Draft Regulations laid before Parliament under section 97(3) of the Welfare Reform Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

The Benefit Cap (Housing Benefit) Regulations 2012

Made - - - -	***
Coming into force - -	*15th April 2013*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 96(1), (3), (4)(a), (b), (c) and (g), (5) and (10) and 97(1) of the Welfare Reform Act 2012(**1**).

A draft of these Regulations was laid before Parliament in accordance with section 97(3) of the Welfare Reform Act 2012 and approved by a resolution of each House.

This instrument contains only regulations made by virtue of, or consequential upon, sections 96 and 97 of the Welfare Reform Act 2012 and is made before the end of the period of six months beginning with the coming into force of those sections.

In accordance with section 176(1) of the Social Security Administration Act 1992(**2**), 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 Benefit Cap (Housing Benefit) Regulations 2012 and come into force on 15th April 2013.

Amendment of the Housing Benefit Regulations 2006

2.—(1) The Housing Benefit Regulations 2006(**3**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of "employed earner" insert—

(**1**) 2012 c.5. Section 96(10) is cited also for the meaning of "prescribed" and "regulations".

(**2**) 1992 c.5. Section 176(1) was amended by Schedule 9, paragraph 23 to the Local Government Finance Act 1992 (c.14), Schedule 13, paragraph 3(4) to the Housing Act 1996 (c.52) and s. 69(6) of the Child Support, Pensions and Social Security Act 2000.

(**3**) S.I. 2006/213.

""employment and support allowance" means an employment and support allowance under Part 1 of the Welfare Reform Act;"; and

(b) after the definition of "Jobseekers Act" insert—

""jobseeker's allowance" means a jobseeker's allowance within the meaning of Part 1 of the Jobseekers Act;".

(3) After regulation 72D(**4**) (relationship between extended payment and entitlement to housing benefit under the general conditions of entitlement) insert—

"**Calculation of an extended payment where the benefit cap applies**

72E. Where a claimant's housing benefit in the benefit week with respect to which the extended payment is to be calculated is reduced in accordance with regulation 75D, the extended payment must be calculated using the amount of housing benefit before any such reduction is made.".

(4) After regulation 73D (relationship between extended payment (qualifying contributory benefits) and entitlement to housing benefit under the general conditions of entitlement) insert—

"**Calculation of an extended payment (qualifying contributory benefits) where the benefit cap applies**

73E. Where a claimant's housing benefit in the benefit week with respect to which the extended payment (qualifying contributory benefits) is to be calculated is reduced in accordance with regulation 75D, the extended payment (qualifying contributory benefits) must be calculated using the amount of housing benefit before any such reduction is made.".

(5) After Part 8 (amount of benefit) insert—

"PART 8A

Benefit cap

Circumstances in which a benefit cap will apply

75A. Unless regulation 75E or 75F applies, a benefit cap applies where the relevant authority makes a determination that during the reference period the total amount of welfare benefits to which—

(a) where the claimant is a member of a couple, each member of the couple is or jointly are entitled; or

(b) in any other case, the claimant is entitled,

exceeds the relevant amount.

Determination of whether a benefit cap applies

75B. The relevant authority need not determine whether the benefit cap applies, or whether to change the amount of any reduction made in accordance with regulation 75D, unless it receives notification from the Secretary of State that the benefit cap may apply or that there has been a change in the amount of a welfare benefit to which the claimant is entitled (but nothing shall prevent the relevant authority making a determination as to whether the benefit

(**4**) Regulations 72D and 73D were inserted by S.I. 2008/959.

cap applies, or the amount of any reduction, if it has information or evidence suggesting that it should do so).

Manner of calculating the amount of welfare benefits

75C.—(1) When calculating the total amount of welfare benefits, the relevant authority must use the amount of a welfare benefit to which a person is entitled unless paragraph (2), (3) or (4) applies.

(2) Where the welfare benefit is housing benefit, the relevant authority must not take account of any reduction under regulation 75D and must use the amount to which the claimant would be entitled by virtue of section 130 of the Act.

(3) Where the welfare benefit is an employment and support allowance, the relevant authority must disregard that benefit where a person is disqualified for receiving it by virtue of section 18 of the Welfare Reform Act.

(4) Where an amount of a welfare benefit other than jobseeker's allowance or employment and support allowance is taken into account as income in accordance with Part 6 (income and capital), or would be so taken into account if the relevant authority were required to calculate the claimant's income, the relevant authority must use that amount.

(5) The amount of a welfare benefit for the purpose of paragraph (4) includes any amount of that benefit which would have been payable but for any loss of benefit under, or by virtue of, section 6B, 7 or 9 of the Social Security Fraud Act 2001(**5**).

Reduction of housing benefit

75D.—(1) Subject to paragraph (2), where the benefit cap applies, the relevant authority must reduce the amount of housing benefit to which the claimant is entitled by virtue of section 130 of the Act by the amount by which the total amount of welfare benefits exceeds the relevant amount.

(2) Where the reduction would reduce the claimant's housing benefit to less than the minimum amount of housing benefit provided for in regulation 75 (minimum housing benefit) , the relevant authority must reduce the claimant's housing benefit by such amount as will leave the claimant entitled to that minimum amount.

Exception to the benefit cap: current or recent work

75E.—(1) The benefit cap does not apply where paragraph (2) applies or during the period specified in paragraph (3).

(2) This paragraph applies where the claimant is, or the claimant and the claimant's partner are jointly, entitled to working tax credit.

(3) The specified period is, where paragraph (4) applies, the consecutive period of 39 consecutive weeks starting on the day specified in paragraph (5).

(4) This paragraph applies where the relevant authority is satisfied that, for at least 50 weeks out of the 52 weeks immediately preceding their last day of work, the claimant or the claimant's partner ("P")—

(a) was employed or engaged in work for payment, or in the expectation of payment; and

(**5**) 2001 c.11. Section 6B was inserted by s. 24(1) of the Welfare Reform Act 2009 (c.24) and amended by s. 113(8)(a) of the Welfare Reform Act 2012. Section 7 was amended by Schedule 3, paragraph 45 to the State Pension Credit Act 2002 (c. 16), s. 49(1) of, and Schedule 3, paragraph 23 to, the Welfare Reform Act 2007 (c.5), Schedule 4, paragraph 2 and Schedule 7, paragraph 1 to the Welfare Reform Act 2009 and Schedule 1, paragraph 13(3) to the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298). Section 8 was amended by Schedule 4, paragraph 3 and Schedule 7, paragraph 1 to the Welfare Reform Act 2009 and s. 113(8)(b) of the Welfare Reform Act 2012.

(b) was not entitled to income support, a jobseeker's allowance or an employment and support allowance,

and, for the purposes of sub-paragraph (a), P is employed or engaged in work for any day on which P is on maternity leave, paternity leave or adoption leave or is in receipt of statutory sick pay.

(5) The specified day is the day after the last day on which P was employed or engaged in the work referred to in paragraph (4).

Exception to the benefit cap: receipt of specified benefit

75F.—(1) The benefit cap does not apply where—

(a) the claimant or the claimant's partner is receiving an employment and support allowance under Part 1 of the Welfare Reform Act which includes a support component;

(b) the claimant or the claimant's partner is receiving an industrial injuries benefit by virtue of Part 5 of the Act;

(c) the claimant or the claimant's partner is receiving an attendance allowance;

(d) the claimant or the claimant's partner is receiving a war pension;

(e) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible, is receiving a disability living allowance;

(f) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible is entitled to a payment listed in sub-paragraph (b), (c), (d) or (e) but—

(i) that person is not receiving it under regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991(**6**);

(ii) it is withheld under article 53 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (maintenance in hospital or an institution)(**7**);

(iii) that person is not receiving it under regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991(**8**);

(2) In this regulation "war pension" has the meaning in regulation 2 (interpretation) and includes—

(a) a guaranteed income payment;

(b) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;

(c) a payment which is made under any of—

(i) the Order in Council of 19th December 1881;

(ii) the Royal Warrant of 27th October 1884;

(**6**) S.I. 1991/2740. Regulation 6 was amended by S.I. 1992/2869, 1999/1326 and 2000/1401. Regulation 7 was substituted by S.I. 2007/2875.
(**7**) S.I. 2006/606.
(**8**) S.I. 1991/2890. Regulation 8 was amended by S.I. 1992/2869, 1999/1326 and 2000/1401. Regulation 9 was substituted by S.I. 2007/2875.