

**2007 No. 2870**

**SOCIAL SECURITY**

**The Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007**

*Made* - - - - *2nd October 2007*

*Laid before Parliament* *2nd October 2007*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred on him by sections 130A(2) and (3), 137(1)(a) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(b) and paragraph 4(4A) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(c).

This instrument contains only regulations made by virtue of, or consequential upon, section 30 of the Welfare Reform Act 2007(d) and is made before the end of the period of six months beginning with the coming into force of that section.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007.

(2) This regulation and, subject to paragraph (4) (which relates to non-local housing allowance cases), regulations 2 to 6, shall come into force on 7th April 2008.

(3) This paragraph applies to a case where no reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008 and in this paragraph—

“eligible rent” shall be construed in accordance with—

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(a) Section 137(1) is an interpretation provision and is cited for the meaning of the word “prescribed”.  
(b) 1992 c.4. Sections 130A was inserted by section 30 of the Welfare Reform Act 2007 (c.5).  
(c) 2000 c. 19. Paragraph 4(4A) of Schedule 7 was inserted by section 30 of the Welfare Reform Act 2007 (c.5).  
(d) 2007 c.5.

- (i) regulations 12 or 12A of the Housing Benefit Regulations 2006(a) or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(b) as in force immediately before 7th April 2008; or
- (ii) in a case to which paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(c) applies, regulations 12 and 13 of the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 of that Schedule as in force immediately before 7th April 2007.

“maximum rent (standard local rate)” means a maximum rent (standard local rate) determined in accordance with regulation 13A of the Housing Benefit Regulations 2006 or the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before 7th April 2008.

(4) In a case to which paragraph (3) applies, these Regulations shall come into force on the day when, on or after 7th April 2008, the first of the following sub-paragraphs applies—

- (a) a relevant authority is required to apply to a rent officer by virtue of regulation 14 of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations;
- (b) sub-paragraph (a) would apply but for the case falling within regulation 14(4)(a) of, or regulations 14(4)(b) of and paragraph 2 of Schedule 2 to, the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations (no application to rent officer required as an existing rent officer determination may be used);
- (c) a relevant authority is required to determine an eligible rent in accordance with regulation 12(3)(b) of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations; or
- (d) a relevant authority is required to determine an eligible rent in accordance with regulation 12(3) of the Housing Benefit Regulations 2006 or regulation 12(3) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations,

and in this paragraph “relevant authority” means an authority administering housing benefit.

(5) Where paragraph (4) does not apply before 6th April 2009, these Regulations shall come into force on that date.

(6) In paragraph (4) of this regulation—

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006 as in force immediately before the coming into force of regulations 4 to 19 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 in that case;

“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force immediately before the coming into force of regulations 4 to 19 of the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 in that case;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 as in force immediately before the coming into force of regulations 2 to 6 of these regulations in that case.

## **Amendment of the Social Security (Claims and Payments) Regulations 1987**

2. Schedule 9 to the Social Security (Claims and Payments) Regulation 1987(d) shall be amended as follows—

- (a) in paragraph 4A(4) for “regulation 12(6)” substitute “regulation 12B(5)”;

(a) 2006/213. Relevant amending instruments are S.I. 2007/1356 and 2868.

(b) 2006/214. Relevant amending instruments are S.I. 2007/1356 and 2868.

(c) 2006/217.

(d) S.I. 1987/1968; relevant amending instruments are S.I. 1991/2284, 1992/2595, 1996/1460, 1999/3178, 2002/3019, 2006/217 and 2006/237.

(b) in paragraph 5(3)(a) and (7) for “regulation 12(3)” substitute “regulation 12B(2)”.

**Amendment of the Housing Renewal Grants Regulations 1996**

3.—(1) The Housing Renewal Grants Regulations 1996(a) shall be amended as follows.

(2) For regulation 31(14)(b) (notional income), substitute—

“(b) “rent” means eligible rent determined in accordance with—

- (i) in the case of a person who has not attained the qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;
- (ii) in the case of a person who has attained the qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations; or
- (iii) where paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 applies, regulation 12 (rent) and 13 (restrictions on unreasonable payments) of the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 74 (non-dependant deductions) of the Housing Benefit Regulations 2006 or regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may be.”.

(3) For regulation 38(7)(b) (notional capital), substitute—

“(b) “rent” means eligible rent determined in accordance with—

- (i) in the case of a person who has not attained the qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;
- (ii) in the case of a person who has attained the qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006, as the case may require, less any deductions which fall to be made under regulation 55 of those Regulations; or
- (iii) where paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 applies, regulation 12 (rent) and 13 (restrictions on unreasonable payments) of the Housing Benefit Regulations 2006

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(a) S.I. 1996/2890.

or the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 74 (non-dependant deductions) of the Housing Benefit Regulations 2006 or regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may be.”

(4) In Schedule 3 (sums to be disregarded in the determination of income other than earnings)—

(a) in paragraph 12(5)(b), for the definition of “rent” substitute—

“(b) “rent” means eligible rent determined in accordance with—

- (i) in the case of a person who has not attained qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations; or
- (ii) in the case of a person who has attained the qualifying age for state pension credit to whom sub-paragraph (iii) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006, as the case may require, less any deductions which fall to be made under regulation 55 (non-dependant deductions) of those Regulations; or
- (iii) where paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 applies, regulation 12 (rent) and 13 (restrictions of unreasonable payments) of the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 74 (non-dependant deductions) of the Housing Benefit Regulations 2006 or regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may be.”

(b) in paragraph 67(3)(a), for the definition of “rent”, substitute—

““rent” means eligible rent determined in accordance with—

- (a) in the case of a person who has not attained the qualifying age for state pension credit to whom paragraph (c) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;
- (b) in the case of a person who has attained the qualifying age for state pension credit to whom sub-paragraph (c) does not apply, eligible rent determined in accordance with regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations; or

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(a) Paragraph 67 was inserted by S.I. 2000/531 in relation to England and in relation to Wales by S.I. 2000/973 and was amended by S.I. 2006/217.

- (c) where paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 applies, regulation 12 (rent) and 13 (restrictions on unreasonable payments) of the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 74 (non-dependant deductions) of the Housing Benefit Regulations 2006 or regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may be.”.

(5) In paragraph 58(3)(a) of Schedule 4 (capital to be disregarded), for the definition of “rent” substitute—

““rent” means eligible rent determined in accordance with—

- (a) in the case of a person who has not attained the qualifying age for state pension credit to whom sub-paragraph (c) does not apply, regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;
- (b) in the case of a person who has attained the qualifying age for state pension credit to whom sub-paragraph (c) does not apply, eligible rent determined in accordance with regulation 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for former pathfinder authorities) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations; or
- (c) where paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 applies, regulation 12 (rent) and 13 (restrictions on unreasonable payments) of the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006 as set out in paragraph 5 that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 74 (non-dependant deductions) of the Housing Benefit Regulations 2006 or regulation 55 (non-dependant deductions) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, as the case may be.”.

#### **Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001**

4.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(b) shall be amended as follows.

(2) In regulation 7 (decisions superseding earlier decisions)—

- (a) omit paragraphs (2ZA), (2B) and (2C);
- (b) in paragraph (3) omit “regulation 88(3) of the Housing Benefit Regulations, regulation 69(3) of the Housing Benefit (State Pension Credit) Regulations”.

(3) After regulation 7 (decisions superseding earlier decisions) insert—

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(a) Paragraph 58 was inserted by S.I. 2000/531 in relation to England and in relation to Wales by S.I. 2000/973.

(b) S.I. 2001/1002; relevant amending instruments are S.I. 2002/490, 2002/1703, 2003/325, 2003/1050, 2003/1338, 2003/2275, 2003/2399, 2004/14, 2005/2267 and 2006/217.

**“Decisions superseding earlier decisions in accordance with paragraph 4(4A) of Schedule 7 to the Act**

7A.—(1) The prescribed cases and circumstances in which a decision must be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are set out in paragraphs (2) to (4).

(2) The appropriate relevant authority must make a decision superseding an earlier decision where it is required to determine a maximum rent (LHA) in accordance with regulation 13C of the Housing Benefit Regulations and regulation 13C of the Housing Benefit (State Pension Credit) Regulations (when a maximum rent (LHA) is to be determined).

(3) The appropriate relevant authority must make a decision superseding an earlier decision in any case to which regulation 14(1)(f) or (g) or the Housing Benefit Regulations or regulation 14(1)(f) or (g) of the Housing Benefit (State Pension Credit) Regulations (requirement to refer to rent officers) applies.

(4) The appropriate relevant authority must make a decision superseding an earlier decision where a change of circumstances specified in regulation 88(3) of the Housing Benefit Regulations or regulation 69(3) of the Housing Benefit (State Pension Credit) Regulations (changes of circumstances which do not need to be notified) occurs.”.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect)—

(a) in paragraph (6A) for “regulation 7(2ZA)” substitute “regulation 7A(3)”;

(b) for paragraph (15) substitute—

“(15) A decision to which regulation 7A(2) applies shall take effect from the first day of the benefit week in which the determination in accordance with regulation 13C of the Housing Benefit Regulations or regulation 13C of the Housing Benefit (State Pension Credit) Regulations (when maximum rent (LHA) is to be determined) was made.”.

**Amendment of the Discretionary Financial Assistance Regulations 2001**

5. For regulation 4(a) (limit on the amount of the discretionary housing payment that may be made) of the Discretionary Financial Assistance Regulations 2001(a) substitute—

“(a) periodical payments in respect of the dwelling which a person occupies as his home, other than payments in respect of council tax, an amount equal to the aggregate of the payments specified in—

(i) regulation 12(1) of the Housing Benefit Regulations less the aggregate of the amounts referred to in regulation 12B(2) of those Regulations calculated on a weekly basis in accordance with regulations 80 and 81 of those Regulations; or

(ii) regulation 12(1) of the Housing Benefit (State Pension Credit) Regulations less the aggregate of the amounts referred to in regulation 12B(2) of those Regulations, calculated on a weekly basis in accordance with regulations 61 and 62 of those Regulations; or”.

**Amendment of Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006**

6.—(1) Schedules 3 and 4 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 shall be amended as follows.

(2) For paragraphs 4 and 5 of Schedule 3 substitute—

**“Eligible rent**

4.—(1) Subject to the following provisions of this paragraph, the eligible rent of a person—

(a) who was entitled to housing benefit on both the first date and the second date; or

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(a) S.I. 2001/1167 as amended by S.I. 2006/217.

- (b) who is liable to make payments in respect of a dwelling occupied by him as his home, which is exempt accommodation, shall be determined in accordance with—
  - (i) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit Regulations, or, as the case may be,
  - (ii) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit (State Pension Credit) Regulations,

as set out in paragraph 5.

(2) Sub-paragraph (1)(a) shall not apply to—

- (a) any determination of a person’s eligible rent in a case where a relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C of the Housing Benefit Regulations or, as the case may be, regulation 13C of the Housing Benefit (State Pension Credit) Regulations; or
- (b) any subsequent determination of his eligible rent.

(3) Sub-paragraph (1)(a) shall only apply in a case where—

- (a) either—
  - (i) the dwelling occupied as his home by a person to whom sub-paragraph (1)(a) refers is the same on both the first date and the second date; or
  - (ii) the dwelling so occupied was not the same by reason only that the change was caused by a fire, flood, explosion or natural catastrophe rendering the dwelling occupied as the home on the first date uninhabitable; and
- (b) the person—
  - (i) was continuously entitled to and in receipt of housing benefit between the first date and the second date in respect of the dwelling to which head (a) above applies; or
  - (ii) was not entitled to or receiving housing benefit for a period not exceeding 4 weeks, but was in continuous occupation of the dwelling to which head (a) above refers between the first date and the second date; or
  - (iii) is a person to whom sub-paragraph (4) applies.

(4) This sub-paragraph applies in the case of a person (“the claimant”) who becomes, or whose partner becomes, a welfare to work beneficiary, and—

- (a) the claimant ceases to be entitled to housing benefit in respect of his residence in the dwelling he occupies as his home;
- (b) the claimant subsequently becomes re-entitled to housing benefit—
  - (i) in respect of the same dwelling, or
  - (ii) in respect of a different dwelling in a case to which sub-paragraph (3)(a)(ii) applies; and
- (c) the first day of that entitlement is within 52 weeks of the claimant or his partner becoming a welfare to work beneficiary.

(5) A person shall be deemed to fulfil the requirements of sub-paragraphs (1)(a) and (3), where—

- (a) he occupies the dwelling which he occupied on the relevant date;
- (b) this paragraph applied to the previous beneficiary on the relevant date; and
- (c) the requirements of sub-paragraphs (6) and (7) are satisfied in his case.

(6) The requirements of this sub-paragraph are that the person was, on the relevant date—

- (a) the partner of the previous beneficiary; or
- (b) in a case where the previous beneficiary died on the relevant date, was a person to whom sub-paragraph (10)(b), (c) or (d) of regulation 13 (restrictions on unreasonable payments), as specified in paragraph 5, applied and for the purposes of this sub-

paragraph “claimant” in that paragraph of that regulation shall be taken to be a reference to the previous beneficiary.

(7) The requirements of this sub-paragraph are that a claim for housing benefit is made within 4 weeks of the relevant date and where such a claim is made it shall be treated as having been made on the relevant date.

(8) The eligible rent of a person to whom—

- (a) regulation 10A of and Schedule A1 to the Housing Benefit Regulations (entitlement to housing benefit by refugees), or, as the case may be,
  - (b) regulation 10A of and Schedule A1 to the Housing Benefit (State Pension Credit) Regulations (entitlement to housing benefit by refugees)
- apply, shall be determined in accordance with—
- (i) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit Regulations, or, as the case may be,
  - (ii) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit (State Pension Credit) Regulations,

as set out in paragraph 5.

(9) Sub-paragraphs (1) to (8) above shall continue to have effect in the case of a claimant who has ceased to be a welfare to work beneficiary or whose partner has ceased to be such a beneficiary where the claimant is entitled to housing benefit at the end of the 52 week period to which sub-paragraph (4)(c) refers.

(10) In this paragraph—

“the first date” means 1st January 1996, except in a case to which sub-paragraph (5) applies, when it shall be the relevant date;

“the second date” means any day after the first date for which a claimant’s entitlement to housing benefit is to be determined;

“eligible rent” means as the case may require, an eligible rent determined in accordance with—

- (a) regulations 12B (eligible rent), 12C (eligible rent and maximum rent), 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases) ; or
- (b) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;

“exempt accommodation” means accommodation which is—

- (a) a resettlement place provided by persons to whom the Secretary of State has given assistance by way of grant pursuant to section 30 of the Jobseekers Act 1995<sup>(a)</sup> (grants for resettlement places); and for this purpose “resettlement place” shall have the same meaning as it has in that section; or
- (b) provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972<sup>(b)</sup>, a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision;

“imprisoned” means detained in custody pending sentence upon conviction or under a sentence imposed by a court;

“previous beneficiary” means a person—

- (a) who died, left the dwelling or was imprisoned, as the case may be;
- (b) who was on that date in receipt of housing benefit or was on that date within 52 weeks of having become a welfare to work beneficiary; and

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<sup>(a)</sup> 1995 c. 18.  
<sup>(b)</sup> 1972 c.70.

(c) to whom this regulation applied on that date;

and, in this paragraph, a reference to a person occupying a dwelling as his home shall be taken to include a person who is treated as occupying a dwelling as his home by virtue of regulation 7 of the Housing Benefit Regulations or, as the case may be, regulation 7 of the Housing Benefit (State Pension Credit) Regulations;

“the qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002(a))—

(a) in the case of a woman, pensionable age; or

(b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

“relevant authority” means an authority administering housing benefit;

“the relevant date” means the date—

(a) of the death of a previous beneficiary;

(b) on which a previous beneficiary who was the claimant’s partner left the dwelling so that he and the claimant ceased to be living together as husband and wife; or

(b) on which a previous beneficiary, other than a beneficiary to whom regulation 7(13) of the Housing Benefit Regulations or, as the case may be, regulation 7(13) of the Housing Benefit (State Pension Credit) Regulations applied, was imprisoned, but only where on that date he was the partner of the claimant,

as the case may be;

“state pension credit” means state pension credit under the State Pension Credit Act 2002;

“welfare to work beneficiary” means a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995(b) applies.

5.—(1) For the purposes of paragraph 4(1), regulation 12 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations is as follows—

#### “Rent

12.—(1) Subject to the following provision 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(c) (register of charities) or an exempt charity within the meaning of that Act,

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(a) 2002 c. 16.

(b) S.I. 1995/311.

(c) 1993 c. 10.

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<sup>(a)</sup>, 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 any apportionment in accordance with paragraphs (4) and (5) and to regulations 13 and 13ZA (restrictions on unreasonable payments and rent increases), the amount of a person's eligible rent shall be the aggregate of such payments specified in paragraph (1) as he is liable to pay less—

- (a) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6);
- (b) 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
- (c) 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 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 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 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; or

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<sup>(a)</sup> 1993 c. 44, as amended by Part 2 section 21(b) of the Crofting Reform etc. Act 2007 (asp.7).

- (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 this regulation and Schedule 1—

“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.”

(2) For the purposes of paragraph 4(1), regulation 13 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations is as follows—

### **“Restrictions on unreasonable payments**

**13.**—(1) Where a rent is registered in respect of a dwelling under Part 4 or 5 of the Rent Act 1977<sup>(a)</sup> or Part 4 or 7 of the Rent (Scotland) Act 1984<sup>(b)</sup> and the rent recoverable from a claimant is limited to the rent so registered, his eligible rent determined in accordance with regulation 12 (rent) shall not exceed the rent so registered.

(2) Where a rent has been determined by a rent assessment committee or a private rented housing committee in respect of a dwelling under Part 1 of the Housing Act 1988<sup>(c)</sup> or Part 2 of the Housing (Scotland) Act 1988<sup>(d)</sup>, the claimant’s eligible rent determined in accordance with regulation 12 shall not exceed the rent determined by the committee during the twelve months beginning with the first day on which that determination had effect.

(3) The relevant authority shall consider—

- (a) whether by reference to a determination or re-determination made by a rent officer in exercise of a function conferred on him by an order under section 122 of the Housing Act 1996<sup>(e)</sup> or otherwise, whether a claimant occupies a dwelling larger than is reasonably required by him and others who also occupy that dwelling (including any non-dependants of his and any person paying rent to him) having regard in particular to suitable alternative accommodation occupied by a household of the same size; or
- (b) whether by reference to a determination or re-determination made by a rent officer in exercise of a function conferred on him by an order under section 122 of the Housing Act 1996 or otherwise, whether the rent payable for his dwelling is unreasonably high by comparison with the rent payable in respect of suitable alternative accommodation elsewhere,

and, where it appears to the authority that the dwelling is larger than is reasonably required or that the rent is unreasonably high, the authority shall, subject to paragraphs (4) to (7), treat the claimant’s eligible rent, as reduced by such amount as it considers appropriate having regard in particular to the cost of suitable alternative accommodation elsewhere and the claimant’s maximum housing benefit shall be calculated by reference to the eligible rent as so reduced.

(4) If any person to whom paragraph (10) applies—

- (a) is aged 60 or over;

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(a) 1977 c.42.

(b) 1984 c.58.

(c) 1988 c.50.

(d) 1988 c. 43. Amended by section 192(1) of and paragraph 16 of Schedule 6 to the Housing (Scotland) Act 2006 (asp1).

(e) 1996 c. 52.

- (b) is incapable of work for the purposes of one or more of the provisions of the Social Security Act, or Part 2 of the Act;
- (c) is treated as capable of work in accordance with regulations made under section 171E of the Act<sup>(a)</sup>; or
- (d) is a member of the same household as a child or young person for whom he or his partner is responsible,

no deduction shall be made under paragraph (3) unless suitable cheaper alternative accommodation is available and the authority considers that, taking into account the relevant factors, it is reasonable to expect the claimant to move from his present accommodation.

(5) No deduction shall be made under paragraph (3) for a period of 12 months from the date of death of any person to whom paragraph (10) applied or, had a claim been made, would have applied, if the dwelling which the claimant occupies is the same as that occupied by him at that date except where the deduction began before the death occurred.

(6) For the purposes of paragraph (5), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is to be treated as occupying a dwelling) is satisfied and for that purpose sub-paragraph (b) of that paragraph shall be treated as if it were omitted.

(7) Without prejudice to the operation of paragraph (4), but subject to paragraph (8), where the relevant authority is satisfied that a person to whom paragraph (10) applies was able to meet the financial commitments for his dwelling when they were entered into, no deduction shall be made under paragraph (3) during the first 13 benefit weeks of the claimant's award of housing benefit.

(8) Paragraph (7) 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.

(9) For the purposes of this regulation—

- (a) in deciding what is suitable alternative accommodation, the relevant authority shall take account of the nature of the alternative accommodation and the facilities provided having regard to the age and state of health of all the persons to whom paragraph (10) applies and, in particular, where a claimant's present dwelling is occupied with security of tenure, accommodation shall not be treated as suitable alternative accommodation unless that accommodation will be occupied on terms which will afford security of tenure reasonably equivalent to that presently enjoyed by the claimant; and
- (b) the relevant factors in paragraph (4) are the effects of a move to alternative accommodation on—
  - (i) the claimant's prospects of retaining his employment; and
  - (ii) the education of any child or young person referred to in paragraph (4)(d) if such a move were to result in a change of school.

(10) 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 (11), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

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<sup>(a)</sup> Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c.18).

(11) Paragraph (10)(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.”.

(3) For the purposes of regulation 12(3) of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations, as inserted by paragraph (1) above, regulation 13ZA of both those Regulations is as follows—

**“Restrictions on rent increases**

**13ZA.**—(1) Subject to paragraph (2), where a claimant’s eligible rent is increased during an award of housing benefit, the relevant authority shall, if it considers, whether by reference to a determination or re-determination made by a rent officer in exercise of a function conferred on him by an order under section 122 of the Housing Act 1996, or otherwise, either—

- (a) that the increase is unreasonably high having regard in particular to the level of increases for suitable alternative accommodation, or
- (b) in the case of an increase which takes place less than 12 months after the date of the previous increase, that the increase is unreasonable having regard to the length of time since that previous increase,

treat the eligible rent as reduced either by the full amount of the increase or, if it considers that a lesser increase was reasonable in all the circumstances, by the difference between the full amount of the increase and the increase that is reasonable having regard in particular to the level of increases for suitable alternative accommodation, and the claimant’s maximum housing benefit shall be calculated by reference to the eligible rent as so reduced.

(2) No deduction shall be made under this regulation for a period of 12 months from the date of death of any person to whom paragraph (1) of regulation 13 (restrictions on unreasonable payments) applied or, had a claim been made, would have applied, if the dwelling which the claimant occupies is the same as that occupied by him at that date except where the deduction began before the death occurred.

(3) For the purposes of paragraph (2), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is to be treated as occupying a dwelling) is satisfied and for that purpose sub-paragraph (b) of that paragraph shall be treated as if it were omitted.”.

(3) For paragraph 8 of Schedule 3 substitute—

**“Local reference rent taper**

**8.**—(1) Regulation 13 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations (maximum rent) shall have effect in the case of a claimant to whom any of sub-paragraphs (3) to (6) applies subject to the amendment specified in sub-paragraph (2).

(2) In paragraph (3) of regulation 13 at the end, add “plus 50 per cent. of the amount by which the claim related rent exceeds the local reference rent.”

(3) This sub-paragraph applies to a claimant who has been continuously entitled to and in receipt of housing benefit—

- (a) in respect of the same dwelling for a period which includes 5th October 1997; and
- (b) which included an addition by virtue of paragraph (3) or (4) of regulation 11 of the 1987 Regulations as they had effect on 5th October 1997.

(4) Sub-paragraph (3) above shall continue to have effect in the case of a person who has ceased to be a welfare to work beneficiary or whose partner has ceased to be such a beneficiary where the person is entitled to housing benefit at the end of the 52 week period to which sub-paragraph (5) refers.

(5) This sub-paragraph applies in the case of a person—

- (a) who was entitled to housing benefit in respect of the dwelling he occupied as his home on or before 5th October 1997;
- (b) whose entitlement to housing benefit in respect of that dwelling was continuous from that date until it ceased because either the person or his partner became a welfare to work beneficiary;
- (c) who on the day before entitlement to housing benefit ceased, was in receipt of an addition to benefit by virtue of paragraph (4) or (5) of regulation 11 of the 1987 Regulations as they had effect on 5th October 1997; and
- (d) who subsequently becomes re-entitled to housing benefit in respect of that dwelling within 52 weeks of him or his partner becoming a welfare to work beneficiary.

(6) In this paragraph, “welfare to work beneficiary” means a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995(a) applies.”.

(4) In Schedule 4—

(a) for regulation 10A(1), substitute—

“**10A.**—(1) Where a person, who has made a claim for asylum, is notified that he has been recorded by the Secretary of State as a refugee, these Regulations shall have effect with respect to his entitlement to housing benefit for the relevant period which applies in his case in accordance with Schedule A1 (treatment of claims for housing benefit by refugees), but that entitlement is—

- (a) subject to the provisions of Schedule A1; and
- (b) with respect to regulations 12 (rent) and 13 (maximum rent), subject to paragraph 4(8) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.”;

(b) for paragraph 3 of Schedule A1 as inserted by paragraph 2(2), substitute—

**“Eligible rent**

**3.**—(1) Subject to sub-paragraph (2), for the purpose of determining a claimant’s eligible rent—

- (a) regulations 12 and 13 have effect as they were in force on 1st January 1996;
- (b) in paragraph (1) of regulation 12 of the former Regulations (restrictions on rent increases) as saved by paragraph 5 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 the words from “whether by reference” to “or otherwise” shall be omitted; and
- (c) regulation 14 (requirement to refer to a rent officer) shall not have effect.

(2) In determining a claimant’s eligible rent for the relevant period, the relevant authority may have regard to information in their possession or which they may obtain, as to the level of rents which had effect in that period in respect of any area in which the claimant occupied a dwelling as his home and in respect of which his claim for housing benefit is made.”; and

(c) for paragraph 7 of Schedule 1A, substitute—

**“Calculation of amount of benefit**

**7.** The appropriate maximum housing benefit to which a claimant is entitled under regulation 10A and this Schedule shall be calculated on a weekly basis in accordance with Part 8 as it had effect for the relevant period.”.

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(a) S.I. 1995/311.

Signed by authority of the Secretary of State for Work and Pensions.

2nd October 2007

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, together with the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 and the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (referred to collectively in this note as the LHA regulations) and the Rent Officers (Housing Benefit Functions) Order 2007 (S.I. 2007/2871), provide for the national rollout of a modified version of the local housing allowance arrangements. The LHA regulations use new powers in the Social Security Contributions and Benefits Act 1992 following commencement of section 30 of The Welfare Reform Act 2007. They also remake some regulations (with amendments in some cases) as the existing regulations will cease to have effect (subject to savings) when the current powers are repealed. These Regulations also make provisions relating to decision making in relation to housing benefit.

The local housing allowance arrangements are a way of determining housing costs eligible to be met by housing benefit for certain cases (local housing allowance cases) using local housing allowances determined by rent officers. The local housing allowance arrangements have applied to the areas of 18 local authorities (former pathfinder authorities).

Regulation 1 provides for regulations 2 to 6 to come into force on 7th April 2008 except in the case of non-local housing allowance cases where the provisions will come into force on the first of certain specified events (see regulation 1(4)).

Regulation 2 amends the Social Security (Claims and Payments) Regulations 1987 to align cross-references to the provisions as amended by the LHA Regulations.

Regulation 3 amends the Housing Renewal Grants Regulations 1996 to substitute a new definition of “rent” into provisions in those regulations.

Regulation 4 amends the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations. Regulation 4(1) inserts or omits cross-references as appropriate. Regulation 4(2) inserts a new regulation 7A. The new regulation requires the appropriate relevant authority to make a decision when it is required to determine a maximum rent (LHA), or where it is required to make referral to a rent officer as 52 weeks have elapsed since the previous referral. This is to ensure that a claimant’s eligible rent is updated annually using a new local housing allowance rate or a rent officer determination. The regulation also requires local authorities to make a decision where a change of circumstances which does not need to be notified by the claimant occurs.

Regulation 5 amends the Discretionary Financial Assistance Regulations 2001.

Regulation 6 re-makes part of Schedule 3 (transitional and savings provisions) to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 with minor amendments. Parts of Schedule 4 to those Regulations are also remade.

A full regulatory impact assessment has not been published for this instrument as it has no direct impact on the costs of businesses, charities and the voluntary sector.

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