
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Housing Benefit (Amendment) Regulations 2012

Amendment of the Housing Benefit Regulations relating to the determination of the maximum rent (social sector)

- 5.—(1) The Housing Benefit Regulations are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) in the definition of “eligible rent”(1), in paragraph (a) after “regulations 12B (eligible rent),” insert “12BA (eligible rent and maximum rent (social sector)),”; and
- (b) in the definition of “registered housing association”(2)—
- (i) in paragraph (b) after “Housing Act 1996” add “or a registered social landlord within the meaning of Part 1 of that Act”; and
- (ii) in paragraph (c) after “Housing (Scotland) Act 2010” add “or a registered social landlord within the meaning of section 165 of that Act”.
- (3) In regulation 11(1)(3) (eligible housing costs) after sub-paragraph (a) insert—
- “(ab) regulations 12BA (eligible rent and maximum rent (social sector)), A13 (when a maximum rent (social sector) is to be determined) and B13 (determination of a maximum rent (social sector));”.
- (4) In regulation 12B(4) (eligible rent) for paragraph (1) substitute—
- “(1) The amount of a person’s eligible rent shall be determined in accordance with the provisions of this regulation except where any of the following provisions applies—
- (a) regulation 12BA (eligible rent and maximum rent (social sector));
- (b) regulation 12C (eligible rent and maximum rent);
- (c) regulation 12D (eligible rent and maximum rent (LHA));
- (d) paragraph 4 of Schedule 3 to the Consequential Provisions Regulations.”.
- (5) After regulation 12B insert—

“Eligible rent and maximum rent (social sector)

12BA.—(1) This regulation applies where a maximum rent (social sector) has been, or is to be, determined in accordance with regulation A13 (when a maximum rent (social sector) is to be determined).

(2) Except where paragraph (3) or (6) applies, the amount of a person’s eligible rent is the maximum rent (social sector).

(3) Where the claimant occupies a dwelling which is the same as that occupied by the claimant at the date of death of a linked person, the eligible rent is—

(1) The definition of “eligible rent” was substituted by [S.I. 2007/2868](#).
(2) The definition of “registered housing association” was substituted by [S.I. 2010/671](#) and amended by [S.I. 2012/700](#).
(3) Regulation 11(1) was substituted by [S.I. 2007/2868](#).
(4) Regulation 12B was inserted by [S.I. 2007/2868](#).

- (a) the eligible rent which applied on the day before the death occurred; or
- (b) in a case where no eligible rent applied on that day, an eligible rent determined in accordance with regulation 12B(2),

where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(4) For the purpose of paragraph (3), a claimant is 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 paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.

(5) Where a person's eligible rent has been determined in accordance with paragraph (3) (protection on death), it shall apply until the first of the following events occurs—

- (a) the period of 12 months from the date of death has expired;
- (b) the determination of an eligible rent in accordance with paragraph (3) (protection on death) in relation to a subsequent death;
- (c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (3);
- (d) there is a change of dwelling; or
- (e) the determination of an eligible rent under regulation 12B.

(6) Where the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for the dwelling when they were entered into, the eligible rent is an eligible rent determined in accordance with regulation 12B(2) where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(7) Paragraph (6) shall not apply where the claimant or the claimant's partner 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 the claimant's current award of housing benefit.

(8) Where a person's eligible rent has been determined in accordance with paragraph (6) (13 week protection), it shall apply until the first of the following events occurs—

- (a) the first 13 weeks of the claimant's award of housing benefit have expired;
- (b) the determination of an eligible rent in accordance with paragraph (3) (protection on death);
- (c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (6);
- (d) there is a change of dwelling; or
- (e) the determination of an eligible rent under regulation 12B.”.

(6) In regulation 12D(5) (eligible rent and maximum rent (LHA)), in paragraph (7)(a)(iv) and (b)(iv) after “regulation 13” insert “, a maximum rent (social sector) by virtue of regulation A13”.

(7) After regulation 12M(6) (transitional protection – reduction in LHA) insert—

(5) Regulation 12D was inserted by [S.I. 2007/2868](#). There are amendments not relevant to this instrument.
(6) Regulation 12M was inserted by [S.I. 2010/2835](#). There are amendments not relevant to this instrument.

“When a maximum rent (social sector) is to be determined

A13.—(1) Subject to paragraph (2), the relevant authority must determine a maximum rent (social sector) in accordance with regulation B13 (determination of a maximum rent (social sector)) where the relevant authority has not determined, and is not required to determine—

- (a) a maximum rent in accordance with regulation 13 (maximum rent); or
- (b) a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined).

(2) This regulation does not apply—

- (a) in a rent allowance case where the tenancy is an excluded tenancy of a type mentioned in any of paragraphs 4 to 11 of Schedule 2 (excluded tenancies) and the landlord is not a registered housing association;
- (b) in respect of shared ownership tenancies;
- (c) in respect of mooring charges for houseboats and payments in respect of the site on which a caravan or mobile home stands;
- (d) where the claimant or the claimant’s partner has attained the qualifying age for state pension credit, or where both have attained that age; or
- (e) where the dwelling is temporary accommodation.

(3) In this regulation “temporary accommodation” means accommodation of a kind listed in paragraph (4) which the relevant authority makes available to the claimant, or which a registered housing association makes available to the claimant in pursuance of arrangements made with it by the authority—

- (a) to discharge any of the authority’s functions under Part 3 of the Housing Act 1985, Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987; or
- (b) to prevent the claimant being or becoming homeless within the meaning of Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987.

(4) The accommodation referred to in paragraph (3) is—

- (a) accommodation—
 - (i) provided for a charge, where that charge includes the provision of that accommodation and some cooked or prepared meals which are also cooked or prepared, and consumed, in that accommodation or associated premises; or
 - (ii) provided in a hotel, guest house, lodging house or similar establishment, but does not include accommodation which is provided in a care home, an independent hospital or a hostel;
- (b) accommodation which the authority or registered housing association holds on a lease and, in the case of an authority in England, is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years;
- (c) accommodation which the authority or registered housing association has a right to use under an agreement other than a lease with a third party.

Determination of a maximum rent (social sector)

B13.—(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).

(2) The relevant authority must determine a limited rent by—

- (a) determining the amount that the claimant's eligible rent would be in accordance with regulation 12B(2) without applying regulation 12B(4) and (6);
 - (b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in accordance with paragraph (5), reducing that amount by the appropriate percentage set out in paragraph (3); and
 - (c) where more than one person is liable to make payments in respect of the dwelling, apportioning the amount determined in accordance with sub-paragraphs (a) and (b) between each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each person.
- (3) The appropriate percentage is—
- (a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and
 - (b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.
- (4) Where it appears to the relevant authority that in the particular circumstances of any case the limited rent is greater than it is reasonable to meet by way of housing benefit, the maximum rent (social sector) shall be such lesser sum as appears to that authority to be an appropriate rent in that particular case.
- (5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable)—
- (a) a couple (within the meaning of Part 7 of the Act);
 - (b) a person who is not a child;
 - (c) two children of the same sex;
 - (d) two children who are less than 10 years old;
 - (e) a child,
- and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where each of them is).”.
- (8) In Schedule 2(7) (excluded tenancies) in paragraph 3—
- (a) omit sub-paragraph (2)(a); and
 - (b) in sub-paragraph (3) omit “(a) or”.
- (9) In Part 2 (application of the regulations) of Schedule 10(8) (former pathfinder authorities) for paragraph 4 substitute—
- “4. In regulation 12B(1) (eligible rent) after sub-paragraph (c) insert—
- “(ca) any of regulations 12E to 12K (transitional protection for pathfinder cases);”.

(7) Schedule 2 was substituted by [S.I. 2007/2868](#). Paragraph 3 was substituted by [2008/2824](#) and amended by [S.I. 2010/671](#).

(8) Schedule 10 was substituted by [S.I. 2007/2868](#).