
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“the Housing Benefit (State Pension Credit) Regulations”) and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”). The amendments do two things. First, they make changes to the time when, and circumstances in which, a case subject to the local housing allowance (“LHA”) is reviewed. Second, they introduce a new method of calculating the eligible rent when determining the appropriate maximum housing benefit of a claimant in the social rented sector whose housing benefit is determined under the Housing Benefit Regulations.

Regulation 3 amends regulation 13C of the Housing Benefit Regulations, which sets out the circumstances when a local authority must determine a maximum rent (LHA) in cases to which the local housing allowance provisions apply. Instead of making a determination on the anniversary of the last determination, the local authority must make a determination on 1st April each year. It must also make a determination when the claimant’s rent changes.

Regulation 4 makes equivalent amendments to the Housing Benefit (State Pension Credit) Regulations.

Regulation 2 amends the Decisions and Appeals Regulations to make provision for the effective date of a supersession that is made as a consequence of the determination of the maximum rent (LHA) that the local authority is required to make on 1st April. This will take effect on 1st April or the first Monday in April if the claimant’s rent is payable in weekly intervals. This ensures that any change will link into changes to other parts of the housing benefit calculation affected by the annual up-rating of benefit.

Regulation 5(5) and (7) insert new regulations 12BA, A13 and B13 into the Housing Benefit Regulations. Regulation 12BA provides that where a maximum rent (social sector) is to be calculated in accordance with regulation B13 by virtue of regulation A13, the eligible rent will be the maximum rent (social sector). Regulation 12BA provides for a protected eligible rent based upon the actual rent for up to 13 weeks where the claimant has not previously been awarded housing benefit in the past 52 weeks and was able to meet their rent obligation when they entered into it. It also provides for a protected eligible rent for up to 12 months where certain members of the claimant’s household have died. This is based either upon the actual rent or, in the case of an existing award of housing benefit, the previous eligible rent.

Regulation A13 makes provision for the cases where a maximum rent (social sector) must be determined by the local authority. It includes exceptions for certain tenancies that are contained within Schedule 2 to the Housing Benefit Regulations, shared ownership tenancies, mooring charges for houseboats and site charges for caravans and mobile homes, claimants who have reached the qualifying age for state pension credit, or whose partner has reached that age, and claimants placed in temporary accommodation by the local authority.

Regulation B13 makes provision for the calculation of the maximum rent (social sector). The local authority must determine how many bedrooms are necessary for the claimant’s household, in accordance with the criteria set out in paragraph (5), and how many bedrooms the claimant has. The local authority must then determine the claimant’s limited rent. If the claimant has one bedroom in excess of the number that is necessary, 14% of the limited rent is deducted to give the maximum rent

(social sector). If the claimant has two or more bedrooms in excess of the number that is necessary, the deduction is 25%.

The other paragraphs in regulation 5 contain consequential amendments. These include an amendment (made by paragraph (2)) to the definition of “registered housing association” to ensure that all tenants of registered social landlords whose rent is not unreasonably high have their eligible rent determined by reference to a maximum rent (social sector). Regulation 6 amends the definition of “registered housing association” in the Housing Benefit (State Pension Credit) Regulations to ensure consistency.

A full impact assessment has not been published for this instrument. However, an assessment of the impact of the provisions in these Regulations is included in the impact assessment that accompanied the Welfare Reform Bill which is available in the libraries of both Houses of Parliament. An updated version of the relevant extract is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies of the impact assessment may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.