

## SCHEDULE 3

Regulation 6(1)

### Transitional and savings provisions

1.—(1) Where a change of circumstances occurs as a result of the payment of arrears of any income (and for the avoidance of doubt income includes any benefit within the meaning of the Act) which affects a determination or decision in respect of entitlement to, or the amount of, housing benefit before 6th March 1995, the provisions specified in sub-paragraph (2) shall apply subject to the omissions specified in relation to that provision.

(2) The provisions specified in this sub-paragraph (which all relate to the date on which changes of circumstances are to take effect) are—

- (a) regulation 77 of the Housing Benefit Regulations which shall apply as if paragraph (9) were omitted;
- (b) regulation 57 of the Housing Benefit (State Pension Credit) Regulations which shall apply as if paragraph (9) were omitted.

### Persons incapable of work

2.—(1) Where, on 12th April 1995, the disability premium was applicable to a claimant by virtue of paragraph 12(1)(b) of Schedule 2 to the former Regulations as in operation on that date, the disability premium shall continue to be applicable to that claimant from 13th April 1995 and for so long as he is incapable of work in accordance with the provisions of, and regulations made under, Part XIIIA of the Act (incapacity for work).

(2) Where on 12th April 1995, the disability premium was applicable to a claimant and in the period from 13th April 1995 to 1st October 1995 sub-paragraph (1) either did not apply or ceased to apply in his case, if—

- (a) for the period for which sub-paragraph (1) did not apply or ceased to apply, the claimant was incapable of work or was treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIIIA of the Act; and
- (b) any break in the period of incapacity did not exceed a period of 56 continuous days,

with effect from 2nd October 1995 for so long as he is incapable of work or is treated as incapable of work, the disability premium shall be applicable in his case.

(3) Sub-paragraphs (1) and (2) shall not apply to a claimant who ceases to be incapable of work or ceases to be treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIIIA of the Act for a period of more than 56 continuous days.

(4) Where, in any period immediately preceding 13th April 1995, the circumstances mentioned in paragraph 12(6) of Schedule 2 to the former Regulations, as in operation on 12th April 1995, applied to a claimant to whom the disability premium was not applicable, that claimant shall be treated for the purposes of regulations 25(11)(c) and 53(2)(e) of, and paragraph 13(1)(b) of Schedule 4 to, the Housing Benefit Regulations as if he had been incapable of work in accordance with the provisions of, and regulations made under, Part XIIIA of the Act throughout that period.

3.—(1) Where the higher pensioner premium was applicable to a claimant on, or at any time during the 56 days immediately preceding, 12th April 1995 by virtue of paragraph 12(1)(a)(ii) of Schedule 2 to the former Regulations, as in operation on that date, paragraph 13 of Schedule 4 to the Housing Benefit Regulations shall, in so far as it applies to those claimants, apply subject to the amendments specified in sub-paragraph (2).

(2) The amendments specified in this sub-paragraph are—

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- (a) in sub-paragraph (1)(a)(i) for “long-term incapacity benefit” substitute “an invalidity pension” and for “in the case of long-term incapacity benefit” substitute “in the case of invalidity pension”;
- (b) in sub-paragraph (1)(a)(ii) for “long-term incapacity benefit” substitute “invalidity pension”;
- (c) in sub-paragraph (1) for head (b) substitute—
  - “(b) the circumstances of the claimant fall, and have fallen, in respect of a continuous period of not less than 28 weeks, within sub-paragraph (6) or, if he was in Great Britain for the whole or part of that period, within one or more comparable Great Britain provisions.”;
- (d) in sub-paragraph (3) for “or to be incapable of work” substitute “for the purposes of the provisions specified in that provision”; and
- (e) for sub-paragraphs (6) and (7) substitute—
  - “(6) For the purposes of sub-paragraph (1)(b) the circumstances of a claimant fall within this sub-paragraph if—
    - (a) he provides evidence of incapacity in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976<sup>(1)</sup> (evidence of incapacity for work) in support of a claim for sickness benefit, invalidity pension or severe disablement allowance within the meaning of sections 14, 15 or 36 of the Act, provided that an adjudication officer has not determined he is not incapable of work; or
    - (b) he is in receipt of statutory sick pay within the meaning of Part XI of the Act.”.

### **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
  - (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 13 and 14 of the Housing Benefit Regulations (rent and restrictions on unreasonable payments), or, as the case may be,
  - (ii) regulations 13 and 14 of the Housing Benefit (State Pension Credit) Regulations (rent and restrictions on unreasonable payments),
- as set out in paragraph 5.
- (2) 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—

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(1) [S.R. 1976 No. 175](#); relevant amending Regulations are [S.R. 1982 No. 153](#) and [S.R. 1987 No. 117](#)

- (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) applies;
  - (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 (3) applies.
- (3) This 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 (2)(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.
- (4) A person shall be deemed to fulfil the requirements of sub-paragraphs (1)(a) and (2), 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 (5) and (6) are satisfied in his case.
- (5) 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 regulation 14(10)(b), (c) or (d) of the Housing Benefit Regulations 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.
- (6) 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.
- (7) The eligible rent of a person to whom—
- (a) regulation 10A of and Schedule A1 to the Housing Benefit Regulations(2), or, as the case may be;
  - (b) regulation 10A of and Schedule A1 to the Housing Benefit (State Pension Credit) Regulations,
- apply, shall be determined in accordance with—
- (i) regulations 13 and 14 of the Housing Benefit Regulations, or, as the case may be,
  - (ii) regulations 13 and 14 of the Housing Benefit (State Pension Credit) Regulations,
- as set out in paragraph 5.
- (8) Sub-paragraphs (1) to (7) 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 (3)(c) refers.

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(2) See, for regulation 10A and Schedule A1, paragraph 2(1) to (3) of Schedule 4 to these Regulations

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(9) In this paragraph—

“exempt accommodation” means accommodation which is provided by a housing association, registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care support or supervision;

“the first date” means 1st April 1996, except in a case to which sub-paragraph (4) applies, in which case it shall be the relevant date;

“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
- (c) to whom this paragraph 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 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
- (c) 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;

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

“state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002;

“welfare to work beneficiary” means a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(3) applies.

5.—(1) 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—

**“Rent**

13.—(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;

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(3) [S.R. 1995 No. 41](#); regulation 13A was inserted by regulation 4(2) of [S.R. 1998 No. 324](#) and amended by regulation 2(6) of [S.R. 2000 No. 4](#)

- (c) payments by way of mesne 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; and
- (h) 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.

(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 by an owner;
- (b) 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
- (c) payments by a person who is eligible for a rent rebate or allowance under a scheme operated by the Ministry of Defence.

(3) Subject to any apportionment in accordance with paragraphs (4) and (5) and to regulations 14 and 14ZA (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 rates, 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 (ineligible service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of that Schedule.

(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 in respect of rates referred to in paragraph (3) shall be—

- (a) if the dwelling occupied by the claimant is a single rateable unit, the amount of the rates payable in respect of the rateable unit as a whole; or
- (b) if the dwelling comprises part only of a rateable unit, the amount treated as a payment by way of rates by virtue of regulation 12(2) (rates).

(7) In this regulation and Schedule 1—

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“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 14 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations is as follows—

**“Restrictions on unreasonable payments**

14.—(1) Where a rent is registered in respect of a dwelling under Part IV, V or VI of the Rent (Northern Ireland) Order 1978(4) and the rent recoverable from a claimant is limited to the rent so registered, his eligible rent determined in accordance with regulation 13 shall not exceed the rent so registered.

(2) The appropriate authority shall consider—

- (a) 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;
- (b) whether the rates payable for the claimant’s dwelling are unreasonably high by comparison with the rates payable in respect of suitable alternative accommodation elsewhere; or
- (c) 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 rates are, or as the case may be, the rent is unreasonably high, the authority shall, subject to paragraphs (3) to (6), treat the claimant’s eligible rates, or as the case may be, 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 rates or eligible rent as so reduced.

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

- (a) is aged 60 or over;
- (b) is incapable of work for the purposes of one or more of the provisions of the Act;
- (c) is treated as capable of work in accordance with regulations made under section 167E of the Act; 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 (2) 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 reduction shall be made under paragraph (2) 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 reduction began before the death occurred.

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(4) S.I. 1978/1050 (N.I. 20)

(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 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 shall be treated as if it were omitted.

(7) Without prejudice to the operation of paragraph (3), 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 (2) during the first 13 benefit weeks of the claimant's benefit period.

(8) Paragraph (7) shall not apply where a claimant was previously entitled to benefit in respect of a benefit period which fell wholly or partly less than 52 weeks before the commencement of his current benefit period.

(9) For the purposes of this regulation—

- (a) in deciding what is suitable alternative accommodation, the appropriate 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 (3) 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 (3)(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.

(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 13(3) of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations, as inserted by paragraph (1), regulation 14ZA of both those Regulations is as follows—

**“Restrictions on rent increases**

14ZA.—(1) Subject to paragraph (2), where a claimant's eligible rent is increased during a benefit period the relevant authority may, if it considers either—

- (a) that the increase is unreasonably high having regard in particular to the level of increases for suitable alternative accommodation; or

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- (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 the 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 reduction shall be made under this regulation for a period of 12 months from the date of death of any person to whom regulation 14(9) 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 reduction 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 is satisfied and for that purpose sub-paragraph (b) of that paragraph shall be treated as if it were omitted.”.

### **Persons from abroad**

6.—(1) Where, immediately before the coming into operation of the consolidating Regulations, a person is entitled to housing benefit, by virtue of regulation 11(1) of the Social Security (Persons From Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996<sup>(5)</sup> (“the 1996 Regulations”), the modifications specified in relation to housing benefit in paragraph (2) shall continue to have effect both as regards that person and as regards persons who are members of his family on 5th February 1996.

(2) The modifications specified in this sub-paragraph are that for regulation 10 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations, there were substituted—

#### **“Persons from abroad**

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable.

(2) In paragraph (1) a “person from abroad” means a person, other than a person to whom paragraph (3) or (6) applies, who has limited leave (as defined in section 33(1) of the 1971 Act) to enter or remain in the United Kingdom which was given in accordance with any provision in the immigration rules (as defined in that section) relating to—

- (a) there being, or to there needing to be, no recourse to public funds; or
- (b) there being no charge on public funds,

during that limited leave.

(3) Subject to paragraph (7) this paragraph applies to a person who—

- (a) is a national of a European Economic Area State, a state which is a signatory to the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953)<sup>(6)</sup>, a state which is a signatory to the Council of Europe Social Charter (signed in Turin on 18th October 1961)<sup>(7)</sup>, the Channel Islands or the Isle of Man; or

<sup>(5)</sup> S.R. 1996 No. 11

<sup>(6)</sup> Cmd. 9512

<sup>(7)</sup> Cmd. 2643



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- (b) having, during any one period of limited leave (including any such period as extended), supported himself without recourse to public funds other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted, provided that there is a reasonable expectation that his supply of funds will be resumed.
- (4) In paragraph (1) “person from abroad” also means any person other than a person to whom paragraph (6) applies who—
- (a) having a limited leave (as defined in section 33(1) of the 1971 Act) to enter or remain in the United Kingdom, has remained without further leave under that Act beyond the time limited by the leave;
- (b) is the subject of a deportation order being an order under section 5(1) of the 1971 Act (deportation) requiring him to leave and prohibiting him from entering the United Kingdom except where his removal from the United Kingdom has been deferred in writing by the Secretary of State;
- (c) is adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the 1971 Act<sup>(8)</sup>) who has not subsequently been given leave under that Act to enter or remain in the United Kingdom except a person who has been allowed to remain in the United Kingdom with the consent in writing of the Secretary of State;
- (d) is a national of a European Economic Area State and is required by the Secretary of State to leave the United Kingdom; or
- (e) is not habitually resident in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—
- (i) a worker for the purposes of [Council Regulation \(EEC\) No. 1612/68](#)<sup>(9)</sup> or [\(EEC\) No. 1251/70](#)<sup>(10)</sup> or a person with a right to reside in the United Kingdom pursuant to Council Directive No. [68/360/EEC](#)<sup>(11)</sup> or No. [73/148/EEC](#)<sup>(12)</sup>;
- (ii) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(13)</sup>, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967<sup>(14)</sup>;
- (iii) a person who has been granted exceptional leave to remain in the United Kingdom by the Secretary of State;
- (iv) a person to whom paragraph (5) applies;
- (v) the subject of a deportation order, being an order under section 5(1) of the 1971 Act requiring him to leave and prohibiting him from entering the United Kingdom, and whose removal from the United Kingdom has been deferred in writing by the Secretary of State, or
- (vi) adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the 1971 Act), has not subsequently been given leave under

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<sup>(8)</sup> The definition of “illegal entrant” was substituted by paragraph 4(1) of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49)

<sup>(9)</sup> O.J. No. L257, 19.10.68, p.2 (OJ/SE 1968 (II) p.475)

<sup>(10)</sup> O.J. No. L142, 30.6.70, p.24 (OJ/SE 1970 (II) p.402)

<sup>(11)</sup> O.J. No. L257, 19.10.68, p.13 (OJ/SE 1968 (II) p.485)

<sup>(12)</sup> O.J. No. L172, 28.6.73, p.14

<sup>(13)</sup> Cmd. 9171

<sup>(14)</sup> Cmd. 3906

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that Act to enter or remain in the United Kingdom but has been allowed to remain in the United Kingdom with the consent in writing of the Secretary of State.

(5) Subject to paragraph (7) this paragraph applies to a person who, having, during any period of limited leave (including any such period as extended), supported himself without recourse to public funds other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted, provided that there is a reasonable expectation that his supply of funds will be resumed.

(6) This paragraph applies to a person who—

(a) is an asylum seeker, and for this purpose a person—

(i) becomes an asylum seeker when he has submitted a claim for asylum to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, and the protocol to that convention, for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made, and

(ii) ceases to be an asylum seeker when his claim is recorded by the Secretary of State as having been finally determined or abandoned;

(b) is awaiting the outcome of an appeal under Part II of the 1971 Act (including any period for which the appeal is treated as pending under section 33(4) of that Act<sup>(15)</sup>);

(c) has no or no further right of appeal under the 1971 Act but has been allowed to remain in the United Kingdom while an application to remain is, or representations on his behalf are, being considered by the Secretary of State;

(d) except where he is a person to whom paragraph (4)(b) applies, has been granted permission to remain in the United Kingdom pending the removal from the United Kingdom of a person who is the subject of a deportation order but whose deportation has been deferred in writing by the Secretary of State;

(e) is subject to a direction for his removal from the United Kingdom but whose removal has been deferred in writing by the Secretary of State; or

(f) is in receipt of income support.

(7) Paragraphs (3)(b) and (5) shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(8) In this regulation—

“the 1971 Act” means the Immigration Act 1971<sup>(16)</sup>;

“European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland.”.

(3) Where, immediately before the coming into operation of the consolidating Regulations, a person is entitled to housing benefit, by virtue of regulation 11(2) of the Social Security (Persons From Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996, the Housing Benefit Regulations shall have effect in relation to him subject to the modifications set out in sub-paragraph (2).

(4) Sub-paragraph (5) applies where a person—

<sup>(15)</sup> Section 33(4) was substituted by paragraph 55 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33)

<sup>(16)</sup> 1971 c. 77

- (a) is entitled to a specified benefit in respect of a period which includes 30th April 2004;
  - (b) claims a specified benefit on or after 1st May 2004 and it is subsequently determined that he is entitled to that benefit in respect of a period which includes 30th April 2004;
  - (c) claims a specified benefit on or after 1st May 2004 and it is subsequently determined that he is entitled to such a benefit in respect of a period which is continuous with a period of entitlement to the same or another specified benefit which includes 30th April 2004;
  - (d) claims jobseeker's allowance on or after 1st May 2004 and it is subsequently determined that he is entitled to jobseeker's allowance in respect of a period of entitlement to that benefit which is linked to a previous period of entitlement which includes 30th April 2004 by virtue of regulations made under paragraph 3 of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995<sup>(17)</sup>.
- (5) Where this sub-paragraph applies, regulation 10 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations is as follows—

**“Persons from abroad**

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A and Schedule A1 apply.

(2) In paragraph (1) “person from abroad” also means any person, other than a person to whom paragraph (3) applies who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of [Council Regulation \(EEC\) No. 1612/68](#) or [\(EEC\) No. 1251/70](#) or a person with a right to reside in the United Kingdom pursuant to Council Directive No. [68/360/EEC](#) or No. [73/148/EEC](#);
- (b) a refugee;
- (c) a person who has been granted exceptional leave to remain in the United Kingdom by the Secretary of State; or
- (d) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>(18)</sup> and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

(3) This paragraph applies to a person who—

- (a) is in receipt of income support; or
- (b) is in Northern Ireland and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(4) Paragraph 1 of Part I of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000<sup>(19)</sup> shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(5) In this regulation—

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<sup>(17)</sup> [S.I. 1995/2705 \(N.I. 15\)](#)

<sup>(18)</sup> [1999 c. 33](#)

<sup>(19)</sup> [S.R. 2000 No. 71](#)

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“European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland;

“refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees.”.

(6) The provisions in sub-paragraph (5) shall continue to have effect until the date on which entitlement to a specified benefit for the purposes of sub-paragraph (4) ceases, and if there is more than one such specified benefit, until the last date on which such entitlement ceases.

(7) In sub-paragraphs (4) and (6), “specified benefit” means income support, housing benefit, jobseeker’s allowance and state pension credit.

(8) In regulation 11 of the 1996 Regulations—

- (a) in paragraph (1), from “those provisions” to the end of the paragraph, there were substituted “the provisions of the Income Support Regulations as then in operation shall continue to have effect as if regulation 4(2) and (3)(b)(i) of these Regulations had not been made”; and
- (b) in paragraph (2), from “those Regulations shall have effect” to the end of the paragraph, there were substituted “the Income Support Regulations shall have effect as if regulation 4 of these Regulations had not been made”.

(9) For the purposes of—

- (a) regulation 10(1) of the Housing Benefit Regulations; and
- (b) regulation 10(1) of the Housing Benefit (State Pension Credit) Regulations,

a person who is an asylum seeker within the meaning of sub-paragraph (10) who has not ceased to be an asylum seeker by virtue of sub-paragraph (11), is not a person from abroad within the meaning of paragraph (1) of those Regulations.

(10) An asylum seeker within the meaning of this paragraph is a person who—

- (a) submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum on or before 2nd April 2000 to the Secretary of State that it would be contrary to the United Kingdom’s obligations under the Convention for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made before that date; or
- (b) on or before 2nd April 2000 becomes, while present in Northern Ireland, an asylum seeker when—
  - (i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change of circumstances that he would not normally order the return of a person to that country;
  - (ii) he submits, within a period of three months from the date on which that declaration was made, a claim for asylum to the Secretary of State under the Convention; and
  - (iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made.

(11) A person ceases to be an asylum seeker for the purposes of this paragraph when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.

(12) In sub-paragraph (10) “the Common Travel Area” means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively and “the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.

### **Frequency of payment of rent allowance**

7.—(1) The regulations specified in sub-paragraphs (3) to (5) shall apply in accordance with the amendments specified in those sub-paragraphs where—

- (a) the claimant was entitled to and in receipt of housing benefit on account of his liability to make payments in respect of a dwelling, which he occupied or was treated as occupying as his home, on 6 October 1996;
- (b) regulation 11 of the Housing Benefit (General) (Amendment No. 3) Regulations (Northern Ireland) 1996<sup>(20)</sup> (saving provision for payment of benefit) applied in the case of payments made to the claimant immediately before the consolidating Regulations came into operation; and
- (c) the claimant continues to be entitled to and in receipt of housing benefit on account of such occupation of that dwelling.

(2) In this paragraph, “claimant” includes the deceased partner of a claimant in any case where a claim is made by the surviving partner within 4 weeks of the death, provided that this paragraph or regulation 11 of the Housing Benefit (General) (Amendment No. 3) Regulations (Northern Ireland) 1996 applied to that deceased person on the day of his death.

(3) Regulation 87 of the Housing Benefit Regulations (time and manner of payment) shall have effect as if, in paragraph (3), for “Subject to regulations 89 to 94” there were substituted “Subject to regulations 90 to 94”.

(4) Regulation 68 of the Housing Benefit (State Pension Credit) Regulations (time and manner of payment) shall have effect as if, in paragraph (3), for “Subject to regulations 70 to 75,” there were substituted “Subject to regulations 71 to 75”.

(5) Regulation 89 of the Housing Benefit Regulations and regulation 70 of the Housing Benefit (State Pension Credit) Regulations (frequency of payment of a rent allowance) shall both have effect as if—

- (a) for paragraph (2), there were substituted—

“(2) A payment of a rent allowance in accordance with paragraph (1) shall be made insofar as it is practicable to do so, two weeks before the end of the period in respect of which it is made unless the liability to pay rent of the person entitled is in respect of a past period, in which case payment of the rent allowance may be made at the end of that period.”;
- (b) paragraphs (3) and (4) were omitted;
- (c) in paragraphs (5) and (6), “Except in a case to which paragraph (3) applies,” were omitted; and
- (d) in paragraph (7) “Subject to paragraphs (2), (3) and (5),” were omitted.

### **Local reference rent taper**

8.—(1) Regulation 14 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) of this paragraph applies subject to the amendments specified in sub-paragraph (2).

(2) The amendments to regulation 14 are—

- (a) in paragraph (6)(a), at the end, there shall be added “plus 50 per cent. of the amount by which the relevant rent exceeds the local reference rent;”;

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<sup>(20)</sup> S.R. 1996 No. 181

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- (b) in paragraph (7) at the end, there shall be added “plus 50 per cent. of the amount by which that reckonable 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 regulation 11(3) or (4) of the former 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 regulation 11(4) or (5) of the former Regulations(21) 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 (Northern Ireland) 1995(22) applies.

### **Residential Care Homes**

9.—(1) Sub-paragraph (2) shall apply to a person who, on 13th November 2005 was a person to whom regulation 7(2) of the former Regulations (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) as in operation on that date applied.

- (2) Where this sub-paragraph applies—
  - (a) regulation 9 of the Housing Benefit Regulations (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) shall have effect as if—
    - (i) in paragraph (1)(k), at the beginning there were inserted “except where paragraph (1A) applies”;
    - (ii) after paragraph (1) there were inserted—
      - “(1A) This paragraph applies to a person who—
        - (a) was or became entitled immediately before 30th October 1990 to housing benefit in respect of residential accommodation; or
        - (b) became or becomes entitled to housing benefit in respect of such accommodation on or after that date but only if the claim was made or, as the case may be, the appropriate authority is satisfied that the claim was sent or delivered to the appropriate office or designated office in accordance with regulation 81(4), before that date.”;

(21) See regulation 14 as substituted by paragraph 5(2) of Schedule 3 to these Regulations

(22) S.R. 1995 No. 41; regulation 13A was inserted by regulation 4(2) of S.R. 1998 No. 324 and amended by regulation 2(6) of S.R. 2000 No. 4

- (iii) for paragraph (4) there were substituted regulation 7(3) of the former Regulations as in operation on 13th November 2005;
- (b) regulation 9 of the Housing Benefit (State Pension Credit) Regulations (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) shall have effect as if—
  - (i) in paragraph (1)(k), at the beginning there were inserted “except where paragraph (1A) applies”;
  - (ii) after paragraph (1) there were inserted—
    - “(1A) This paragraph applies to a person who—
      - (a) was or became entitled immediately before 30th October 1990 to housing benefit in respect of residential accommodation; or
      - (b) became or becomes entitled to housing benefit in respect of such accommodation on or after that date but only if the claim was made or, as the case may be, the appropriate authority is satisfied that the claim was sent or delivered to an appropriate office in accordance with regulation 62(5), before that date.”;
  - (iii) for paragraph (4) there were substituted regulation 7(3) of the former Regulations as in operation on 13th November 2005;
- (c) regulation 49 of the Housing Benefit Regulations (calculation of tariff income from capital) shall have effect as if—
  - (i) for paragraph (3) there were substituted—
    - “(3) For the purposes of paragraph (2), the prescribed circumstances are that the claimant—
      - (a) occupies residential accommodation as his home; or
      - (b) is a person to whom paragraph (1A), as inserted by paragraph 9(2)(a)(ii) of Schedule 3 to the Consequential Provisions Regulations applies.”;
  - (ii) for paragraph (8), there were substituted—
    - “(8) Paragraph (7) shall not apply to residential accommodation of the type referred to in paragraph (7)(b) or (c) where such accommodation is residential accommodation for the purposes of regulation 9 and paragraph (4)(c) does not apply to the claimant in respect of that accommodation.”.
- (3) Sub-paragraph (4) shall apply to a person who, on 13th November 2005, was a person to whom regulation 7(5) of the former Regulations as in operation on that date applied.
- (4) Where this sub-paragraph applies—
  - (a) regulation 9 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations shall have effect as if—
    - (i) for paragraph (4) there were substituted regulation 7(3) of the former Regulations as in operation on 13th November 2005;
    - (ii) after paragraph (4) there were inserted—
      - “(5) Subject to the following provisions of this regulation, paragraph (6) applies to a person who—
        - (a) occupies or is treated by regulation 5(8) of the former Regulations as occupying residential accommodation on 31st March 1993;
        - (b) is or was liable to pay rent in respect of that accommodation for that day;

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- (c) is a person to whom regulation 7(2)(a) or (b) of the former Regulations applies immediately before 1st April 1993; and
- (d) is or was entitled to housing benefit in respect of the liability mentioned in sub-paragraph (b).

(6) In the case of a person to whom this paragraph applies, regulation 9 of these Regulations shall continue to apply to him as if the amendments to the former Regulations specified in regulation 3(4)(b) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993(23) had not been made.

(7) Subject to paragraph (8), where on 1st April 1993 paragraph (6) applies to a person that paragraph shall cease to apply to him—

- (a) on the day on which he is first absent from the accommodation which he occupied or was treated under regulation 5(8) of the former Regulations as occupying on 31st March 1993; and
- (b) on any day which falls after that day.

(8) For the purposes of paragraph (7), any absence shall be disregarded during which the person is treated as occupying the accommodation as his home pursuant to regulation 7(12), (13) or (17) of these Regulations.

(9) Where a person—

- (a) ceases to be entitled to housing benefit; and
- (b) was before he ceased to be entitled a person to whom paragraph (6) applied,

that paragraph shall not apply to him in the case of any subsequent claim for housing benefit.”;

(b) regulation 49 of the Housing Benefit Regulations shall have effect as if—

(i) for paragraph (3) there were substituted—

“(3) For the purposes of paragraph (2), the prescribed circumstances are that the claimant—

- (a) occupies residential accommodation as his home; or
- (b) is a person to whom paragraph (6), as inserted by paragraph 9(4)(a)(ii) of Schedule 3 to the Consequential Provisions Regulations applies.”;

(ii) for paragraph (8) there were substituted—

“(8) Paragraph (7) shall not apply to residential accommodation of the type referred to in sub-paragraph (b) or (c) of paragraph (7) where such accommodation is residential accommodation for the purposes of regulation 9 and paragraph (4)(c) does not apply to the claimant in respect of that accommodation.”.

(5) Sub-paragraph (6) shall apply to a person who, on 13th November 2005, was a person to whom regulation 7(7) of the former Regulations as in operation on that date applied.

(6) Where this paragraph applies—

(a) regulation 9 of both the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations shall have effect as if—

(i) for paragraph (4) there were substituted paragraph (3) of regulation 7 of the former Regulations as in operation on 13th November 2005;



(ii) after paragraph (4) there were inserted—

“(5) Subject to the following provisions of this regulation, paragraph (6) applies to a person who—

- (a) occupies or is treated under regulation 5(7C), (8) or (8C) of the former Regulations as occupying accommodation in an establishment which on 1st April 1993 was registered as a small home under Part II of the Registered Homes (Northern Ireland) Order 1992<sup>(24)</sup> (residential care homes);
- (b) was occupying or was treated under regulation 5(8) of the former Regulations as occupying, that accommodation on 31st March 1993;
- (c) is or was liable to make payments in respect of that accommodation for 31st March 1993; and
- (d) is or was entitled to housing benefit in respect of that liability.

(6) In the case of a person to whom this paragraph applies, paragraph (4), as substituted by paragraph 9(4)(a)(i) of Schedule 3 to the Consequential Provisions Regulations, shall apply as if sub-paragraph (a) was omitted.

(7) Subject to paragraph (8), where on 1st April 1993 paragraph (6) applies to a person that paragraph shall cease to apply to him—

- (a) on the day on which he is first absent from the accommodation which he occupied or was treated under regulation 5(8) of the former Regulations as occupying on 31st March 1993; and
- (b) on any day which falls after that day.

(8) For the purposes of paragraph (7), any absence shall be disregarded during which the person is treated as occupying the accommodation as his home pursuant to regulation 7(12), (13) or (17).

(9) Where a person—

- (a) ceases to be entitled to housing benefit; and
- (b) was before he ceased to be entitled a person to whom paragraph (6) applied,

that paragraph shall not apply to him in the case of any subsequent claim for housing benefit.

(10) Where on 31st March 1993 a person occupied or was treated as occupying an establishment mentioned in paragraph (5)(a) and on a day subsequent to that date the establishment, if it was registered under Part II of the Registered Homes Order, ceases to be so registered, then on that day and on any day thereafter paragraph (6) shall not apply to that person.

(11) In this regulation “small home” has the same meaning as in Part II of the Registered Homes Order by virtue of Article 4(5) of that Order.”;

(b) regulation 49 of the Housing Benefit Regulations shall have effect as if—

(i) for paragraph (3) there were substituted—

“(3) For the purposes of paragraph (2), the prescribed circumstances are that the claimant—

- (a) occupies residential accommodation as his home; or

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<sup>(24)</sup> S.I. 1992/3204 (N.I. 20); Part II was amended by the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) and the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3 (N.I.))

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(b) is a person to whom paragraph (6), as inserted by paragraph 9(4)(a)(ii) of Schedule 3 to the Consequential Provisions Regulations applies.”;

(ii) for paragraph (8) there were substituted—

“(8) Paragraph (7) shall not apply to residential accommodation of the type referred to in of paragraph (7)(b) or (c) where such accommodation is residential accommodation for the purposes of regulation 9 and paragraph (4)(c) does not apply to the claimant in respect of that accommodation.”.