STATUTORY INSTRUMENTS

1986 No. 430

LOCAL GOVERNMENT, ENGLAND AND WALES
LOCAL GOVERNMENT, SCOTLAND

The Housing Benefits (Subsidy) Amendment Order 1986

Made - - - - -	5*th March* 1986
Laid before Parliament	10*th March* 1986
Coming into Operation	31*st March* 1986

The Secretary of State for Social Services, with the consent of the Treasury **(a)**, in exercise of the powers conferred on him by section 32(2) of the Social Security and Housing Benefits Act 1982 **(b)** and of all other powers enabling him in that behalf, after consultation in accordance with section 36(1) of that Act with organisations appearing to him to be representative of authorities concerned, hereby makes the following Order:—

Citation and commencement

1. This Order, which may be cited as the Housing Benefits (Subsidy) Amendment Order 1986, shall come into operation on 31st March 1986.

Amendment of the Housing Benefits (Subsidy) Order 1985

2.—(1) The Housing Benefits (Subsidy) Order 1985 **(c)** shall be amended in accordance with the following provisions of this article.

(2) In article 1(2) (interpretation) for the words "the Housing Benefits Regulations 1982" there shall be substituted the words "the Housing Benefits Regulations 1985" **(d)**.

(3) In article 2 (amount of subsidy), before the words "The amount of subsidy" there shall be inserted the words "Subject to section 32(2) of the Act" and for the words "articles 3 and 4" there shall be substituted the words "articles 3, 4 and 6".

(4) In article 3 (rebates or allowances) for the words "the rebates or allowances" to the end there shall be substituted the words "the total of rebates or allowances granted by that authority during the year or, in the case of an authority administering a local scheme in accordance with section 30 of the Act, the total of rebates or allowances which would have been granted by that authority during the year under the statutory scheme less, in either case, any deductions specified in article 5 of this Order which fall to be made from that total".

(a) *See* section 32(2) of the Social Security and Housing Benefits Act 1982 (c. 24).
(b) 1982 c. 24, as amended by section 22 of the Social Security Act 1985 (c. 53).
(c) S.I. 1985/440.
(d) S.I. 1985/677.

(5) The following articles shall be substituted for article 5 (modification of the scheme):—

"*Deductions from subsidy in respect of rebates or allowances*

5.—(1) The deductions referred to in article 3 of this Order are deductions of the following amounts:—

(*a*) where a tenant of an authority is or, if he were not in receipt of a rent rebate, would be able to choose whether or not to be provided with any services, facilities or rights or to choose whether or not to provide those services, facilities or rights for himself (whether or not in return for an award or grant from the appropriate authority) while continuing to occupy or, as the case may be, when entering into occupation of a dwelling as his home either under his existing tenancy agreement or by entering into a new agreement, the amounts attributable to those items (whether or not those amounts form part of the sum fixed as rent or are otherwise reserved as rent);

(*b*) where a person is, will be or may become entitled to a rent-free period which does not fall to be taken into account in calculating the amount of rent rebate to which he is entitled in accordance with the Housing Benefits Regulations 1985, the amount of rebate which is payable to him for the period beginning with the date of the award and equal to the length of the award;

(*c*) where an authority charges a person to whom regulation 9 applies a rent higher than that charged to any of its other tenants in respect of a similar dwelling for a reason relating to the fact that regulation 9 applies to him, the amount of rebate to which he is entitled by reference to the additional amount of the rent;

(*d*) any amounts awarded by an authority under regulation 25 of the Housing Benefits Regulations 1985;

(*e*) where an authority makes an award to one of its tenants in receipt of housing benefit in the form of a payment of money or money's worth, a credit to the person's rent account, or in some other form, and whether or not the person is immediately entitled to the award, the amount of the award, but no such deduction shall be made in respect of an award—

(i) made to a tenant for a reason unrelated to the fact that he is a tenant,

(ii) made under a statutory obligation,

(iii) for a purpose specified in or under statute, made in exercise of a discretion where the circumstances in which that discretion may be exercised are also specified as aforesaid,

(iv) made as reasonable compensation for work actually carried out by the tenant in carrying out reasonable repairs or redecoration which the authority would otherwise have carried out or be required to carry out,

(v) of a reasonable amount made as compensation for loss, damage or inconvenience of a kind which occurs only irregularly suffered by the tenant by virtue of his occupation of his home.

Overpayment of rebates or allowances

6.—(1) Where an authority makes an overpayment of a housing benefit, subsidy shall be payable in accordance with paragraph (2) of this article.

(2) Subsidy under paragraph (1) of this article shall be payable in certificated cases only, and in such a case the amount of subsidy shall be the following percentage of the difference between the amount of the overpayment, and the amount, if any, of the overpayment recovered by the authority:—

(*a*) in respect of an overpayment caused by an error of the authority making the payment, 100%; and

(*b*) in respect of any other overpayment—

(i) in the case of an authority referred to in paragraph 1 or 2 of the Schedule to this Order, 100%, and

(ii) in the case of an authority referred to in paragraph 3 of the Schedule to this Order, 100.6%:

so however that the total amount of subsidy payable to an authority during the year in respect of an overpayment to which sub-paragraph (*a*) above applies shall not exceed 0.19% of the aggregate of the total of rebates and allowances granted by that authority during the year in certificated cases and the total of any overpayments to which sub-paragraph (*b*) above applies made by that authority during the year less any amount of those overpayments recovered by that authority.

(3) In this article "overpayment" means any amount paid by way of a housing benefit to which there was no entitlement under the Housing Benefits Regulations 1985, including any excess of housing benefit actually paid over the amount to which there was in fact entitlement under those regulations and including any amount in excess of the amount, if any, of benefit which would have been due had a certificate under regulation 9 of those regulations not been issued or, as the case may be, had such a certificate been cancelled.".

Signed by authority of the Secretary of State for Social Services.

Tony Newton,
Minister of State,
Department of Health and Social Security.

4th March 1986.

We consent,

Donald Thompson,
A. G. Hamilton,
Two of the Lords Commissioners of
Her Majesty's Treasury.

5th March 1986.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the Housing Benefits (Subsidy) Order 1985 ("the Subsidy Order"), which sets out the manner in which subsidy payable under section 32 of the Social Security and Housing Benefits Act 1982 ("the Act") to authorities who grant rate rebates, rent rebates or rent allowances under the Act is calculated, to take account of the amendments to section 32 made by section 22 of the Social Security Act 1985 which enables the Secretary of State to prescribe deductions from subsidy which would otherwise be payable in accordance with section 32 as well as to deduct any amount which he considers it unreasonable to meet out of money provided by way of such subsidy.

Article 2(4) of this Order substitutes a new article 5 in the Subsidy Order which prescribes, for the purpose of calculating subsidy, deductions from the total of rebates or allowances which are granted by an authority under the statutory scheme under section 28 of the Act or, in the case of an authority administering a local scheme under section 30 of the Act, from the total of rebates or allowances which would have been granted by that authority under the statutory scheme.

The Order also inserts a new article 6 into the Subsidy Order so as to enable subsidy to be paid in respect of overpayments of benefit in certain cases. Those cases and the method of calculating the amount of subsidy are set out in that article 6.

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