Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

The Housing Benefit (Amendment) Regulations 2012

Made - - - - ***

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 by sections 123(1)(d), 130A(2), (3) and (5), 137(1) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992(**1**), section 79(4) of the Social Security Act 1998(**2**) and paragraphs 4(4A) and (6), 20(1) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**3**).

A draft of this Order was laid before Parliament in accordance with section 176(1)(ab)(**4**) of the Social Security Contributions and Benefits Act 1992 and approved by a resolution of each House.

This instrument contains only regulations made by virtue of, or consequential upon, section 69 of the Welfare Reform Act 2012(**5**) 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(**6**), 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 (Amendment) Regulations 2012.

(2) Subject to paragraph (3), these Regulations come into force on 1st January 2013.

(3) Regulations 3(2)(a), 4(2)(a), 5 and 6 come into force on 1st April 2013.

(**1**) 1992 c.4. Section 130A was inserted by s. 30(2) of the Welfare Reform Act 2007 (c.5) and amended by s. 69 of the Welfare Reform Act 2012 (c.5). Section 137 is an interpretation provision and is cited for the definition of "prescribed".

(**2**) 1998 c.14. Section 79(4) is applied to the provisions of the Child Support, Pensions and Social Security Act 2000 (c.19) by paragraph 20(3) of Schedule 7 to that Act.

(**3**) 2000 c.19. Paragraph 4(4A) was inserted by s. 30(3) of the Welfare Reform Act 2007. Paragraph 23(1) is an interpretation provision and is cited for the definition of "prescribed".

(**4**) Section 176(1) was amended by s. 69(4) of the Welfare Reform Act 2012.

(**5**) 2012 c.5.

(**6**) 1992 c.5. Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c.52) and s. 69(6) of the Child Support, Pensions and Social Security Act 2000.

(4) In these Regulations—

"the Housing Benefit Regulations" means the Housing Benefit Regulations 2006(**7**); and

"the Housing Benefit (State Pension Credit) Regulations" means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**8**).

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

2.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**9**) are amended as follows.

(2) In regulation 8 (date from which a decision superseding an earlier decision takes effect) for paragraph (15)(**10**) substitute—

"(15) A decision to which regulation 7A(2) applies shall take effect—

(a) from 1st April in a case where the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) or (c) of the Housing Benefit Regulations or, as the case may be, regulation 61(2)(b) or (c) of the Housing Benefit (State Pension Credit) Regulations; and

(b) in any other case, from the first Monday in April.".

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

3.—(1) The Housing Benefit Regulations are amended as follows.

(2) In regulation 13C(**11**) (when a maximum rent (LHA) is to be determined)—

(a) in paragraph (2)(d)—

(i) at the end of paragraph (ii) omit "or"; and

(ii) after paragraph (iii) add—

"or

(iv) notification of a change of a kind which affects the amount of the claimant's cap rent as determined in accordance with regulation 13D (determination of a maximum rent (LHA)).";

(b) for paragraph (3) substitute—

"(3) This paragraph applies on 1st April in any year.";

(c) omit paragraph (4); and

(d) in paragraph (6) omit the definition of "the LHA date".

Amendment of the Housing Benefit (State Pension Credit) Regulations relating to the determination of the maximum rent (LHA)

4.—(1) The Housing Benefit (State Pension Credit) Regulations are amended as follows.

(2) In regulation 13C(**12**) (when a maximum rent (LHA) is to be determined)—

(a) in paragraph (2)(d)—

(**7**) S.I. 2006/213.
(**8**) S.I. 2006/214.
(**9**) S.I. 2001/1002.
(**10**) Paragraph (15) was inserted by S.I. 2003/2399 and substituted by S.I. 2007/2870 (as amended by S.I. 2008/586).
(**11**) Regulation 13C was inserted by S.I. 2007/2868. There are amendments not relevant to this instrument.
(**12**) Regulation 13C was inserted by S.I. 2007/2869. There are amendments not relevant to this instrument.

(i) at the end of paragraph (ii) omit "or"; and

(ii) after paragraph (iii) add—

"or

(iv) notification of a change of a kind which affects the amount of the claimant's cap rent as determined in accordance with regulation 13D (determination of a maximum rent (LHA)).";

(b) for paragraph (3) substitute—

"(3) This paragraph applies on 1st April in any year.";

(c) omit paragraph (4); and

(d) in paragraph (6) omit the definition of "the LHA date".

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"(**13**), 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"(**14**)—

(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)(**15**) (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(**16**) (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).

(**13**) The definition of "eligible rent" was substituted by S.I. 2007/2868.
(**14**) The definition of "registered housing association" was substituted by S.I. 2010/671 and amended by S.I. 2012/700.
(**15**) Regulation 11(1) was substituted by S.I. 2007/2868.
(**16**) Regulation 12B was inserted by S.I. 2007/2868.

(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—

(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(**17**) (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(**18**) (transitional protection – reduction in LHA) insert—

(**17**) Regulation 12D was inserted by S.I. 2007/2868. There are amendments not relevant to this instrument.
(**18**) Regulation 12M was inserted by S.I. 2010/2835. There are amendments not relevant to this instrument.