STATUTORY RULES OF NORTHERN IRELAND

# 2008 No. 103

# HOUSING; RATES; SOCIAL SECURITY

## The Housing Benefit (Local Housing Allowance) (Miscellaneous and Consequential Amendments) 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 129A(2) and (3) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**), and now vested in it(**b**), and paragraph 4(3A) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**c**).

This Rule contains only regulations made consequential upon section 30(2) and (3) of the Welfare Reform Act (Northern Ireland) 2007(**d**).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Housing Benefit (Local Housing Allowance) (Miscellaneous and Consequential Amendments) 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 Regulations(**e**) or, as the case may be, the Housing Benefit (State Pension Credit) Regulations(**f**) (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 Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations as set out in paragraph 5 of that Schedule(**g**) (as in operation immediately before 7th April 2008).

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

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(**a**) 1992 c. 7; 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)
(**b**) *See* Article 8(b) of S.R. 1999 No. 481
(**c**) 2000 c. 4 (N.I.); paragraph 4(3A) was inserted by section 30(3)(b) of the Welfare Reform Act (Northern Ireland) 2007
(**d**) 2007 c. 2 (N.I.)
(**e**) Regulation 13 was amended by regulation 7(3) of S.R. 2007 No. 196 and regulation 3(3) of S.R. 2007 No. 266
(**f**) Regulation 13 was amended by regulation 8(3) of S.R. 2007 No. 196 and regulation 4(3) of S.R. 2007 No. 266
(**g**) Regulation 13, as set out in paragraph 5(1), was amended by regulation 9 of S.R. 2007 No. 196

(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(**a**);

(d) the Executive is required to determine an eligible rent in accordance with regulation 13(3)(b) of the Housing Benefit Regulations or, as the case may be, 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 Regulations or, as the case may be, 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 to 7 shall come into operation on that date.

(4) In paragraph (3)—

(a) references to the Housing Benefit Regulations, 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 of the Housing Benefit (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008(**b**) or, as the case may be, the Housing Benefit (State Pension Credit) (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008(**c**) 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 Regulations or, as the case may be, 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(**d**);

"the Housing Benefit Regulations" means the Housing Benefit Regulations (Northern Ireland) 2006(**e**);

"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(**f**).

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

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(**a**) 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
(**b**) S.R. 2008 No. 101
(**c**) S.R. 2008 No. 102
(**d**) S.R. 2006 No. 407
(**e**) S.R. 2006 No. 405
(**f**) S.R. 2006 No. 406
(**g**) 1954 c. 33 (N.I.)

**Amendment of the Social Security (Claims and Payments) Regulations**

**2.** In Schedule 8A to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**a**) (deductions from benefits and direct payment to third parties) in paragraph 5(2) for "regulation 13(3)" substitute "regulation 13A(2)".

**Amendment of the Housing Benefit (Decisions and Appeals) Regulations**

**3.**—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**b**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 7 (decisions superseding earlier decisions)—

(a) omit paragraph (2ZA)(**c**); and

(b) in paragraph (3)(**d**) before "specified" insert "in respect of rates".

(3) After regulation 7 insert—

**"Decisions superseding earlier decisions in accordance with paragraph 4(3A) of Schedule 7 to the Act**

**7A.**—(1) The prescribed cases and circumstances in which a decision must be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are set out in paragraphs (2) to (4).

(2) The appropriate relevant authority must make a decision superseding an earlier decision where it is required to determine a maximum rent (LHA) in accordance with regulation 14C(3) of the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations (when a maximum rent (LHA) is to be determined).

(3) The appropriate relevant authority must make a decision superseding an earlier decision in any case where 52 weeks have elapsed since it last made a decision to which regulation 15 of the Housing Benefit Regulations or, as the case may be, the Housing Benefit (State Pension Credit) Regulations applies.

(4) The appropriate relevant authority must make a decision superseding an earlier decision where a change of circumstances specified in regulation 84(2) of the Housing Benefit Regulations or, as the case may be, regulation 65(2) of the Housing Benefit (State Pension Credit) Regulations (changes of circumstances which do not need to be notified) occurs.".

(4) In regulation 8(6A) (date from which a decision superseding an earlier decision takes effect) for "regulation 7(2ZA)" substitute "regulation 7A(3)".

(5) In the Schedule (decisions against which no appeal lies)—

(a) in paragraphs 1(**e**) and 1A(**f**) for "regulation 15" substitute "regulations 14C(5)(e) (board and attendance) and 15"; and

(b) after paragraph 5(**g**) add—

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(**a**) S.R. 1987 No. 465; Schedule 8A was inserted by the Schedule to S.R. 1988 No. 67 and paragraph 5(2) was amended by Article 9(2) of S.R. 1999 No. 472 (C. 36), paragraph 2(4)(c)(i) of Schedule 2 to S.R. 2006 No. 407 and regulation 2(d) of S.R. 2007 No. 206

(**b**) Relevant amending Regulations are S.R. 2003 No. 312, S.R. 2004 No. 144, S.R. 2006 No. 407 and S.R. 2007 No. 266

(**c**) Paragraph (2ZA) was inserted by regulation 31(1) of S.R. 2004 No. 144 and amended by paragraph 7(4)(a) of Schedule 2 to S.R. 2006 No. 407

(**d**) Paragraph (3) was amended by paragraph 7(4)(b) of Schedule 2 to S.R. 2006 No. 407

(**e**) Paragraph 1 was amended by paragraph 7(7)(a) of Schedule 2 to S.R. 2006 No. 407

(**f**) Paragraph 1A was inserted by paragraph 7(7)(b) of Schedule 2 to S.R. 2006 No. 407

(**g**) Paragraph 5 was added by regulation 3 of S.R. 2003 No. 312 and amended by paragraph 7(7)(d) of Schedule 2 to S.R. 2006 No. 407

"**6.** No appeal shall lie against so much of any decision of a relevant authority as adopts a determination under the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008(**a**).".

**Amendment of the Discretionary Financial Assistance Regulations**

**4.**—(1) The Discretionary Financial Assistance Regulations (Northern Ireland) 2001(**b**) are amended in accordance with paragraphs (2) and (3).

(2) In regulations 2(1)(b)(**c**) (discretionary housing payments) and 6(1)(b)(i)(**d**) (form, manner and procedure for claims) after "has been" insert "determined in accordance with regulation 14D or".

(3) In regulation 4(**e**) (limit on the amount of the discretionary housing payment that may be made)—

(a) omit "amount of the"; and

(b) in paragraphs (a) and (b) for "paragraph (3)(b) of that regulation" substitute "regulation 13A(2) of those Regulations".

**Amendment of the Housing Renewal Grants (Reduction of Grant) Regulations**

**5.**—(1) The Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004(**f**) are amended in accordance with paragraphs (2) to (4).

(2) In regulations 32(15) (notional income) and 39(8) (notional capital) for sub-paragraph (a)(**g**) substitute—

"(a) "rates or rent" means eligible rates or rent determined in accordance with—

(i) in respect of rates—

(aa) in the case of a person who has not attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations (non-dependant deductions); or

(bb) in the case of a person who has attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit (State Pension Credit) Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations (non-dependant deductions);

(ii) in respect of rent—

(aa) in the case of a person who has not attained the qualifying age for state pension credit to whom sub-head (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible rent and maximum rent (LHA)) of the Housing Benefit Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations;

(bb) in the case of a person who has attained the qualifying age for state pension credit to whom sub-head (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible

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(**a**) S.R. 2008 No. 100
(**b**) S.R. 2001 No. 216; relevant amending Regulations are S.R. 2003 No. 154 and S.R. 2006 No. 407
(**c**) Regulation 2(1) was amended by paragraph 8(3) of Schedule 2 to S.R. 2006 No. 407
(**d**) Regulation 6(1) was amended by paragraph 8(6)(a) of Schedule 2 to S.R. 2006 No. 407
(**e**) Regulation 4 was substituted by regulation 5 of S.R. 2003 No. 154 and amended by paragraph 8(5) of Schedule 2 to S.R. 2006 No. 407
(**f**) S.R. 2004 No. 8; relevant amending Regulations are S.R. 2006 No. 407
(**g**) Sub-paragraph (a) was respectively substituted by paragraph 12(5)(b) and (6)(b) of Schedule 2 to S.R. 2006 No. 407

rent and maximum rent (LHA)) of the Housing Benefit (State Pension Credit) Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations; or

(cc) where paragraph 4 of Schedule 3 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 (transitional and savings provisions: eligible rent) applies, regulations 13 (rent) and 14 (restrictions on unreasonable payments) of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 72 of the Housing Benefit Regulations or regulation 53 of the Housing Benefit (State Pension Credit) Regulations, as the case may be;".

(3) In Schedule 3 (sums to be disregarded in the determination of income other than earnings) in paragraph 12(5) for head (a)(**a**) substitute—

"(a) "rates or rent" means eligible rates or rent determined in accordance with—

(i) in respect of rates—

(aa) in the case of a person who has not attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations (non-dependant deductions); or

(bb) in the case of a person who has attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit (State Pension Credit) Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations (non-dependant deductions);

(ii) in respect of rent—

(aa) in the case of a person who has not attained the qualifying age for state pension credit to whom paragraph (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible rent and maximum rent (LHA)) of the Housing Benefit Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations;

(bb) in the case of a person who has attained the qualifying age for state pension credit to whom paragraph (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible rent and maximum rent (LHA)) of the Housing Benefit (State Pension Credit) Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations; or

(cc) where paragraph 4 of Schedule 3 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 (transitional and savings provisions: eligible rent) applies, regulations 13 (rent) and 14 (restrictions on unreasonable payments) of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 72 of the Housing Benefit Regulations or regulation 53 of

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(**a**) Head (a) was substituted by paragraph 12(7)(a)(ii) of Schedule 2 to S.R. 2006 No. 407

the Housing Benefit (State Pension Credit) Regulations, as the case may be;".

(4) In Schedule 3 in paragraph 60(3) and in Schedule 4 (capital to be disregarded) in paragraph 51(3) for head (c)(**a**) substitute—

"(c) "rates or rent" means eligible rates or rent determined in accordance with—

(i) in respect of rates—

(aa) in the case of a person who has not attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations (non-dependant deductions); or

(bb) in the case of a person who has attained the qualifying age for state pension credit, regulation 12 of the Housing Benefit (State Pension Credit) Regulations (rates), less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations (non-dependant deductions);

(ii) in respect of rent—

(aa) in the case of a person who has not attained the qualifying age for state pension credit to whom paragraph (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible rent and maximum rent (LHA)) of the Housing Benefit Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 72 of those Regulations;

(bb) in the case of a person who has attained the qualifying age for state pension credit to whom paragraph (cc) does not apply, regulation 13A (eligible rent), 13B (eligible rent and maximum rent) or 13C (eligible rent and maximum rent (LHA)) of the Housing Benefit (State Pension Credit) Regulations, as the case may require, less any deductions in respect of non-dependants which fall to be made under regulation 53 of those Regulations; or

(cc) where paragraph 4 of Schedule 3 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 (transitional and savings provisions: eligible rent) applies, regulations 13 (rent) and 14 (restrictions on unreasonable payments) of the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations as set out in paragraph 5 of that Schedule less any deductions which fall to be made in respect of non-dependants under regulation 72 of the Housing Benefit Regulations or regulation 53 of the Housing Benefit (State Pension Credit) Regulations, as the case may be.".

**Amendment of the Consequential Provisions Regulations**

**6.** In Schedule 3 to the Consequential Provisions Regulations(**b**) (transitional and savings provisions)—

(a) in paragraph 4—

(i) after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1)(a) shall not apply to—

(a) any determination of a person's eligible rent in a case where the Executive is required to determine a maximum rent (LHA) by virtue of regulation 14C of the

(**a**) Head (c) was respectively substituted by paragraph 12(7)(b)(ii) and (8)(b)(ii) of Schedule 2 to S.R. 2006 No. 407
(**b**) To which there are amendments not relevant to these Regulations

Housing Benefit Regulations or, as the case may be, regulation 14C of the Housing Benefit (State Pension Credit) Regulations; or

(b) any subsequent determination of his eligible rent.", and

(ii) in sub-paragraph (9)—

(aa) before the definition of "exempt accommodation" insert—

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

(a) regulations 13A (eligible rent), 13B (eligible rent and maximum rent), 13C (eligible rent and maximum rent (LHA)); 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;"; and

(bb) after the definition of "previous beneficiary" insert—

""relevant authority" means an authority administering housing benefit;"; and

(b) in paragraph 8—

(i) in sub-paragraph (1) for "amendments" substitute "amendment", and

(ii) for sub-paragraph (2) substitute—

"(2) In paragraph (3) of regulation 14 at the end add "plus 50 per cent. of the amount by which the claim-related rent exceeds the local reference rent".".

**Revocations**

**7.** Regulation 31(1) of the Housing Benefit (Abolition of Benefit Periods Amendment) Regulations (Northern Ireland) 2004(**a**) and paragraphs 7(4)(a) and (7)(a)(i) and 12(5)(b), (6)(b), (7)(a)(ii) and (b)(ii) and (8)(b)(ii) of Schedule 2 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006(**b**) are revoked.

Sealed with the Official Seal of the Department for Social Development on 11th March 2008
(L.S.)

*John O'Neill*
A senior officer of the Department for Social Development

(**a**) S.R. 2004 No. 144
(**b**) S.R. 2006 No. 407

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend various sets of Regulations in connection with the introduction of local housing allowance arrangements in housing benefit from 7th April 2008.

Regulation 1 provides for the citation, commencement and interpretation of the Regulations. The amendments in these Regulations will have effect in relation to any case at the same time as amendments made by the Housing Benefit (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008 or the Housing Benefit (State Pension Credit) (Local Housing Allowance) (Amendment) Regulations (Northern Ireland) 2008 (collectively, "the LHA Regulations").

Regulation 2 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 to update a cross reference so as to take account of an amendment made by the LHA Regulations.

Regulation 3 amends the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001. Regulation 3(3) inserts a new regulation 7A which requires the Northern Ireland Housing Executive ("the Executive") to make a decision when it is required to determine a maximum rent (LHA), or where 52 weeks have elapsed since the previous decision under regulation 15 of the Housing Benefit Regulations (Northern Ireland) 2006 or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006. This is to ensure that a claimant's eligible rent is updated annually using a new local housing allowance rate or an Executive decision under that regulation 15. The new regulation also requires the Executive to make a decision where a change of circumstances which does not need to be notified by the claimant occurs. Regulation 3(2) and (4) makes amendments relating to the insertion of the new regulation 7A. Regulation 3(5) amends the Schedule to make it clear that no appeal lies against any part of a decision which is based on a broad rental market area determination or local housing allowance determination made by the Executive under the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008, or a decision made by virtue of, or as a consequence of, a substantial part of the rent under the tenancy being fairly attributable to board and attendance.

Regulation 4 amends the Discretionary Financial Assistance Regulations (Northern Ireland) 2001. Regulation 4(2) ensures that discretionary housing payments are available in local housing allowance cases. Regulation 4(3) updates cross references so as to take account of amendments made by the LHA Regulations and makes a minor drafting amendment.

Regulation 5 amends the Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004 to replace definitions of "rates or rent" with definitions which take account of amendments by the LHA Regulations.

Regulation 6 amends the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 to make minor amendments to the transitional and savings provisions set out in Schedule 3 so as to take account of amendments made by the LHA Regulations.

Regulation 7 makes consequential revocations.

Section 129A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and paragraph 4(3A) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, some of the enabling provisions under which these Regulations are made, were respectively inserted by section 30(2) and (3) of the Welfare Reform Act (Northern Ireland) 2007 ("the Welfare Reform Act"). Section 30(2) and (3) was brought into operation on 10th March 2008, for the purpose only of authorising the making of regulations, and on 7th April 2008, in so far as not already in operation, by virtue of the Welfare Reform (2007 Act) (Commencement No. 3) Order (Northern Ireland) 2008 (S.R. 2008 No. 93 (C. 3)). As these Regulations are consequential upon section 30(2) and (3) of the Welfare Reform Act and are made before the end of the period of 6 months of the coming into operation of that provision they are, accordingly,

exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from prior reference to the Social Security Advisory Committee.

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