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(**a**) and sections 5(1)(q) and (5) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and now vested in it(**c**).

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

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(**e**) (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 as set out in paragraph 5 of that Schedule(**f**) (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;

(**a**) 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)

(**b**) 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))

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

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

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

(**f**) Regulation 13, as set out in paragraph 5(1), was amended by regulation 9 of S.R. 2007 No. 196

(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 (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(**b**);

"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(**c**).

(6) The Interpretation Act (Northern Ireland) 1954(**d**) 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)(**e**) (interpretation)—

(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;

(**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. 2006 No. 407

(**c**) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2007 Nos. 196 and 266

(**d**) 1954 c. 33 (N.I.)

(**e**) To which there are amendments not relevant to these 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(**a**);";

(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;

"registered housing association" means a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992(**b**);"; 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**) S.R. 2008 No. 100
(**b**) S.I. 1992/1725 (N.I. 15)

(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)(**a**); 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

(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).

(**a**) Paragraph (3) was amended and paragraph (6A) was inserted by regulation 8(3) of S.R. 2007 No. 196

(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—

(i) the determination of a maximum rent (LHA) by virtue of regulation 14C(2)(d);

(ii) the determination of a maximum rent (LHA) by virtue of regulation 14C(3), or

(iii) the determination of a maximum rent by virtue of regulation 14 or an eligible rent under regulation 13A.

(3) Subject to paragraph (7), where the Executive is required to determine a maximum rent (LHA) by virtue of regulation 14C(2)(a), (b) or (d)(i) or (ii) and the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any linked person, the eligible rent shall be—

(a) either—

(i) the eligible rent which applied on the day before the death occurred, or

(ii) in a case where there was no eligible rent, subject to regulation 13A(3), (4) and (7), the reckonable rent due on that day; or

(b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent determined in accordance with sub-paragraph (a).

(4) For the purpose of paragraph (3), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 is satisfied and for that purpose paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.

(5) Subject to paragraphs (6) and (7), where the Executive is required to determine a maximum rent (LHA) by virtue of regulation 14C(2)(a) or (b) and the Executive is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, the eligible rent shall be—

(a) an eligible rent determined in accordance with regulation 13A(2); or

(b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent referred to in sub-paragraph (a).

(6) Paragraph (5) shall not apply where a 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.

(7) Where a person's eligible rent has been determined in accordance with—

(a) paragraph (3)(a), it shall apply until the first of the following events occurs—

(i) the period of 12 months from the date of death has expired;

(ii) the Executive determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 14C(2)(d)(iii);

(iii) the determination of an eligible rent in accordance with paragraph (3)(a) in relation to a subsequent death, or

(iv) the determination of a maximum rent by virtue of regulation 14 or an eligible rent under regulation 13A;

(b) paragraph (5)(a), it shall apply until the first of the following events occurs—

(i) the first 13 weeks of the claimant's award of housing benefit have expired;

(ii) the Executive determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 14C(2)(d)(iii);

(iii) the determination of an eligible rent in accordance with paragraph (3)(a), or

(iv) the determination of a maximum rent by virtue of regulation 14 or an eligible rent under regulation 13A.

(8) Where an eligible rent ceases to apply by virtue of paragraph (7)(a)(i) or (b)(i) the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (3)(a) and (5)(a).".

(7) For regulation 14(**a**) (maximum rent) substitute—

"Maximum rent

14.—(1) Where the Executive has made a decision in accordance with Schedule 2(**b**), the maximum rent shall be determined in accordance with paragraphs (2) to (6).

(2) In a case where a claim-related rent has been decided, but a local reference rent is not required, the maximum rent shall be that claim-related rent.

(3) Subject to the limit specified in paragraph (4), in a case where both a local reference rent and a claim-related rent has been decided, the maximum rent shall be the local reference rent.

(4) In a case to which paragraph 8 of Schedule 3 to the Consequential Provisions Regulations applies, where a local reference rent has been decided, the maximum rent shall not exceed twice that local reference rent.

(5) Where the maximum rent is derived from—

(**a**) Regulation 14 was amended by regulation 8(4) of S.R. 2007 No. 196 and regulation 4(4) of S.R. 2007 No. 266
(**b**) Schedule 2 was amended by regulation 4(5) of S.R. 2007 No. 266

(a) a claim-related rent and an ineligible amount in respect of meals has been included in that claim-related rent; or

(b) a local reference rent and an ineligible amount in respect of meals has been included in that local reference rent,

in determining the maximum rent the Executive shall deduct an amount determined in accordance with paragraph 2 of Schedule 1(**a**) in respect of meals.

(6) This regulation is subject to regulations 14A and 14B.

(7) In this regulation—

"claim-related rent" means the rent decided by the Executive under paragraph 6 of Schedule 2;

"local reference rent" means the rent decided by the Executive under paragraph 4 of Schedule 2.

Protection on death and 13 week protection

14A.—(1) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of a linked person, the maximum rent shall be either—

(a) the maximum rent which applied before the death occurred; or

(b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(2) For the purposes of paragraph (1), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 is satisfied and for that purpose sub-paragraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(3) Subject to paragraph (4), where the Executive is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant's award of housing benefit.

(4) Paragraph (3) shall not apply where a 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.

Change in reckonable rent

14B.—(1) In a case where—

(a) the Executive has determined a maximum rent under regulation 14 or 14A; and

(b) during the period for which that maximum rent applies the reckonable rent in respect of the dwelling by reference to which that maximum rent was determined is reduced to a sum which is less than that maximum rent,

the maximum rent shall be reduced to an amount equal to the reduced reckonable rent.

(2) This paragraph applies in a case where—

(a) the Executive has made a decision under regulation 16(1);

(b) subsequent to that decision the reckonable rent for that dwelling is changed; and

(c) a maximum rent is to be determined in relation to a claim for housing benefit by a claimant.

(**a**) The amounts in paragraph 2 were substituted by Article 20(4)(a) of S.R. 2007 No. 153

(3) In a case to which paragraph (2) applies, where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if the reckonable rent had not changed, the maximum rent shall be the reckonable rent as so reduced.

(4) In any other case to which paragraph (2) applies, the Executive shall treat the reckonable rent to be that applicable to the decision referred to in paragraph (2)(a).

When a maximum rent (LHA) is to be determined

14C.—(1) The Executive shall determine a maximum rent (LHA) in accordance with regulation 14D in any case where paragraphs (2) or (3) apply.

(2) This paragraph applies where the Executive has received—

(a) a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;

(b) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;

(c) in relation to an award of housing benefit where the eligible rent was determined without reference to regulation 14D, a notification of a change of dwelling (as defined in regulation 2) where the change occurs on or after 7th April 2008; or

(d) in relation to an award of housing benefit where a maximum rent (LHA) was determined in accordance with regulation 14D—

(i) notification of a change of a kind which affects the category of dwelling applicable to the claim;

(ii) notification of the death of a linked person, where the notification does not fall within head (i), or

(iii) notification of a change of dwelling.

(3) This paragraph applies on the anniversary of the LHA date.

(4) Where the LHA date is 29th February, the anniversary of the LHA date shall be 28th February.

(5) This regulation does not apply in a case where—

(a) the landlord is a registered housing association;

(b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (savings provision) applies;

(c) the tenancy is an excluded tenancy under paragraph 4 or 5 of Schedule 3(**a**);

(d) the claim or award relates to—

(i) periodical payments of a kind falling within regulation 13(1) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home, or

(ii) rent payable in relation to a hostel; or

(e) a substantial part of the rent under the tenancy is fairly attributable to board and attendance.

(6) In this regulation "the LHA date" means the date by reference to which the local housing allowance used to determine the maximum rent (LHA) was identified.

Determination of a maximum rent (LHA)

14D.—(1) Subject to paragraphs (3) to (9), the maximum rent (LHA) shall be the local housing allowance determined by virtue of regulation 3(2) or (4)(a) of the Executive Determinations Regulations which is applicable to—

(**a**) Paragraph 4 was amended by regulation 4(6) of S.R. 2007 No. 266

(a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and

(b) the category of dwelling which applies at the relevant date in accordance with paragraph (2).

(2) The category of dwelling which applies is—

(a) the category specified in paragraph 1(1)(a) of the Schedule to the Executive Determinations Regulations (one bedroom shared accommodation) where sub-paragraph (b) does not apply because neither sub-paragraph (b)(i) nor (ii) are satisfied in the claimant's case and—

(i) neither the claimant nor his partner (where he has one) is a person to whom paragraph 6 of Schedule 4 applies, or

(ii) the claimant's partner is not a care leaver;

(b) the category specified in paragraph 1(1)(b) of the Schedule to the Executive Determinations Regulations (one bedroom self-contained accommodation) where that applies in the claimant's case at the relevant date in accordance with the size criteria as set out in paragraph (3) and—

(i) the claimant (together with his partner where he has one) has the exclusive use of 2 or more rooms, or

(ii) the claimant (together with his partner where he has one) has the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking,

and in this sub-paragraph "room" means a bedroom or room suitable for living in except for a room which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;

(c) in any other case, the category which corresponds with the number of bedrooms to which the claimant is entitled in accordance with paragraph (3).

(3) The claimant shall be entitled to one bedroom for each of the following categories of occupier (and each occupier shall come within the first category only which applies to him)—

(a) a couple;

(b) a person who is not a child;

(c) 2 children of the same sex;

(d) 2 children who are less than 10 years old;

(e) a child.

(4) The Executive shall determine —

(a) the cap rent (in accordance with the definition in paragraph (10)); and

(b) whether the cap rent exceeds the applicable local housing allowance.

(5) Where the applicable local housing allowance exceeds the cap rent, for the purpose of determining the appropriate maximum housing benefit, the amount of the claimant's liability shall be the amount of the applicable local housing allowance.

(6) Where paragraph (5) applies, the maximum rent (LHA) shall be the lower of—

(a) the applicable local housing allowance; or

(b) the amount equal to the cap rent determined in accordance with paragraph (4)(a) plus £15.

(7) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (2)(c) has been determined, the Executive shall—

(a) make local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market area at the relevant date; and

(b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.

(8) Subject to paragraph (9), where—

(a) the Executive receives a request from a person stating that—

(i) he is contemplating occupying as his home a dwelling which contains a specified number of bedrooms, exceeding 5, and

(ii) that if he does so, he is likely to claim housing benefit; and

(b) no local housing allowance determination is in effect for a broad rental market area for the category of dwelling containing the number of bedrooms specified in the request,

the Executive shall make local housing allowance determinations for each broad rental market area for the category of dwelling containing the number of bedrooms specified in the request, and in this paragraph "bedroom" has the meaning specified in paragraph 1(2) of the Schedule to the Executive Determinations Regulations.

(9) The request must—

(a) be made on a form approved by the Executive for the purpose of making a request under paragraph (8);

(b) be properly completed; and

(c) contain the following matters—

(i) the signature of the prospective occupier;

(ii) the signature of the person to whom the prospective occupier would incur liability to make such payments;

(iii) a statement that the person in head (ii) agrees to the application being made for that determination, and

(iv) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit.

(10) In this regulation—

"cap rent" means the aggregate of such payments specified in regulation 13(1) which the claimant is liable to pay, or is treated as liable to pay by virtue of regulation 8, subject to regulation 13A(3), (4) and (7);

"care leaver" means a person who has not attained the age of 22 and—

(a) has ceased to be the subject of a care order made pursuant to Article 50(1)(a) of the Children Order which had previously been made in respect to him either—

(i) after he attained the age of 16 years, or

(ii) before he attained the age of 16 years, but had continued after he attained that age; or

(b) was formerly provided with accommodation under Article 21 of the Children Order;

"occupiers" means the persons whom the Executive is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant's household;

"relevant date" means, as the case may require—

(a) the date of the claim to which the claim or relevant information referred to in regulation 14C(2)(a) or (b) relates;

(b) the date of the change of dwelling, change which affects the category of dwelling, or date of death, to which a notification referred to in regulation 14C(2)(c) or (d) relates; or

(c) the date on which the anniversary of the LHA date referred to in regulation 14C(3) falls;

"tenancy" includes a licence to occupy premises, and reference to a tenant or any other expression appropriate to a tenancy shall be construed accordingly.

Publication of local housing allowances

14E. The Executive shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the Executive.

Amended determinations

14F.—(1) This regulation applies where a decision has been revised in consequence of an amended broad rental market area determination or amended local housing allowance determination.

(2) Where that amended determination has led to a reduction in the maximum rent (LHA) applicable to a claimant, the amended determination shall be a change of circumstances in relation to that claimant.

(3) Where that amended determination has led to an increase in the maximum rent (LHA) applicable to a claimant, the amended determination shall have effect in place of the original determination.".

(8) In regulation 15(1) (decisions) after "rent allowance" insert "where a maximum rent (LHA) does not fall to be determined under regulation 14C".

(9) In regulation 16 (pre-tenancy decisions)—

(a) for paragraph (1) substitute—

"(1) Except in the case where any liability to make payments in respect of a dwelling would be to the Executive, a decision shall be made by the Executive of the amount of rent which may be used in the calculation of housing benefit, where a request is received from a person ("the prospective occupier"), on a properly completed form approved for the purpose by the Executive, which includes the specified matters and any of the circumstances specified in regulation 14C(5)(a) to (d) apply."; and

(b) in paragraph (5)—

(i) omit the definition of "registered housing association", and

(ii) at the end add—

""specified matters" means—

(a) the signature of the prospective occupier;

(b) the signature of the person to whom the prospective occupier would incur liability to make such payments;

(c) a statement that the person in paragraph (b) agrees to the application being made for that decision; and

(d) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit.".

(10) In regulation 71(1)(b) (payment on account of a rent allowance) after "Schedule 2" add "or, as the case may be, relevant determination made by the Executive in accordance with the Executive Determinations Regulations".

(11) In regulation 73 (circumstances in which payment is to be made to a landlord or the Department of Finance and Personnel) after paragraph (2) insert—

"(2A) In a case where—

(a) the Executive has determined a maximum rent (LHA) in accordance with regulation 14D; and

(b) the rent allowance exceeds the amount which the claimant is liable to pay his landlord by way of rent,

any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 74 may include all or part of any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent but shall not include any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent and arrears of rent.".

(12) In regulation 79 (person from whom recovery may be sought)—

(a) after paragraph (2) insert—

"(2A) Where an overpayment is made in a case where the Executive has determined a maximum rent (LHA) in accordance with regulation 14D, and the housing benefit payable exceeds the amount which the claimant is liable to pay his landlord by way of rent, the Executive must not recover from the landlord more than the landlord has received."; and

(b) in paragraph (3) for "paragraph (1)" substitute "paragraphs (1) and (2A)".

(13) In Schedule 2 (decisions of rent payable)—

(a) in paragraph 6—

(i) in sub-paragraph (1) for "means" to the end substitute "means the claim-related rent decided by the Executive in accordance with paragraph (2A).";

(ii) omit sub-paragraph (2);

(iii) after sub-paragraph (1) insert—

"(2A) The Executive shall decide that the claim-related rent is—

(a) where it makes a decision under sub-paragraph (2) of paragraph 1, sub-paragraph (2) of paragraph 2 and sub-paragraph (3) of paragraph 3, the lowest of the 3 rents decided under those sub-paragraphs;

(b) where it makes a decision under only 2 of the sub-paragraphs referred to in head (a), the lower of the 2 rents decided under those sub-paragraphs;

(c) where it makes a decision under only one of the sub-paragraphs referred to in head (a), the rent decided under that sub-paragraph;

(d) where it does not make a decision under any of the sub-paragraphs referred to in head (a), the rent payable under the tenancy of the dwelling at the relevant time.", and

(iv) in sub-paragraph (3) omit "Where the dwelling is not in a hostel,"; and

(b) in paragraph 7(1) for "regulation 13(3)" substitute "regulation 13A(2)".

Revocations

3. Regulation 8(3) and (4) of the Social Security and Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2007(**a**) and regulation 4(4) of the Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 2007(**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. 2007 No. 196
(**b**) S.R. 2007 No. 266

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 in connection with the introduction of local housing allowance.

Local housing allowance arrangements are a way of determining housing costs eligible to be met by housing benefit for certain cases ("local housing allowance cases") using local housing allowances determined by the Northern Ireland Housing Executive ("the Executive") under the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008.

Regulation 1 provides for the citation, commencement and interpretation of the Regulations. The Regulations come into operation from 7th April 2008, except for cases to which regulation 1(2) applies. Those are existing cases which will continue to be dealt with under the Regulations as in operation immediately before 7th April 2008, until one of the triggers for determining the amount of rent eligible to be met by housing benefit referred to in regulation 1(3) applies, or 6th April 2009. In certain circumstances, such as a change of dwelling, an existing case will become a local housing allowance case.

Regulation 2:

replaces regulation 13(3) to (7) with regulations 13A, which makes provision for eligible rent for cases where it is based on the claimant's actual rent, and 13B, which makes provision for eligible rent where a maximum rent is calculated in accordance with regulation 14;

inserts regulation 13C which makes provision for eligible rent where a maximum rent (LHA) is calculated in accordance with regulation 14D;

replaces regulation 14, with minor amendments, with regulations 14 to 14B;

inserts regulations 14C, which provides when a maximum rent (LHA) is to be determined, 14D, which makes provision about the way in which a maximum rent (LHA) is to be determined, 14E, which provides for the publication of local housing allowances, and 14F, which provides from when a decision revised as a result of an amended broad rental market area determination or amended local housing allowance determination is to have effect;

amends regulations 15 and 16 to provide that those regulations do not apply to local housing allowance cases;

amends regulation 73 to provide that, in a local housing allowance case where direct payment of an amount of housing benefit is made to the landlord, that amount must not exceed the amount the claimant is liable to pay his landlord as rent and arrears of rent;

amends regulation 79 to provide that where a claimant's housing benefit exceeds the amount he is liable to pay to the landlord as rent and there is an overpayment that is recoverable from the claimant's landlord, the Executive cannot recover from the landlord more than the amount that was paid to him.

Regulation 3 makes consequential revocations.

Section 129A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, one of the enabling provisions under which these Regulations are made, was inserted by section 30(2) of the Welfare Reform Act (Northern Ireland) 2007 ("the Welfare Reform Act"). Section 30(2) 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) 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, from prior reference to the Social Security Advisory Committee.

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