern Ireland) 2008**

Made - - - - *11th March 2008*

Coming into operation - *20th March 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129A(2) and 171(1) and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and now vested in it(b).

This Rule contains only regulations made consequential upon section 30(2) of the Welfare Reform Act (Northern Ireland) 2007(c).

Citation and commencement

1. These Regulations may be cited as the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008 and shall come into operation on 20th March 2008.

Interpretation

2.—(1) In these Regulations—

“broad rental market area” has the meaning specified in paragraph 4 of the Schedule;

“broad rental market area determination” means a determination made in accordance with regulation 3(1);

“dwelling” means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“the Housing Benefit Regulations” means the Housing Benefit Regulations (Northern Ireland) 2006(d);

“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(e);

“local housing allowance determination” means a determination made in accordance with regulation 3(2);

(a) 1992 c. 7; section 129A was inserted by section 30(2) of the Welfare Reform Act (Northern Ireland) 2007 and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(b) See Article 8(b) of S.R. 1999 No. 481

(c) 2007 c. 2 (N.I.)

(d) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 101

(e) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 No. 102

“rent” means any of the periodical payments referred to in regulation 13(1) of the Housing Benefit Regulations or, as the case may be, regulation 13(1) of the Housing Benefit (State Pension Credit) Regulations;

“tenancy” includes—

- (a) a licence; and
- (b) a prospective tenancy or licence, and

references to a tenant or any other expression appropriate to a tenancy shall be construed accordingly;

“uncontrolled tenancy” means a tenancy which is not a controlled tenancy within the meaning of Article 40(4) of the Private Tenancies (Northern Ireland) Order 2006(a) or a secure tenancy within the meaning of Article 25 of the Housing (Northern Ireland) Order 1983(b);

“working day” means any day other than a Saturday, a Sunday or a day which is a public holiday in Northern Ireland.

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

Broad rental market area determinations and local housing allowance determinations

3.—(1) On 20th March 2008 and so often thereafter as the Executive considers appropriate, the Executive shall—

- (a) determine one or more broad rental market areas so that every part of Northern Ireland falls within a broad rental market area and no part of Northern Ireland falls within more than one broad rental market area; and
- (b) specify the area contained within each broad rental market area by reference to the postcodes for each such broad rental market area.

(2) No more than 10 and not less than 8 working days before the end of each month the Executive shall for each broad rental market area determine, in accordance with the provisions of the Schedule—

- (a) a local housing allowance for each of the categories of dwelling set out in paragraph 1 of the Schedule; and
- (b) local housing allowances for such other categories of dwelling of more than 5 bedrooms as the Executive believes are likely to be required for the purpose of calculating housing benefit.

(3) Any broad rental market area determination made in accordance with paragraph (1), or local housing allowance determination made in accordance with paragraph (2) before 7th April 2008, shall take effect on 7th April 2008 and any subsequent determination shall take effect on the first day of the month which begins after the day on which the determination is made.

(4) Where the Executive is required to make local housing allowance determinations by—

- (a) regulation 14D(7)(a)(d); or
- (b) regulation 14D(8),

of the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations, it shall do so in accordance with the provisions of the Schedule.

(5) Where the Executive has made a local housing allowance determination in accordance with paragraph (4), any determination made in accordance with—

- (a) paragraph (4)(a) shall take effect for the month in which the relevant date falls; and

(a) S.I. 2006/1459 (N.I. 10)

(b) S.I. 1983/1118 (N.I. 15)

(c) 1954 c. 33 (N.I.)

(d) Regulation 14D was inserted into S.R. 2006 No. 405 by regulation 2(7) of S.R. 2008 No. 101 and into S.R. 2006 No. 406 by regulation 2(7) of S.R. 2008 No. 102

(b) paragraph (4)(b) shall take effect for the month in which the determination is made, except that no such determination can have effect before 7th April 2008.

(6) Where the Executive has made a local housing allowance determination in accordance with paragraph (2) it shall make an approximate monthly allowance determination in relation to that local housing allowance determination.

Sealed with the Official Seal of the Department for Social Development on 11th March 2008
(L.S.)

John O'Neill

A senior officer of the Department for Social Development

Broad rental market area determinations and local housing allowance determinations

Categories of dwelling

1.—(1) The categories of dwelling for which the Executive is required to determine a local housing allowance in accordance with regulation 3(2)(a) are—

- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him to share the use of one or more of—
 - (i) a kitchen;
 - (ii) a bathroom;
 - (iii) a toilet, or
 - (iv) a room suitable for living in;
- (b) a dwelling where the tenant (together with his partner where he has one) has the exclusive use of only one bedroom and exclusive use of a kitchen, a bathroom, a toilet and a room suitable for living in;
- (c) a dwelling where the tenant has the use of only 2 bedrooms;
- (d) a dwelling where the tenant has the use of only 3 bedrooms;
- (e) a dwelling where the tenant has the use of only 4 bedrooms;
- (f) a dwelling where the tenant has the use of only 5 bedrooms.

(2) In—

- (a) sub-paragraph (1)(b) “partner” has the same meaning as in regulation 2 of the Housing Benefit Regulations or, as the case may be, regulation 2 of the Housing Benefit (State Pension Credit) Regulations;
- (b) sub-paragraph (1)(c) to (f) “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
 - (i) a member of his household;
 - (ii) a non-dependant of the tenant (within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations), or
 - (iii) a person who pays rent to the tenant.

Local housing allowance for category of dwelling in paragraph 1

2.—(1) Subject to paragraph 3, the Executive must determine a local housing allowance for each category of dwelling in paragraph 1 in accordance with the following sub-paragraphs.

(2) The Executive must compile a list of rents.

(3) A list of rents means a list in ascending order of the rents which, in the Executive’s opinion, are payable at the date of the determination for a dwelling let under an uncontrolled tenancy which meets the criteria specified in sub-paragraph (5).

(4) The list must include any rents which are of the same amount.

(5) The criteria for including an uncontrolled tenancy on the list of rents in relation to each category of dwelling specified in paragraph 1 are—

- (a) that the dwelling let under the uncontrolled tenancy is in the broad rental market area for which the local housing allowance for that category of dwelling is being determined;

- (b) that the dwelling is in a reasonable state of repair; and
- (c) that the uncontrolled tenancy permits the tenant to use exclusively or share the use of, as the case may be, the same number and type of rooms as the category of dwelling in relation to which the list of rents is being compiled.

(6) Where rent is payable other than weekly the Executive must use the figure which would be payable if the rent were to be payable weekly by—

- (a) multiplying the rent by an appropriate figure to obtain the rent for a year;
- (b) dividing the total in head (a) by 365; and
- (c) multiplying the total in head (b) by 7.

(7) When compiling the list of rents for each category of dwelling, the Executive must—

- (a) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
- (b) exclude the amount of any rent which, in the Executive’s opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.

(8) When compiling the list of rents, the Executive may include rents in other similar areas in which it believes a comparable market exists where it is not satisfied that the broad rental market area contains a sufficient number of dwellings that accord with the relevant category of dwelling set out in paragraph 1 to enable it to make a local housing allowance determination.

(9) The local housing allowance for each category of dwelling specified in paragraph 1 is the amount of the median rent in the list of rents for that category of dwelling.

(10) The median rent is determined as follows—

- (a) where there is an even number of rents on the list, the formula is—

$$\frac{\text{the amount of the rent at P} + \text{the amount of the rent at P1}}{2} = \text{the local housing allowance}$$

where P is the position on the list defined by dividing the number of rents on the list by 2 and P1 is the following position on the list;

- (b) where there is an odd number of rents on the list, the formula is—

$$\frac{\text{the number of rents on the list} + 1}{2} = L$$

where L is the position on the list in which the rent used to identify the local housing allowance lies.

(11) Where the median rent is not a whole number of pence, the rent must 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.

Anomalous local housing allowances

3. Where—

- (a) the Executive has determined the local housing allowance for each of the categories of dwelling in paragraph 1(1) in accordance with the preceding paragraphs; and
- (b) the local housing allowance for a category of dwelling in paragraph 1(1)(b) to (f) is lower than the local housing allowance for any of the categories of dwelling which precede it,

that local housing allowance shall be the same as the highest local housing allowance which precedes it.

Broad rental market area

4. In this Schedule “broad rental market area” means an area—
- (a) comprising 2 or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area;
 - (b) within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
 - (c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the introduction of local housing allowance arrangements in housing benefit.

The Regulations provide for the Northern Ireland Housing Executive to make broad rental market area determinations and local housing allowance determinations. The Regulations come into operation in advance of the provisions relating to local housing allowance in the Housing Benefit Regulations (Northern Ireland) 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 so that determinations needed for the introduction of local housing allowance on 7th April 2008 can be made.

Section 129A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, one of the enabling provisions under which these Regulations are made, was inserted by section 30(2) of the Welfare Reform Act (Northern Ireland) 2007 (“the Welfare Reform Act”). Section 30(2) was brought into operation on 10th March 2008, for the purpose only of authorising the making of regulations, and on 7th April 2008, in so far as not already in operation, by virtue of the Welfare Reform (2007 Act) (Commencement No. 3) Order (Northern Ireland) 2008 (S.R. 2008 No. 93 (C. 3)). As these Regulations are consequential upon section 30(2) of the Welfare Reform Act and are made before the end of the period of 6 months of the coming into operation of that provision they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from prior reference to the Social Security Advisory Committee.