STATUTORY RULES OF NORTHERN IRELAND

2008 No. 102

HOUSING

The Housing Benefit (State Pension Credit) (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008

Made - - - - 11th March 2008

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129(2), 129A(2) to (5) and 171(1) and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and sections 5(1)(q) and (5) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and now vested in it(**3**).

This Rule contains only regulations made consequential upon section 30(2) of the Welfare Reform Act (Northern Ireland) 2007(**4**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (State Pension Credit) (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008 and, subject to paragraph (3) (which relates to existing cases), shall come into operation on 7th April 2008.

(2) This paragraph applies to a case where the amount of the eligible rent which applied immediately before 7th April 2008 was determined in accordance with—

(a) regulation 13 of the Housing Benefit (State Pension Credit) Regulations(**5**) (as in operation immediately before 7th April 2008); or

(b) in a case to which paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies, regulations 13 and 14 of the Housing Benefit (State Pension Credit) Regulations

(**1**) 1992 c. 7; section 129(2) was amended by Article 8(2) of the Housing Support Services (Northern Ireland) Order 2002 (S.I. 2002/3154 (N.I. 8)); section 129A was inserted by section 30(2) of the Welfare Reform Act (Northern Ireland) 2007 and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) 1992 c. 8; section 5(5) was inserted by Article 3(1) of the Housing Benefit (Payment to Third Parties) (Northern Ireland) Order 1996 (S.I. 1996/2597 (N.I. 20)) and in section 165 subsection (1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and subsection (6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(**3**) *See* Article 8(b) of S.R. 1999 No. 481

(**4**) 2007 c. 2 (N.I.)

(**5**) Regulation 13 was amended by regulation 8(3) of S.R. 2007 No. 196 and regulation 4(3) of S.R. 2007 No. 266

as set out in paragraph 5 of that Schedule(**6**) (as in operation immediately before 7th April 2008).

(3) In a case to which paragraph (2) applies, regulations 2 and 3 shall come into operation on the day when, on or after 7th April 2008, one of the following sub-paragraphs first applies—

(a) the Executive has received a notification of a change relating to a rent allowance;

(b) the Executive has received a notification of a change of dwelling;

(c) 52 weeks have elapsed since the appropriate relevant authority's last decision took effect in accordance with regulation 8(6A) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**7**);

(d) the Executive is required to determine an eligible rent in accordance with regulation 13(3)(b) of the Housing Benefit (State Pension Credit) Regulations; or

(e) the Executive is required to determine an eligible rent in accordance with regulation 13(3) of the Housing Benefit (State Pension Credit) Regulations as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations,

and, where none of those sub-paragraphs apply before 6th April 2009, regulations 2 and 3 shall come into operation on that date.

(4) In paragraph (3)—

(a) references to the Housing Benefit (State Pension Credit) Regulations and the Consequential Provisions Regulations mean those Regulations as in operation immediately before the coming into operation of regulation 2 in relation to that case;

(b) "change of dwelling" means a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the Executive may make a rent allowance;

(c) "change relating to a rent allowance" means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 3 to the Housing Benefit (State Pension Credit) Regulations applies;

(d) "the Executive" means the Northern Ireland Housing Executive.

(5) In these Regulations—

"the Consequential Provisions Regulations" means the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006(**8**);

"the Housing Benefit (State Pension Credit) Regulations" means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**9**).

(6) The Interpretation Act (Northern Ireland) 1954(**10**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Housing Benefit (State Pension Credit) Regulations

2.—(1) The Housing Benefit (State Pension Credit) Regulations are amended in accordance with paragraphs (2) to (13).

(2) In regulation 2(1)(**11**) (interpretation)—

(**6**) Regulation 13, as set out in paragraph 5(1), was amended by regulation 9 of S.R. 2007 No. 196
(**7**) S.R. 2001 No. 213; regulation 8(6A) was inserted by regulation 31(2) of S.R. 2004 No. 144 and amended by paragraph 7(5)(c) of Schedule 2 to S.R. 2006 No. 407 and regulation 2(3)(a) of S.R. 2007 No. 266
(**8**) S.R. 2006 No. 407
(**9**) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2007 Nos. 196 and 266
(**10**) 1954 c. 33 (N.I.)
(**11**) To which there are amendments not relevant to these Regulations

(a) after the definition of "adoption leave" insert—

""amended determination" means a determination where the Executive is of the opinion that it has made an error (other than in the application of its professional judgement) in relation to a broad rental market area determination or a local housing allowance determination determined in accordance with regulation 3(2) of the Executive Determinations Regulations;";

(b) after the definition of "board and lodging accommodation" insert—

""broad rental market area" has the meaning specified in paragraph 4 of the Schedule to the Executive Determinations Regulations;

"broad rental market area determination" means a determination made in accordance with regulation 3(1) of the Executive Determinations Regulations;

"change of dwelling" means, for the purposes of regulation 14C, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the Executive may make a rent allowance;";

(c) for the definition of "eligible rent" substitute—

""eligible rent" means, as the case may require, an eligible rent determined in accordance with—

(a) regulation 13A, 13B or 13C; or

(b) regulations 13 (rent) and 14 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;";

(d) after the definition of "the Executive" insert—

""the Executive Determinations Regulations" means the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008(**12**);";

(e) after the definition of "a joint-claim jobseeker's allowance" insert—

""linked person" means—

(a) any member of the claimant's family;

(b) 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;

(c) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it;

"local housing allowance" means an allowance determined in accordance with paragraph 2 of the Schedule to the Executive Determinations Regulations;";

(f) after the definition of "maximum rent" insert—

""maximum rent (LHA)" means the amount determined in accordance with regulation 14D;";

(g) after the definition of "rateable unit" insert—

""reckonable rent" means payments which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for regulation 14, be eligible for housing benefit;

(**12**) S.R. 2008 No. 100

"registered housing association" means a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992(**13**);"; and

(h) after the definition of "relevant authority" insert—

""relevant information" means information or evidence forwarded to the relevant authority by an appropriate office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate office relating to that claim;".

(3) In regulation 3(4) (definition of non-dependant) after "and regulation 9" insert "and the definition of "linked person" in regulation 2(1)".

(4) In regulation 11(eligible housing costs)—

(a) in paragraph (1) for sub-paragraph (b) substitute—

"(b) in the case of a rent rebate or allowance, the amount of his eligible rent determined in accordance with—

(i) regulation 13A;

(ii) regulations 13B, 14, 14A and 14B;

(iii) regulations 13C, 14C and 14D, or

(iv) regulations 13 (rent) and 14 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations,

whichever is applicable in his case."; and

(b) in paragraph (2) for "paragraphs (1) to (3) of that regulation" substitute "paragraphs (1) or (2) of that regulation or paragraph (2) of regulation 13A".

(5) In regulation 13 (rent)—

(a) omit paragraphs (3) to (7)(**14**); and

(b) in paragraph (8) after "regulation" insert ", regulation 13A".

(6) After regulation 13 insert—

"**Eligible rent**

13A.—(1) The amount of a person's eligible rent shall be determined in accordance with the provisions of this regulation except where regulations 13B or 13C apply, or paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies.

(2) Subject to paragraphs (3), (4) and (7), the amount of a person's eligible rent shall be the aggregate of such payments specified in regulation 13(1) as that person is liable to pay less—

(a) except where he is separately liable for rates, an amount determined in accordance with paragraph (5);

(b) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6);

(c) 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

(**13**) S.I. 1992/1725 (N.I. 15)
(**14**) Paragraph (3) was amended and paragraph (6A) was inserted by regulation 8(3) of S.R. 2007 No. 196

(d) where he is liable to make payments in respect of any service charges to which regulation 13(1)(e) does not apply, but to which paragraph 3(2) of Schedule 1 applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Schedule 1.

(3) Where the payments specified in regulation 13(1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion of those payments as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(4) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in regulation 13(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.

(5) The amount of the deduction in respect of rates referred to in paragraph (2) 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).

(6) The amount of the deduction referred to in paragraph (2) shall be—

(a) if the dwelling occupied by the claimant is a self-contained unit, except in a case to which sub-paragraph (c) applies, the amount of the charges;

(b) in any other case, except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing the area of the dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;

(c) where the charges vary in accordance with the amount of water actually used, the amount which the Executive considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.

(7) In any case where it appears to the Executive that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to the Executive to be an appropriate rent in that particular case.

Eligible rent and maximum rent

13B.—(1) This regulation applies where a maximum rent has been, or is to be, determined in accordance with regulation 14.

(2) Where this regulation applies, the amount of a person's eligible rent shall be the maximum rent, subject to paragraphs (3), (4) and (7) of regulation 13A.

Eligible rent and maximum rent (LHA)

13C.—(1) This regulation applies where, by virtue of paragraphs (2) or (3) of regulation 14C, a maximum rent (LHA) has been, or is to be, determined in accordance with regulation 14D.

(2) Where this regulation applies, except where paragraphs (3)(a) or (5)(a) apply,—

(a) the amount of a person's eligible rent shall be the maximum rent (LHA); and

(b) it shall apply until the earlier of—