
STATUTORY INSTRUMENTS

1998 No. 562

**The Income-related Benefits
(Subsidy to Authorities) Order 1998**

PART III

CALCULATION OF SUBSIDY

Interpretation of Part III

11.—(1) In this Part, unless the context otherwise requires—

“allowance” means a rent allowance;

“board and lodging accommodation” means—

- (a) accommodation provided for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which are both cooked or prepared and consumed in that accommodation or associated premises; or
- (b) accommodation provided in a hotel, guest house, lodging house or some similar establishment,

but it does not include accommodation in a residential care home or nursing home within the meaning of regulation 19(3) of the Income Support (General) Regulations 1987⁽¹⁾ nor in a hostel within the meaning of regulation 12A of the Housing Benefit Regulations⁽²⁾;

“the Community Charge Benefits Regulations” means the Community Charge Benefits (General) Regulations 1989⁽³⁾;

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992⁽⁴⁾;

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987⁽⁵⁾;

“overpayment” includes excess benefits under the Community Charge Benefits Regulations and excess benefit under the Council Tax Benefit Regulations as well as overpayments under the Housing Benefit Regulations and any reference in this Order to “overpayment” in relation to any of the 1989 Order, the Housing Benefit (Subsidy) Order 1990 (S.I. 1990/785), the Housing Benefit and Community Charge Benefit (Subsidy) Order 1991 (S.I. 1991/587), the Housing Benefit and Community Charge Benefit (Subsidy) Order 1992 (S.I. 1992/739), the Housing Benefit and Community Charge Benefit (Subsidy) (No.2) Order 1993 (S.I. 1993/935),

(1) S.I. 1987/1967; relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1992/3147 and 1993/2119.

(2) Regulation 12A was inserted by regulation 5 of S.I. 1990/546; relevant amending instrument is S.I. 1995/560.

(3) S.I. 1989/1321, amended by S.I. 1990/834, 835, 1549, 1657, 1773, 1991/234, 849, 1599, 2742, 2910, 1992/432, 1026, 1101, 1326, 1385, 2148 and 1993/1105.

(4) S.I. 1992/1814, amended by S.I. 1993/349, 688, 963, 1150, 1249, 1540, 2118, 1994/470, 578, 1925, 2137 and 3061, 1995/511, 559, 560, 625, 626, 1339, 1742, 2303, 3282, 1996/30, 462, 1510, 2006, 2432, 2518, 1997/65, 852, 1671, 1790, 1841, 2434 and 2676.

(5) S.I. 1987/1971, amended by S.I. 1988/661, 909, 1444, 1843, 1971, 1989/43, 416, 566, 1017, 1322, 1990/546, 671, 1549, 1657, 1775, 2564, 1991/235, 1599, 2910, 1992/50, 201, 432, 1026, 1101, 1326, 1585, 2147, 1993/317, 518, 963, 1150, 1249, 1540, 2118, 1994/470, 578, 1003, 2137, 3061, 1995/511, 559, 560, 625, 626, 1339, 1644, 1742, 2303, 2868, 3282, 1996/30, 194, 462, 965, 1510, 1944, 2006, 2432, 2518, 1997/65, 85, 852, 1671, 1790, 1974, 1975, 2197, 2434, 2435, 2619 and 2676.

the Housing Benefit and Council Tax Benefit (Subsidy) Order 1994 (S.I. 1994/523), the Housing Benefit and Council Tax Benefit (Subsidy) Order 1995 (S.I. 1995/872), the Housing Benefit and Council Tax Benefit (Subsidy) Order 1996 (S.I. 1996/1217) and the Housing Benefit and Council Tax Benefit (Subsidy) Order 1997 (S.I. 1997/1004)">previous Orders shall bear the meaning it has in this Order;

“period overrun” has the meaning assigned to it by paragraph 1 of Schedule 3;

“rebate” means a rent rebate excluding, in the case of England and Wales, any Housing Revenue Account rebates⁽⁶⁾;

“the Rent Officers Order” means the Rent Officers (Housing Benefits Functions) Order 1997⁽⁷⁾ or the Rent Officers (Housing Benefits Functions) (Scotland) Order 1997⁽⁸⁾, as the case may be;

“the Rent Officers Order 1995” means the Rent Officers (Additional Functions) Order 1995⁽⁹⁾ or the Rent Officers (Additional Functions) (Scotland) Order 1995⁽¹⁰⁾, as the case may be;

“scheme” means the housing benefit scheme or council tax benefit scheme, as the case may be, as prescribed under section 123(1) of the Social Security Contributions and Benefits Act 1992⁽¹¹⁾,

and other expressions used in this Part and in the Housing Benefit Regulations or Council Tax Benefit Regulations, as the case may be, shall have the same meanings in this Part as they have in those Regulations.

(2) In this Part

“qualifying expenditure” means, in relation to an authority, the total of relevant benefit, including any payments under regulation 91 of the Housing Benefit Regulations (payments on account of a rent allowance)⁽¹²⁾ and any extended payments, lawfully paid by the authority during the relevant year, less—

- (a) the deduction, if any, calculated for that authority in article 15;
- (b) any deductions specified in article 19 relevant to that authority, and
- (c) where, under sections 134(8)⁽¹³⁾ (arrangements for housing benefit) or 139(6)⁽¹⁴⁾ (arrangements for council tax benefit) of the Act, as the case may be, the authority has modified any part of a scheme it administers, any amount by which the total of relevant benefit paid under that scheme during the relevant year by it exceeds the total it would have paid if the scheme had not been so modified.

Amount of subsidy

12. The amount of an authority’s subsidy for the relevant year, to be paid pursuant to article 9—

- (a) for the purposes of section 140B(1) of the Act (calculation of amount of subsidy)⁽¹⁵⁾, shall be the amount or total of the amounts calculated in accordance with article 13;

(6) See the meaning of “relevant benefit” in section 140B(2) of the Social Security Administration Act 1992, inserted by paragraph 4 of Schedule 12 to the Housing Act 1996 (c. 52).

(7) S.I. 1997/1984.

(8) S.I. 1997/1995.

(9) S.I. 1995/1642, amended by S.I. 1995/2365, 3148, 1996/959, 1997/1000 and 1984.

(10) S.I. 1995/1643, amended by S.I. 1995/2361, 3185, 1996/975, 1997/1003 and 1995.

(11) 1992 c. 4; amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 1(1).

(12) Regulation 91 was amended by S.I. 1995/2868.

(13) Section 134(8) allows modification of the housing benefit scheme so as to provide for the disregard from income of a war disablement pension or a war widow’s pension.

(14) Section 139(6) allows modification of the council tax benefit scheme so as to provide for the disregard from income of a war disablement pension or a war widow’s pension; it was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 20.

(15) Section 140B was inserted by paragraph 4 of Schedule 12 to the Housing Act 1996.

- (b) for the purposes of section 140B(4A)(a) of the Act (subsidy in respect of the costs of administering relevant benefits)(16) shall include, for an authority identified in column (1) of Schedule 1, the sum specified in column (2) of that Schedule for that authority, plus or minus any adjustment to be made in relation to that authority pursuant to Schedule 2.

Relevant benefit

13.—(1) Subject to any adjustment in accordance with paragraph (3), for the purposes of section 140A of the Act, the subsidy to be paid to an authority shall, subject in the case of Scottish Homes to paragraph (2), be—

- (a) in the case of an authority to which none of articles 14, 16 and 17 applies, 95 per cent. of its qualifying expenditure;
- (b) in the case of any authority to which at least one of those articles applies an amount equal to the aggregate of—
 - (i) 95 per cent. of so much of its qualifying expenditure as remains after deducting from total qualifying expenditure the amount of expenditure attributable to the relevant benefit to which each of those articles which is relevant applies; and
 - (ii) the appropriate amount calculated in respect of the relevant benefit under each such article,plus, in each case, the additions, where applicable, under articles 18 and 21(2), but subject, in each case, to the deductions, where applicable, under articles 20 and 21(3).

(2) In the case of Scottish Homes, its subsidy for the relevant year shall include a further sum being—

- (a) where sub-paragraph (a) of paragraph (1) applies, 5.5 per cent. of its qualifying expenditure, but subject to a maximum of £1,683,746; or
- (b) where sub-paragraph (b) of paragraph (1) applies, 5.5 per cent. of so much of its qualifying expenditure as remains after the deductions set out in paragraph (1)(b)(i), but subject to the maximum specified in sub-paragraph (a).

(3) Where, during the relevant year, there is a period overrun in respect of relevant benefit then the subsidy for the authority for that year shall be adjusted by the deduction from the subsidy otherwise due under this article of—

- (a) an amount equal to the percentage, as calculated in accordance with paragraph 2 of Schedule 3, of that part of the qualifying expenditure for that authority attributable to expenditure in respect of allowances, to the extent that the overrun relates to allowances;
- (b) an amount equal to the percentage, as calculated in accordance with paragraph 3 of Schedule 3, of that part of the qualifying expenditure for that authority attributable to expenditure in respect of rebates, to the extent that the overrun relates to rebates; and
- (c) an amount equal to the percentage, as calculated in accordance with paragraph 4 of Schedule 3, of the qualifying expenditure for that authority attributable to expenditure in respect of council tax benefit, to the extent that the overrun relates to council tax benefit.

Backdated benefit

14.—(1) Subject to paragraph (2), where—

- (a) during the relevant year an authority has, under paragraph (15) of regulation 72 of the Housing Benefit Regulations or paragraph (16) of regulation 62 of the Council Tax Benefit

(16) Section 140B was inserted by paragraph 4 of Schedule 12 to the Housing Act 1996; subsection (4A) was inserted by section 10 of the Social Security Administration (Fraud) Act 1997 (c. 47).

Regulations (time and manner of claiming)(17), treated any claim as made on a day earlier than that on which it is made; and

(b) any part of that authority's qualifying expenditure is attributable to such earlier period, for the purposes of article 13(1)(b)(ii), the appropriate amount for the relevant year in respect of such part shall be 50 per cent. of the qualifying expenditure so attributable.

(2) This article shall not apply in a case to which article 18(1)(b)(ii) or paragraph 6 of Schedule 4 applies.

Disproportionate rent increase

15.—(1) Except where paragraph (5), (6) or (7) applies, in the case of an authority in Scotland, whose average rent increase differential, as calculated in accordance with paragraph (2) (“the proportion”), has a value greater than zero, the deduction from qualifying expenditure specified in article 11(2)(a) shall be the proportion multiplied by the sum calculated for that authority in accordance with paragraph (4).

(2) The average rent increase differential for each authority shall be calculated by applying the formula—

$$(1 + A) \times \left(\frac{B}{C} \times \frac{D}{E} \right) - 1$$

where

A, B, C, D and E each has the value determined in accordance with paragraph (3).

(3) For the purposes of paragraph (2)—

(a) the value of A shall be the proportion calculated for that authority pursuant to paragraphs (3) and (4) of—

(i) in relation to the relevant year commencing on 1st April 1997, article 6 of the 1997 Order, or

(ii) in relation to a relevant year commencing on or after 1st April 1998, this article of this Order for the year immediately preceding the relevant year;

(b) the value of B shall be the average rent charged by the authority in respect of Category 1 dwellings on the final date;

(c) the value of C shall be the average rent charged by the authority in respect of Category 1 dwellings on the initial date;

(d) the value of D shall be the average rent charged by the authority in respect of Category 2 dwellings on the initial date; and

(e) the value of E shall be the average rent charged by the authority in respect of Category 2 dwellings on the final date.

(4) The sum referred to in paragraph (1) shall be that part of qualifying expenditure attributable to rebates granted during the relevant year before any deduction by reason of this article, but less any part of such expenditure to which article 13(1)(b)(ii) applies.

(5) Subject to paragraph (6), this article shall not apply in the case of an authority—

(a) which has—

(i) set the rent for the relevant year according to the type, condition, class or description of the dwellings and the services, facilities or rights provided to the tenants, where that rent is reasonable having regard to those matters;

(ii) not taken account of whether a tenant was a beneficiary when setting rents for the relevant year, and

(iii) not let dwellings, either in the relevant year or in either of the two previous years, to beneficiaries irrespective of their housing needs;

or

(b) where—

(i) any increases in rent between the initial date and 1st April in the following year were of the same percentage and applied on the same day to all tenants irrespective of whether they were beneficiaries, and

(ii) the average rent increase differential calculated in accordance with—

(aa) in relation to the relevant year commencing on 1st April 1997, article 6 of the 1997 Order; or

(bb) in relation to a relevant year commencing on or after 1st April 1998, this article of this Order for the year immediately preceding the relevant year,

for that authority had a value which was zero or less than zero.

(6) In the case of a new authority, sub-paragraph (a)(iii) of paragraph (5) shall be modified so that, in relation to the relevant year commencing on 1st April 1997, for the words “or in either of the two previous years” there shall be substituted the words “or in the previous year”.

(7) This article shall not apply in a case to which article 17 (subsidy in respect of homeless and short lease rebate cases) applies.

(8) In this article (and, in the case of the meaning ascribed to the word “beneficiary”, also in article 19(2))—

“average” means the arithmetic mean;

“beneficiary” means a person who is entitled or likely to become entitled to a rebate;

“Category 1 dwellings” means dwellings rented out by the authority, on both the initial date and the final date, in respect of which, on the final date, the persons liable to pay such rent were in receipt of rebates;

“Category 2 dwellings” means dwellings rented out by the authority, on both the initial date and the final date, in respect of which, on the final date, the persons liable to pay such rent were not in receipt of rebates;

“final date” means the last day of the relevant year;

“initial date” means the day before the relevant year; and

“rent” means either—

(a) the payments specified in sub-paragraphs (a) to (j) in paragraph (1) of regulation 10 of the Housing Benefit Regulations (rent)(**18**); or

(b) the eligible rent,

as the authority may determine, provided that wherever the expression “rent” occurs in paragraph (3) it has the same meaning throughout in relation to that authority.

Treatment of high rents in rent allowance cases

16.—(1) Except in a case to which article 14 (backdated benefit) applies, and subject to paragraphs (2), (3) and (4) and to article 23 (transitional provisions in relation to rent officer determinations), this article applies in a rent allowance case and, where this article applies, the

(18) Regulation 10(1) was amended by S.I. 1988/1971.

appropriate amount, for the purposes of article 13(1)(b)(ii), shall be calculated in accordance with Part II of Schedule 4.

(2) This article shall not apply where a dwelling is an excluded tenancy by virtue of paragraph 1 and any of paragraphs 3, 10, 11 or 11A of Schedule 1A(19) (excluded tenancies) to the Housing Benefit Regulations.

(3) Where the dwelling is an excluded tenancy by virtue of paragraph 1 and any of paragraphs 5 to 9 of Schedule 1A to the Housing Benefit Regulations (“a regulated tenancy”), this article shall not apply if—

- (a) a rent is registered in respect of that dwelling under Part IV, V or VI of the Rent Act 1977(20) or Part V, VI or VII of the Rent (Scotland) Act 1984(21); or
- (b) an application has been made for such registration as is mentioned in sub-paragraph (a), but no such registration has been made because the rent officer or rent assessment committee (which in this article has the same meaning as in those Acts), as the case may be, are satisfied that the rent is at or below the fair rent level,

but in the case of a regulated tenancy to which neither sub-paragraph (a) nor (b) applies, the appropriate amount in respect of that allowance shall be calculated in accordance with Part I of Schedule 4.

(4) This article shall not apply in a case where a maximum rent has been determined, except where—

- (a) it was determined by reference to a reckonable rent and a local reference rent, when the appropriate amount shall be calculated in accordance with paragraph 14 of Schedule 4; or
- (b) prior to its determination, a payment was made pursuant to regulation 91 (payment on account) of the Housing Benefit Regulations(22), when the appropriate amount, in respect of that payment, shall be calculated in accordance with paragraph 11 of Schedule 4; or
- (c) regulation 11(9) of the Housing Benefit Regulations (no maximum rent for first 13 weeks) applies, when the appropriate amount shall be calculated in respect of the first 13 weeks in accordance with paragraph 15 of Schedule 4.

(5) Expressions used in this article and in Schedule 4 have the same meanings in this article as they have in that Schedule.

Subsidy in respect of homeless and short lease rebate cases

17.—(1) Subject to paragraphs (5) and (6), where paragraph (4) applies and any part of the qualifying expenditure of an authority identified in column (1) of Schedule 1, except Scottish Homes, is attributable to any rebate granted in respect of a person whose weekly eligible rent exceeds the threshold, then for the purposes of article 13(1)(b)(ii), where that weekly eligible rent—

- (a) does not exceed the cap, the appropriate amount in respect of that rebate shall be calculated in accordance with paragraph (2);
- (b) does exceed the cap, the appropriate amount in respect of that rebate shall be calculated in accordance with paragraph (3).

(2) Subject to paragraph (7), where paragraph (1)(a) applies, and the rebate granted—

(19) Schedule 1A was inserted by regulation 13 of S.I. 1990/546; paragraph 3 was substituted by S.I. 1995/2868 and paragraph 11A was inserted by S.I. 1992/432 and amended by S.I. 1997/852.

(20) 1977 c. 42.

(21) 1984 c. 58.

(22) Regulation 91 was amended by S.I. 1995/2868.

- (a) is the same as or is less than the amount by which the eligible rent exceeds the threshold, the appropriate amount shall be 12.5 per cent. of that part of the qualifying expenditure attributable to such rebates;
 - (b) is greater than the amount by which the eligible rent exceeds the threshold, the appropriate amount shall be 12.5 per cent. of that part of the qualifying expenditure attributable to such rebates which is equal to the excess and 95 per cent. of the qualifying expenditure attributable to the balance after deducting that excess.
- (3) Subject to paragraph (7), where paragraph (1)(b) applies, and the rebate granted—
- (a) is the same as or is less than the amount by which the eligible rent exceeds the cap, the appropriate amount shall be nil per cent. of that part of the qualifying expenditure attributable to such rebates;
 - (b) is greater than the amount by which the eligible rent exceeds the cap, the appropriate amount shall be the aggregate of—
 - (i) nil per cent. of that part of the qualifying expenditure attributable to such rebates which is equal to the excess over the cap;
 - (ii) 12.5 per cent. of that part of the qualifying expenditure attributable to such rebates which is equal to the excess over the threshold, but not over the cap; and
 - (iii) 95 per cent. of the qualifying expenditure attributable to the balance after deducting an amount equal to the excess over the threshold.
- (4) This paragraph applies where a rebate is payable by an authority in respect of rents which exceed the threshold and
- (a) a person is required to pay to an authority under section 69(2)(b) of the Housing Act 1985⁽²³⁾, section 206 of the Housing Act 1996⁽²⁴⁾ or section 35(2)(b) of the Housing (Scotland) Act 1987⁽²⁵⁾, as the case may be, for board and lodging accommodation made available to that person;
 - (b) a person is required to pay to an authority under section 69(2)(b) of the Housing Act 1985, section 206 of the Housing Act 1996 or section 35(2)(b) of the Housing (Scotland) Act 1987, as the case may be, for accommodation, which the authority holds on a licence agreement from a landlord, and which it makes available to that person;
 - (c) a person is required to pay to an authority for accommodation outside that authority's Housing Revenue Account, which the authority holds on a lease granted for a term not exceeding 10 years, and which it makes available to that person.
- (5) Where, in Scotland—
- (a) a person is required to pay to an authority for accommodation which the authority holds on a lease granted for a term not exceeding 10 years and which it makes available to that person; and
 - (b) an authority, other than Scottish Homes, identified in column (1) of Schedule 1, has granted any rebate in respect of such requirements to pay,
- the appropriate amount shall be calculated in accordance with paragraph (6).
- (6) Where paragraph (5) applies—
- (a) if the rebate granted is in respect of a person whose weekly eligible rent does not exceed the threshold, then the appropriate amount shall be 95 per cent. of that rebate;

(23) 1985 c. 68, repealed by the Housing Act 1996, Schedule 19 Part VIII, but remains in force for applications made before 20/1/97.

(24) 1996 c. 52.

(25) 1987 c. 26.

- (b) if the rebate granted is the same as or is less than the amount by which the eligible rent exceeds the threshold, the appropriate amount shall be nil per cent.; and
 - (c) if the rebate granted is greater than the amount by which the eligible rent exceeds the threshold, the appropriate amount in respect of such part of such rebate which is equal to the excess shall be nil per cent., but in respect of that part of such rebate attributable to the balance after deducting an amount equal to the excess, the appropriate amount shall be 95 per cent..
- (7) For the relevant year commencing on 1st April 1997, this article shall be modified so that, for the figure “12.5” in paragraphs (2)(a) and (b) and (3)(b)(ii), there shall be substituted the figure “17.5”.
- (8) In this article, in relation to an authority falling within paragraph (1)—
- “the cap” means the sum specified in relation to that authority in column (4) of Schedule 1, and
 - “the threshold” means the sum specified in relation to that authority in column (3) of Schedule 1.

Additions to subsidy

- 18.—**(1) Subject to paragraphs (8), (9) and (10), the additions referred to in article 13(1) are—
- (a) where following the loss, destruction or non-receipt, or alleged loss, destruction or non-receipt of original instruments of payment of relevant benefit, an authority makes duplicate payments and the original instruments have been or are subsequently encashed, an amount equal to 25 per cent. of the amount of the duplicate payments;
 - (b) subject to paragraphs (2) and (3), where, during the relevant year, it is discovered that an overpayment of community charge benefit or relevant benefit has been made and an amount is to be deducted under article 19 in relation to that overpayment, an amount equal to—
 - (i) in the case of a departmental error overpayment, 95 per cent. of so much of the overpayment as has not been recovered by the authority;
 - (ii) in the case of a fraudulent overpayment 95 per cent. of the overpayment; or
 - (iii) except where head (i) or (ii) above applies, 25 per cent. of the overpayment;
 - (c) where, during the relevant year, it is discovered that an overpayment in respect of which a deduction was made under article 11 or 19 of the 1994 Order, the 1995 Order, the 1996 Order or the 1997 Order (other than a deduction under article 11(1)(g) or 19(1)(c) of the 1994 Order or 11(1)(f) or 19(1)(c) of the 1995, 1996 or 1997 Orders) or, in respect of a year earlier than the relevant year, under article 19 (other than a deduction under article 19(1)(f)), as the case may be, was a fraudulent overpayment, the amount, if any, by which 95 per cent. of any such overpayment exceeds the amount of any subsidy that has been paid in respect of that overpayment;
 - (d) in the case of an authority, other than Scottish Homes, identified in column (1) of Schedule 1, the sum specified in relation to that authority in column (5) of that Schedule.
- (2) The amount under paragraph (1)(b) shall not include an amount in relation to—
- (a) an authority error overpayment;
 - (b) any technical overpayment; or
 - (c) any overpayment discovered in the relevant year, which arose as a result of a reduction in the amount of council tax a person is or was liable to pay.

(3) In the case of a departmental error overpayment, where some or all of that overpayment is recovered by the authority, no addition shall be applicable to the authority in respect of the amount so recovered.

(4) In paragraphs (1)(b)(i) and (3) and in article 19(1)(e) “departmental error overpayment” means an overpayment caused by a mistake made, whether in the form of an act or omission—

- (a) by an officer of the Department of Social Security or the Department for Education and Employment, acting as such; or
- (b) in a decision of an adjudication officer, social security appeal tribunal or Social Security Commissioner appointed in accordance with sections 38(1), 40(1), 51(1) and 52(1) of the Act (appointment of adjudication officers, chairmen and members of social security appeal tribunals and Commissioners),

where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake.

(5) In paragraph (1)(b)(ii) and (c), in article 19(1)(f) and in paragraph 1 of Schedule 5 “fraudulent overpayment” means an overpayment in respect of a period falling wholly or partly after 31st March 1993 and which—

- (a) is so classified by an officer of the authority, whom the authority has designated for the purpose of so classifying, after that date; and
- (b) occurs as a result of the payment of relevant benefit or community charge benefit arising in consequence of—
 - (i) a breach of section 111A or 112(1) of the Act (dishonest or false representations for obtaining benefit)(**26**); or
 - (ii) a person knowingly failing to report a relevant change of circumstances, contrary to the requirements of regulation 75 of the Housing Benefit Regulations(**27**), regulation 63 of the Community Charge Benefits Regulations or of regulation 65 of the Council Tax Benefit Regulations, as the case may be, (duty to notify change of circumstances), with intent to obtain or retain such relevant benefit or community charge benefit for himself or another.

(6) In paragraph (2)(a) “authority error overpayment” means an overpayment caused by a mistake made, whether in the form of an act or omission, by an authority, where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake.

(7) In paragraph (2)(b) “technical overpayment” means that part of an overpayment which occurs as a result of a rebate or council tax benefit being awarded in advance of the payment when—

- (a) a change of circumstances, which occurs subsequent to that award, reduces or eliminates entitlement to that rebate or benefit; or
- (b) the authority identifies, subsequent to that award, a recoverable overpayment which does not arise from a change in circumstances,

but shall not include any part of that overpayment occurring before the benefit week following the week in which the change is disclosed to the authority or it identifies that overpayment.

(8) Except for paragraphs (1)(b)(ii), (1)(c) and (5), this article shall not apply to that part of any community charge benefit or relevant benefit in respect of a case to which paragraph (15) of regulation 72 of the Housing Benefit Regulations(**28**), paragraph (16) of regulation 62 of the Council

(26) Section 111A was inserted by section 13 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(27) Regulation 75 was amended by S.I. 1990/546.

(28) Regulation 72(15) was amended by S.I. 1996/462.

Tax Benefit Regulations(29) or paragraph (18) of regulation 60 of the Community Charge Benefits Regulations (time and manner in which claims are to be made), as the case may be, applies.

(9) Any reference in this article to an overpayment shall not include any relevant benefit for any period overrun or other period immediately following expiry of the specified period determined under regulation 66 of the Housing Benefit Regulations(30) or regulation 57 of the Council Tax Benefit Regulations(31) (benefit periods), as the case may be, except for so much of any relevant benefit to which the claimant would not have been entitled had a claim for that period been duly made and determined.

(10) This article shall not apply to any expenditure in respect of which, had it been qualifying expenditure, the appropriate amount would have been nil.

Deductions to be made in calculating subsidy

19.—(1) The deductions referred to in article 11(2)(b) are, subject to paragraph (4), to be of the following amounts where—

- (a) subject to paragraphs (2) and (3), a tenant of an authority, who is in receipt of a rebate while continuing to occupy, or when entering into occupation of a dwelling as his home, either under his existing tenancy agreement or by entering into a new tenancy agreement—
 - (i) is during, or was at any time prior to, the relevant year able to choose whether or not to be provided with any services, facilities or rights (“improvements”) and chooses or chose to be so provided;
 - (ii) is during, or was at any time prior to, the relevant year, able to choose either to be provided with any improvements or, whether or not in return for an award or grant from the authority, to provide such improvements for himself; or
 - (iii) would be able during, or would have been able at any time prior to, the relevant year to exercise the choice set out in head (i) or (ii) of this sub-paragraph if he were not or had not at that time been in receipt of a rebate,

the amounts attributed during the relevant year to such improvements whether they are or would be expressed as part of the sum fixed as rent, otherwise reserved as rent or expressed as an award or grant from the authority;
- (b) during the relevant year a person becomes entitled to a rent-free period which has not been, or does not fall to be, taken into account in calculating the amount of rebate to which he is entitled under the Housing Benefit Regulations, the amount of rebate which is or was payable to him in respect of such rent-free period;
- (c) during the relevant year an award in the form of a payment of money or monies worth, a credit to the person’s rent account or in some other form is made by an authority to one of its tenants in receipt of a rebate, whether or not the person is immediately entitled to the award, the amount or value of the award, but no such deduction shall be made in respect of an award—
 - (i) made to a tenant for a reason unrelated to the fact that he is a tenant;
 - (ii) made under a statutory obligation;

(29) Regulation 62(16) was amended by S.I. 1996/462.

(30) Regulation 66 was amended by S.I. 1988/1971, 1989/1322 and 1996/1510.

(31) Regulation 57 was amended by S.I. 1996/1510.

- (iii) made under section 137 of the Local Government Act 1972(32) or section 83 of the Local Government (Scotland) Act 1973(33) (power of local authorities to incur expenditure for certain purposes not otherwise authorised);
 - (iv) except where sub-paragraph (a)(ii) applies, made as reasonable compensation for reasonable repairs or redecoration the tenant has, or has caused to be, carried out whether for payment or not and which the authority would otherwise have carried out or have been required to carry out; or
 - (v) of a reasonable amount made as compensation for loss, damage or inconvenience of a kind which occurs only exceptionally and which was suffered by the tenant by virtue of his occupation of his home;
- (d) during the relevant year the weekly amount of relevant benefit is increased pursuant to paragraph (2) or (3) of regulation 61 of the Housing Benefit Regulations(34) or regulations 51(5) or 54(4) of the Council Tax Benefit Regulations (increases of weekly amounts for exceptional circumstances)(35), the amount of such increase;
- (e) during the relevant year an amount is recovered in relation to a departmental error overpayment, within the meaning of article 18(4), the amount so recovered, in a case where the overpayment had occurred and been discovered in a year earlier than the relevant year;
- (f) during the relevant year a fraudulent overpayment, within the meaning of article 18(5), is identified, the amount of the overpayment, but only to the extent that the amount of overpayment or any part of it has not been deducted from qualifying expenditure under article 4 or 19 of the 1994 Order, the 1995 Order, the 1996 Order or the 1997 Order or article 11(2), as the case may be;
- (g) subject to sub-paragraphs (e) and (f), during the relevant year it is discovered that an overpayment of relevant benefit has been made, the amount of such overpayment, but only to the extent that—
- (i) the amount of such overpayment or any part of it has not been deducted from qualifying expenditure under article 3 of the 1989 Order or the 1990 Order or under article 4 or 15 of the 1991 Order or articles 4 or 16 of the 1992 Order or the 1993 Order or articles 4 or 19 of respectively the 1994 Order, the 1995 Order, the 1996 Order or the 1997 Order, or article 11(2), as the case may be; and
 - (ii) the amount of the overpayment or any part of it does not include an amount to which paragraph (15) of regulation 72 of the Housing Benefit Regulations, paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989(36), paragraph (18) of regulation 59 of the Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988(37), paragraph (16) of regulation 62 of the Council Tax Benefit Regulations(38) or paragraph (18) of regulation 60 of the Community Charge Benefits Regulations (time and manner in which claims are to be made), as the case may be, applied;

(32) 1972 c. 70; section 137 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 3), section 44; the Local Government Finance Act 1982 (c. 32), section 34, Schedule 5 paragraph 5; the Local Government Act 1986 (c. 10), section 3 and by the Local Government and Housing Act 1989 (c. 42), section 194, Schedule 12.

(33) 1973 c. 65; section 83 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), sections 6 and 50; the Rating and Valuation Amendment (Scotland) Act 1987 (c. 31), section 9; the Local Government Act 1986 (c. 10), section 3; the Abolition of Domestic Rates (Scotland) Act 1987 (c. 47), Schedule 1 paragraph 27 and by the Local Government and Housing Act 1989 (c. 42), section 36(9).

(34) Paragraph (2) of regulation 61 was inserted by S.I. 1994/578 and paragraph (3) by S.I. 1995/1644.

(35) Regulations 51(5) and 54(4) were added by S.I. 1994/2137.

(36) S.I. 1989/1322.

(37) S.I. 1988/1890, amended by S.I. 1989/43, 361, 972 and 1990/127.

(38) Regulation 62(16) was amended by S.I. 1996/462.

- (h) during the relevant year any instrument of payment of relevant benefit issued by an authority during that year is returned to that authority without being presented for payment or is found by that authority to have passed its date of validity without being presented for payment, the amount of any such instrument;
 - (i) during the relevant year an amount is recovered in respect of which subsidy was paid pursuant to paragraph 6(2) of Schedule 6 to the 1996 Order or the 1997 Order or paragraph 11(2) of Schedule 4 (subsidy on payments on account), the amount so recovered, where the payment on account was made in a year earlier than the relevant year.
- (2) Subject to paragraph (3), no deduction shall be made under sub-paragraph (1)(a) where the eligible rent for a tenant has been increased in a case to which that sub-paragraph would apply, but—
- (a) any such services, facilities or rights (“improvements”)—
 - (i) relate solely to the physical needs of the property in question or the needs of that tenant; and
 - (ii) the increased rent in relation to such improvements is reasonable;
 - (b) the tenant was eligible whether or not he was a beneficiary; and
 - (c) the authority has not let properties, to which they intend to make improvements, either in the relevant year or in the two years preceding that year, solely or largely to beneficiaries.
- (3) In paragraph (2)—
- (a) “beneficiary” has the meaning it is given by article 15(8); and
 - (b) in a case to which article 24 applies, sub-paragraph (c) shall have effect as modified by article 24(2).
- (4) Where in relation to any amount of a rebate or allowance a deduction falls to be made under two or more of the sub-paragraphs of paragraph (1), as the case may be, only the higher or highest, or, where the amounts are equal, only one amount, shall be deducted.

Deduction from subsidy

20. Where, during the relevant year, it is found by an authority that any instrument of payment issued by it as payment of any relevant benefit or community charge benefit on or after 1st April 1988, but before the relevant year, has been returned to that authority without having been presented for payment or has passed its date of validity without having been presented for payment, the deduction referred to in article 13(1) shall be the amount of any subsidy that has been paid in respect of that instrument.

Additions to and deductions from subsidy in respect of benefit savings

21.—(1) Where this article applies, the addition to or, as the case may be, deduction from subsidy referred to in article 13(1) shall be calculated in accordance with Schedule 5.

(2) This article applies in the case of an authority to which paragraph 2 of Schedule 5 applies and in such a case the addition shall be calculated in accordance with that paragraph.

(3) This article also applies in the case of an authority to which paragraph 4 of Schedule 5 applies and in such a case the deduction shall be calculated in accordance with that paragraph.