
STATUTORY INSTRUMENTS

2006 No. 213

The Housing Benefit Regulations 2006

PART 3

Payments in respect of a dwelling

Eligible housing costs

11.—(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 regulations 12(3) and (7) and 13 (rent and maximum rent).

(2) Subject to paragraph (4), housing benefit shall not be payable in respect of payments made by a person on income support or an income-based jobseeker's allowance whose applicable amount for that benefit includes an amount in respect of those payments.

(3) Where any payment for which a person is liable in respect of a dwelling and which is specified in regulation 12(1) (payments of rent for which housing benefit is payable), is increased on account of—

- (a) outstanding arrears of any payment or charge; or
- (b) any other unpaid payment or charge,

to which paragraphs (1) to (3) of that regulation or Schedule 1 (ineligible service charges) refer and which is or was formerly owed by him in respect of that or another dwelling, a rent rebate or, as the case may be, a rent allowance shall not be payable in respect of that increase.

(4) Where a person who has been awarded housing benefit in respect of a dwelling becomes entitled to income support or an income-based jobseeker's allowance and his applicable amount for the purpose of calculating his entitlement to that benefit includes an amount in respect of a payment made by him in respect of that dwelling, the payments made by him in respect of that dwelling shall continue to be eligible for housing benefit for a period of 4 benefit weeks beginning with the benefit week after the date on which he becomes entitled to income support or an income-based jobseeker's allowance.

Rent

12.—(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home—

- (a) payments of, or by way of, rent;
- (b) payments in respect of a licence or permission to occupy the dwelling;
- (c) payments by way of mesne profits or, in Scotland, violent profits;
- (d) payments in respect of, or in consequence of, use and occupation of the dwelling;

- (e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends;
 - (f) mooring charges payable for a houseboat;
 - (g) where the home is a caravan or a mobile home, payments in respect of the site on which it stands;
 - (h) any contribution payable by a person resident in an almshouse provided by a housing association which is either a charity of which particulars are entered in the register of charities established under section 3 of the Charities Act 1993⁽¹⁾ (register of charities) or an exempt charity within the meaning of that Act, which is a contribution towards the cost of maintaining that association's almshouses and essential services in them;
 - (i) payments under a rental purchase agreement, that is to say an agreement for the purchase of a dwelling which is a building or part of one under which the whole or part of the purchase price is to be paid in more than one instalment and the completion of the purchase is deferred until the whole or a specified part of the purchase price has been paid; and
 - (j) where, in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993⁽²⁾, the payment in respect of the croft land.
- (2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments—
- (a) payments under a long tenancy except a shared ownership tenancy granted by a housing association or a housing authority;
 - (b) payments under a co-ownership scheme;
 - (c) payments by an owner;
 - (d) payments under a hire purchase, credit sale or conditional sale agreement except to the extent the conditional sale agreement is in respect of land; and
 - (e) payments by a Crown tenant.
- (3) Subject to paragraphs (4), (5) and (7), the amount of a person's eligible rent shall be—
- (a) the maximum rent where a maximum rent has been, or falls to be, determined in accordance with regulations 13 (maximum rent); or
 - (b) except where sub-paragraph (a) applies, the aggregate of such payments specified in paragraph (1) as that person is liable to pay less—
 - (i) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6);
 - (ii) 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
 - (iii) where he is liable to make payments in respect of any service charges to which paragraph (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.
- (4) Where the payments specified in paragraph (1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such

(1) 1993 c. 10.

(2) 1993 c. 44.

proportion thereof as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(5) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in paragraph (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.

(6) The amount of the deduction referred to in paragraph (3) shall be—

- (a) except in a case to which sub-paragraph (c) applies, if the dwelling occupied by the claimant is a self-contained unit, 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.

(7) In any case where it appears to the 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.

(8) In this regulation and Schedule 1 (ineligible service charges)—

“service charges” means periodical payments for services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and

“services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling.

Maximum rent

13.—(1) Where an authority has applied to the rent officer for a determination in accordance with regulation 14 (requirement to refer to rent officers) and a rent officer has made a determination or redetermination in exercise of the Housing Act functions, the maximum rent shall be determined in accordance with paragraphs (2) to (17).

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

(3) In a case where the rent officer has determined and is required to notify the authority of a local reference rent, the maximum rent shall not exceed twice that local reference rent.

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

- (a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the 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.

(5) Paragraph (4) 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) who has a non-dependant residing with him.

(6) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the authority and a claim-related rent, and—

- (a) the claim-related rent is higher than the local reference rent, the maximum rent shall be the local reference rent;
- (b) the local reference rent is higher than the claim-related rent, the maximum rent shall be the claim-related rent.

(7) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined a local reference rent of which he is required to notify the authority, but has not determined a claim-related rent and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent.

(8) In a case where—

- (a) the authority has determined a maximum rent in respect of a dwelling; and
- (b) during the award of housing benefit the reckonable rent in respect of that dwelling is reduced to a sum which is less than the reckonable rent at the time that maximum rent was determined,

then—

- (i) the maximum rent shall not be reduced, where the sum is not less than the maximum rent, during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g); and
- (ii) the maximum rent shall be reduced to an amount equal to that sum, where that sum is less than the maximum rent during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g).

(9) Subject to paragraph (10), 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); and
- (b) subsequent to that determination the reckonable rent for that dwelling is changed,

then in determining a maximum rent in relation to a claim for benefit of a claimant who has a liability to make payments in respect of that dwelling, the authority shall treat the claim-related rent or, as the case may be, reckonable rent to be that determined in or, as the case may be, applicable to, that determination by the rent officer.

(10) Paragraph (9) shall not apply in a case where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if that reckonable rent had not changed; and where this paragraph applies, the maximum rent shall be the reckonable rent, as so reduced.

(11) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom paragraph (16)(b) to (d) applied or, had a claim been made, would have applied, 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.

(12) For the purposes of paragraph (11), 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 sub-paragraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(13) In a case where a charge for meals is ineligible to be met by housing benefit under regulation 12(3) and paragraph 1 of Schedule 1, there shall be deducted an amount determined in accordance with paragraph 2 of Schedule 1 in respect of meals in the calculation of a person's maximum rent, except where the maximum rent is derived from a rent officer determination under—

- (a) paragraph 3 (exceptional high rents) of Schedule 1 to the Rent Officers Order⁽³⁾ and the notice of claim-related rent states pursuant to paragraph 9(1)(c) of that Schedule that an ineligible payment has not been included in it; or
- (b) paragraph 5 (single room rents) of that Schedule.

(14) Subject to paragraph (15), where the relevant authority is satisfied that a person to whom paragraph (16) applies 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.

(15) Paragraph (14) shall not apply where a claimant 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 his current award of housing benefit.

(16) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) 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;
- (d) subject to paragraph (17), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(17) Paragraph (16)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

(18) 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;

(3) [S.I. 1997/1984](#).

“deduction for meals” means any amount of a person’s otherwise eligible rent which is an ineligible service charge by reason of and within the meaning of paragraph 1(a)(i) of Schedule 1;

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order;

“reckonable rent” means those 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 this regulation, be eligible for housing benefit plus the amount of any deduction for fuel, deduction for meals or water charges, as the case may be, which that person is liable to pay;

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

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; or
- (b) it has received relevant information regarding a claim on which rent allowance may be awarded; or
- (c) it has received a notification of a change relating to a rent allowance; or
- (d) it has received a notification of a change of dwelling; or
- (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, signifying that he is contemplating occupying a dwelling as his home and that if he does so, he is likely to claim housing benefit, but only where that form—
 - (i) is signed by the prospective occupier;
 - (ii) is countersigned by the person to whom the prospective occupier would incur liability to make such payments; and
 - (iii) indicates that the person countersigning agrees to the application being made for that determination; or
- (f) 52 weeks have elapsed since it last made an application under sub-paragraph (a), (b), (c), (d) or (e) above in relation to the claim or award in question; or
- (g) 52 weeks have elapsed since—
 - (i) an application was made under sub-paragraph (f) above; or
 - (ii) an application was made under this sub-paragraph,
 whichever last occurred.

(2) When applying to the rent officer pursuant to paragraph (1) the relevant authority shall state the total amount of those payments referred to in regulation 12(1) (rent) which that claimant is liable to make in respect of the dwelling which he occupies as his home and shall provide the following information in respect of those payments—

- (a) whether they include any charges for water, sewerage or allied environmental services or charges in respect of meals or fuel which are ineligible by virtue of paragraph 2 and Part 2 of Schedule 1 (ineligible service charges); and
- (b) where they 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)—

- (i) that such charges are included; and
- (ii) the value of those charges as determined by that authority pursuant to regulation 12(3) and that Schedule.

(3) When applying to the rent officer pursuant to paragraph (1), the relevant authority shall state whether, in their opinion, the claimant is or may be a young individual.

(4) 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 which ends 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).

(5) Where a relevant authority receives a request pursuant to paragraph (1)(e) and it is a case where, by reason of paragraph (4), 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 (4)(a) 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.

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

- (a) the relevant authority receiving a claim on which rent allowance may be awarded; or
- (b) the relevant authority receiving relevant information regarding a claim on which rent allowance may be awarded; or
- (c) the relevant authority receiving a notification of a change relating to a rent allowance; or
- (d) 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) elapsed,

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

(7) For the purpose of calculating any period of days mentioned in paragraphs (5) or (6), 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.

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

(9) Where the relevant authority has identified charges to which paragraph (2)(b) applies, it shall—

- (a) deduct those charges from the total amount of those payments which, in accordance with paragraph (2), 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 under paragraph (1) for his use in making determinations under Schedule 1 (determinations) to the Rent Officers Order.

(10) In this regulation—

“change of dwelling” means 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;

“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 not in a case where his current agreement commenced less than 11 months before such a request;

“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⁽⁴⁾ or,
- (b) in Scotland, is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001⁽⁵⁾;

“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;

“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.

Applications to the rent officer for redeterminations

15.—(1) Subject to paragraph (2) and regulation 16, 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 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 redetermination by rent officer

16.—(1) This paragraph applies where—

(4) 1996 c. 5; functions transferred by Government of Wales Act 1998 (c. 38), section 140.

(5) 2001 asp 10.

- (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; and
- (c) those representations are made no later than 6 weeks 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 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 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 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 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 or substitute 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.