

2010 No. 2835

SOCIAL SECURITY

The Housing Benefit (Amendment) Regulations 2010

Made - - - - *24th November 2010*

Laid before Parliament *30th November 2010*

Coming into force - - *1st April 2011*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2) to (5), 137(1) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992(a) and sections 5(2A) to (2C), 189(1) and (4) and 191 of the Social Security Administration Act 1992(b).

In accordance with section 172(1) of the Social Security Administration Act 1992, the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

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

Citation and commencement

1. These Regulations may be cited as the Housing Benefit (Amendment) Regulations 2010 and come into force on 1st April 2011.

Amendment of the Housing Benefit Regulations 2006

2.—(1) The Housing Benefit Regulations 2006(c) are amended as follows.

(2) In regulation 2(1)(d) (interpretation)—

(a) after the definition of “person on income support” insert—

““person who requires overnight care” means a person (“P”)—

(a) who—

(i) is in receipt of attendance allowance;

(ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or

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

(b) 1992 c.5. Section 5(2A) to (2C) were inserted by s. 35(2) of the Welfare Reform Act 2007. Section 189(1) and (4) were amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109. Section 191, which was amended by Schedule 5, paragraph 10 of the Welfare Reform Act 2007, is an interpretation provision and is cited for the meaning of the word “prescribe”.

(c) S.I. 2006/213.

(d) Relevant amendments are S.I. 2007/2868 and 2008/1042.

- (iii) although not satisfying either paragraph (i) or (ii) above has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and
- (b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—
 - (i) be engaged in providing overnight care for P;
 - (ii) regularly stay overnight at the dwelling for that purpose; and
 - (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,
 but, in a case where P is treated as occupying a dwelling which P does not actually occupy, paragraph (b)(ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange at such time as P actually occupied or occupies the dwelling;” and
- (b) in the definition of “young individual” after sub-paragraph (f) add—
 - “or
 - (g) who is a person who requires overnight care;”.
- (3) In regulation 12D(1)(a) (eligible rent and maximum rent (LHA)) at the beginning insert, “Except where regulation 12M (transitional protection – reduction in LHA) applies;”.
- (4) Omit regulation 12L(b) (transitional protection – larger properties).
- (5) Before regulation 13(c) (maximum rent) insert—

“Transitional protection – reduction in LHA

12M.—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;
 - (b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling; or
 - (ii) regulation 13C(3) (anniversary of LHA date); and
 - (c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.
- (2) Where this regulation applies, the claimant’s eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or
 - (b) in any other case, the lower of—
 - (i) the amount of the eligible rent which applied immediately before 1st April 2011; or
 - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(a) Regulation 12D was inserted by S.I. 2007/2868.
 (b) Regulation 12L was inserted by S.I. 2009/614.
 (c) Regulation 13 was substituted by S.I. 2007/2868.

(3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

- (a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;
- (b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);
- (c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
- (d) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (e) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D.”.

(6) In regulation 13D(a) (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c) for “to a maximum of five” substitute “up to a maximum of four”;
- (b) at the end of paragraph (3) insert—
“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 both of them are).”;
- (c) for paragraph (5) substitute—
“(5) Where the applicable local housing allowance exceeds the cap rent, the maximum rent (LHA) shall be the cap rent.”; and
- (d) omit paragraphs (6), (8) and (9).

(7) In regulation 14(8)(b) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance” for “or (d)” substitute “, (d) or (f)”.

(8) In regulation 96(3A)(b)(c) (circumstances in which payment may be made to a landlord)—

- (a) after paragraph (iii) add—
“or
(iv) the relevant authority considers that it will assist the claimant in securing or retaining a tenancy.”; and
- (b) for paragraph (4) substitute—
“(4) In this regulation—
“landlord” has the same meaning as in regulation 95 and paragraph (2) of that regulation shall have effect for the purposes of this regulation; and
“tenancy” includes—
(a) in Scotland, any other right of occupancy; and

(a) Regulation 13D was inserted by S.I. 2007/2868 (as amended by S.I. 2008/586) and was amended by S.I. 2009/614.
(b) Regulation 14 was substituted by S.I. 2007/2868. There is an amendment not relevant to these Regulations.
(c) Paragraph (3A) was inserted by S.I. 2007/2686.

(b) in England and Wales, a licence to occupy premises.”.

(9) In regulation 114A(9)(a) (information to be provided to rent officers) between paragraph (c) and the word “and” insert—

“(ca) whether the claimant or the claimant’s partner is a person who requires overnight care;”.

(10) In paragraph 2(3) of Schedule 2(b) (excluded tenancies) after paragraph (e) add—

“(f) the claimant or the claimant’s partner becomes or ceases to be a person who requires overnight care where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

(11) In paragraph 6 of Schedule 10(c) (former pathfinder authorities), in the inserted regulation 12I (basic transitional protection in the second and subsequent years after 7th April 2008), in paragraph (2)(b)(ii) omit “, plus £15”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(d) are amended as follows.

(2) In regulation 2(1)(e) (interpretation) after the definition of “person on state pension credit” insert—

““person who requires overnight care” means a person (“P”)—

(a) who—

- (i) is in receipt of attendance allowance;
- (ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
- (iii) although not satisfying either paragraph (i) or (ii) above has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and

(b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—

- (i) be engaged in providing overnight care for P;
- (ii) regularly stay overnight at the dwelling for that purpose; and
- (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,

but, in a case where P is treated as occupying a dwelling which P does not actually occupy, sub-paragraph (b)(ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that it is reasonable in the circumstances for an additional bedroom to be provided in that dwelling;”.

(3) In regulation 12D(1)(f) (eligible rent and maximum rent (LHA)) at the beginning insert, “Except where regulation 12M (transitional protection – reduction in LHA) applies,”.

(4) Omit regulation 12L(g) (transitional protection – larger properties).

(5) Before regulation 13(h) (maximum rent) insert—

(a) Regulation 114A was inserted by S.I. 2007/2868.

(b) Schedule 2 was substituted by S.I. 2007/2868. There are amendments not relevant to these Regulations.

(c) Schedule 10 was substituted by S.I. 2007/2868.

(d) S.I. 2006/214.

(e) There are amendments not relevant to these Regulations.

(f) Regulation 12D was inserted by S.I. 2007/2869.

(g) Regulation 12L was inserted by S.I. 2009/614.

(h) Regulation 13 was substituted by S.I. 2007/2869.

“Transitional protection – reduction in LHA

12M.—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;
- (b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling; or
 - (ii) regulation 13C(3) (anniversary of LHA date); and
- (c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.

(2) Where this regulation applies, the claimant’s eligible rent is—

- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or
- (b) in any other case, the lower of—
 - (i) the amount of the eligible rent which applied immediately before 1st April 2011; or
 - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(3) Where the claimant’s eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

- (a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;
- (b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);
- (c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
- (d) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (e) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D.”.

(6) In regulation 13D(a) (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c) for “to a maximum of five” substitute “up to a maximum of four”;
- (b) at the end of paragraph (3) insert—

(a) Regulation 13D was inserted by S.I. 2007/2869 (as amended by S.I. 2008/586) and was amended by S.I. 2009/614.

“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 both of them are).”;

(c) for paragraph (5) substitute—

“(5) Where the applicable local housing allowance exceeds the cap rent, the maximum rent (LHA) shall be the cap rent.”; and

(d) omit paragraphs (6), (8) and (9).

(7) In regulation 14(8)(a) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance” for “or (d)” substitute “, (d) or (e)”.

(8) In regulation 77(3A)(b)(b) (circumstances in which payment may be made to a landlord)—

(a) after paragraph (iii) add—

“or

(iv) the relevant authority considers that it will assist the claimant in securing or retaining a tenancy.”; and

(b) for paragraph (4) substitute—

“(4) In this regulation—

“landlord” has the same meaning as in regulation 95 and paragraph (2) of that regulation shall have effect for the purposes of this regulation; and

“tenancy” includes—

(a) in Scotland, any other right of occupancy; and

(b) in England and Wales, a licence to occupy premises.”.

(9) In regulation 95A(9)(c) (information to be provided to rent officers) between paragraph (b) and the word “and” insert—

“(ba) whether the claimant or the claimant’s partner is a person who requires overnight care;”.

(10) In paragraph 2(3) of Schedule 2(d) (excluded tenancies) after paragraph (d) add—

“(e) the claimant or the claimant’s partner becomes or ceases to be a person who requires overnight care where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

(11) In paragraph 6 of Schedule 9(e) (former pathfinder authorities), in the inserted regulation 12I (basic transitional protection in the second and subsequent years after 7th April 2008), in paragraph (2)(b)(ii) omit “, plus £15”.

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

Freud
Parliamentary Under-Secretary of State,
Department for Work and Pensions

24th November 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations amends the Housing Benefit Regulations 2006. Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

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- (a) Regulation 14 was substituted by S.I. 2007/2869. There is an amendment not relevant to these Regulations.
(b) Paragraph (3A) was inserted by S.I. 2007/2689.
(c) Regulation 95A was inserted by S.I. 2007/2869.
(d) Schedule 2 was substituted by S.I. 2007/2689. There are amendments not relevant to these Regulations.
(e) Schedule 9 was substituted by S.I. 2007/2869.

Paragraph (6) of regulation 2 amends regulation 13D which provides for the calculation of a maximum rent in cases where housing benefit is calculated by reference to a local housing allowance (LHA). The amendment does three things.

First, it reduces the maximum size dwelling for which the LHA is calculated from five to four bedrooms, and removes provisions that allowed a local authority to request a local housing allowance determination for dwellings larger than the maximum.

Secondly, it requires account to be taken of an additional bedroom for a non-resident carer in any case where the claimant or claimant's partner is a person who requires overnight care. Paragraph (2) of regulation 2 inserts a definition of "person who requires overnight care", and also in the Housing Benefit Regulations 2006 adjusts the definition of "young individual" to exclude such a person. Paragraphs (7), (9) and (10) make consequential amendments.

Finally, it removes the provision that allows claimants to receive up to £15 more than their actual rent. Paragraph (11) makes an equivalent amendment to regulation 12I, which is a transitional provision applying to some claimants in former pathfinder authorities.

Paragraph (5) makes provision for transitional protection for up to 9 months where the local authority determines a new maximum rent (LHA) because it is the anniversary of the last determination or there is a new applicable LHA because the claimant has become entitled to a larger category of dwelling.

Paragraph (8) extends the circumstances in which payment of Housing Benefit may be made directly to the landlord in cases where a maximum rent (LHA) has been determined.

The Report of the Social Security Advisory Committee dated 13th October 2010 on the Secretary of State's proposal to make these Regulations, together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not, are contained in an Act Paper published by The Stationery Office Ltd.

An assessment of the impact of these Regulations has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website:

<http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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STATUTORY INSTRUMENTS

2010 No. 2835

SOCIAL SECURITY

The Housing Benefit (Amendment) Regulations 2010

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