

SCHEDULES

SCHEDULE 7

HOUSING BENEFIT: REVISIONS AND APPEALS

Restrictions on entitlement to benefit in certain cases of error

- 18.**—(1) Subject to sub-paragraph (2), this paragraph applies where—
- (a) the effect of the determination, whenever made, of an appeal by virtue of this Schedule to a Commissioner or the court (“the relevant determination”) is that the relevant authority’s decision out of which the appeal arose was erroneous in point of law; and
 - (b) after the date of the relevant determination a decision falls to be made by a relevant authority in accordance with that determination (or would, apart from this paragraph, fall to be so made)—
 - (i) in relation to a claim for housing benefit;
 - (ii) as to whether to revise, under paragraph 3, a decision as to a person’s entitlement to that benefit; or
 - (iii) on an application made under paragraph 4 for a decision as to a person’s entitlement to that benefit to be superseded.
- (2) This paragraph does not apply where the decision mentioned in sub-paragraph (1)(b)—
- (a) is one which, but for paragraph 16(2) or (3)(a), would have been made before the date of the relevant determination; or
 - (b) is one made in pursuance of paragraph 17(3) or (5).
- (3) In so far as the decision relates to a person’s entitlement to benefit in respect of a period before the date of the relevant determination, it shall be made as if the relevant authority’s decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) Sub-paragraph (1)(a) shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
 - (b) the error of law made by the relevant authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (5) It is immaterial for the purposes of sub-paragraph (1)—

- (a) where such a decision as is mentioned in head (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
 - (b) where such a decision as is mentioned in head (b)(ii) or (iii) falls to be made on an application under paragraph 3 or (as the case may be) 4, whether the application was made before or after that date.
- (6) In this paragraph “the court” means—
- (a) the High Court;
 - (b) the Court of Appeal;
 - (c) the House of Lords; or
 - (d) the Court of Justice of the European Community.
- (7) For the purposes of this paragraph, any reference to entitlement to benefit includes a reference to entitlement—
- (a) to any increase in the rate of a benefit; or
 - (b) to a benefit, or increase of benefit, at a particular rate.
- (8) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this paragraph in accordance with any regulations made for that purpose.
- (9) Regulations made under sub-paragraph (8) may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination by a lower court or by a Commissioner; or
 - (b) for a determination of a lower court or of a Commissioner to be treated as if it had been made on the date of a determination by a higher court.