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(**a**).

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(**b**), 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(**c**) are amended as follows.

(2) In regulation 2 (interpretation)—

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

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

(**a**) 2012 c.5. Section 96(10) is cited also for the meaning of "prescribed" and "regulations".
(**b**) 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.
(**c**) S.I. 2006/213.

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

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

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(**a**).

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

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

(**a**) 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.

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(**a**);

(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)(**b**);

(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(**c**);

(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;

(iii) the Order by His Majesty of 14th January 1922,

to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed

(**a**) 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.
(**b**) S.I. 2006/606.
(**c**) 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.

forces of the Crown and whose service in such capacity terminated before 31st March 1973

(d) a pension paid by the government of a country outside Great Britain which is analogous to a war pension or any of the pensions or payments mentioned in sub-paragraphs (a) to (c).

Interpretation

75G. For the purposes of section 96 of the Welfare Reform Act 2012 and this Part—

"couple" has the meaning in regulation 2 unless the claimant is a member of a polygamous marriage, in which case it means the claimant and the member of the polygamous marriage to whom the claimant was first married and references to the claimant's partner are to that member of that marriage;

"reference period" means a benefit week;

"relevant amount" is—

(a) for a single claimant, £350; and

(b) for all other claimants, £500;

"welfare benefit" means—

(a) bereavement allowance;

(b) carer's allowance;

(c) child benefit;

(d) child tax credit;

(e) an employment and support allowance;

(f) guardian's allowance;

(g) housing benefit;

(h) incapacity benefit;

(i) income support;

(j) a jobseeker's allowance;

(k) maternity allowance;

(l) severe disablement allowance;

(m) widowed mother's allowance ;

(n) widowed parent's allowance;

(o) widow's pension.".

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

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

(2) In regulation 4 (revision of decisions) after paragraph (7F)(**b**) insert—

"(7H) Where a relevant authority has reduced housing benefit as a consequence of regulation 75D of the Housing Benefit Regulations, that decision may be revised at any time.".

(**a**) S.I. 2001/1002.

(**b**) Paragraph (7F) was inserted by S.I. 2006/644. Paragraph (7G) was inserted by S.I. 2007/2474 and ceased to have effect after 31st December 2010.

(3) In regulation 7(2) (decisions superseding earlier decisions) after sub-paragraph (q)(**a**) insert—

"(r) which as a consequence of regulation 75D of the Housing Benefit Regulations reduces housing benefit to apply the benefit cap or increases or decreases such a reduction (including a decrease to nil).".

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect) after paragraph (14E)(**b**) insert—

"(14F) Where a decision is superseded in accordance with regulation 7(2)(r), the superseding decision shall take effect—

(a) on the date the superseding decision is made where the decision results in the application of the benefit cap or an increase in a reduction; and

(b) where the decision results in the benefit cap ceasing to apply or a decrease in a reduction, on the date from which the welfare benefit (within the meaning of regulation 75G of the Housing Benefit Regulations) is reduced.".

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

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

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 ("the Housing Benefit Regulations") to make provision for a cap on the total amount of welfare benefits to which a person is entitled. It also makes consequential amendments to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 ("the Decisions and Appeals Regulations").

Regulation 2 amends the Housing Benefit Regulations. Regulation 2(5) inserts a new Part 8A with new regulations 75A to 75G which make provision for the benefit cap. Regulation 75A provides that a benefit cap applies when the amount of welfare benefits to which a claimant or a claimant and claimant's partner are entitled in a week exceeds the relevant amount. The relevant amount is defined in regulation 75G as £350 for a single claimant who is not responsible for a child or young person and £500 in any other case. Regulation 75G also prescribes the welfare benefits to be taken into account.

Regulation 75B makes provision relating to when the local authority determines whether a benefit cap applies. Although the local authority may continue to act on any information or evidence it receives, it need not make a determination relating to the benefit cap (including whether any reduction should be increased or decreased) unless it receives a notification from the Secretary of State.

Regulation 75C makes provision as to the manner in which entitlement to welfare benefits is to be calculated where the amount of the welfare benefit paid to the claimant is not the same as the amount to which the claimant is entitled.

Regulation 75D provides that where the benefit cap applies, the local authority must reduce a claimant's housing benefit by the amount by which welfare benefits exceed the relevant amount. Where such a reduction would reduce the claimant's housing benefit below the minimum amount payable (in most cases 50p), the local authority must reduce housing benefit by such amount as would leave entitlement of that minimum amount.

(**a**) Sub-paragraph (q) was added by S.I. 2010/1907 and amended by S.I. 2010/2430.
(**b**) Paragraph (14E) was inserted by S.I. 2010/1907.

Regulation 75E provides for an exception to the benefit cap, both where the claimant or the claimant's partner is entitled to working tax credit and where the claimant or the claimant's partner was in work for 50 out of the 52 weeks before that work ended and was not entitled to income support, jobseeker's allowance or an employment and support allowance. This applies for 39 weeks from the day after the last day in respect of which that person received payment for that work.

Regulation 75F also provides for an exception to the benefit cap where the claimant or the claimant's partner is in receipt of an employment and support allowance with a support component, attendance allowance, industrial injuries benefit or a war pension. They also include cases where the claimant, claimant's partner or a child or young person one of them is responsible for is in receipt of disability living allowance. Where a person is not receiving disability living allowance, attendance allowance or a war disablement pension because they are in hospital or a care home, the exceptions will continue to apply.

Regulation 75G prescribes various definitions for the purposes of new Part 8A.

Regulation 2(2) makes consequential amendments and regulation 2(3) and (4) make amendments relating to extended payments of housing benefit so that the amount of the extended payment is not reduced to apply the benefit cap.

Regulation 3 amends the Decisions and Appeals Regulations to allow the local authority to revise decisions relating to the cap and to supersede to apply the cap and any change in the amount of a reduction. It also makes provision for the effective date of superseding decisions.

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, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: http://www.dwp.gov.uk/resourcecentre/ria.asp.

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The Benefit Cap (Housing Benefit) Regulations 2012

ISBN 978-0-11-152675-0

£5.75

E3917 07/2012 123917T 19585

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