

Draft laid before Parliament under section 97(3) of the Welfare Reform Act 2012, for approval by resolution of each House of Parliament.

STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

Housing Benefit (Benefit Cap) Regulations 2012

Made - - - - *****

Coming into force - - *[8th April 2013]*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 96(1), (4)(a), (b), (c) and (g), (5) and (10) and 97(1) of the Welfare Reform Act 2012(1).

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(2), 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 Housing Benefit (Benefit Cap) Regulations 2012 and come into force on [8th April 2013].

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

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

(2) In regulation 4 (revision of decisions) after paragraph (7F)(4) 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.”

(3) In regulation 7(2) (decisions superseding earlier decisions) after sub-paragraph (q)(5) insert—

(1) 2012 c.5.

(2) 1992 c.5. Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c.52) and s. 69(6) of the Child Support, Pensions and Social Security Act 2000.

(3) S.I. 2001/1002.

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

“(r) which as a consequence of regulation 75D of the Housing Benefit Regulations reduces housing benefit to apply the benefit cap of the Housing Benefit Regulations 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)(6) insert—

“(14F) When 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 75F of the Housing Benefit Regulations) reduced.”.

Amendment of the Housing Benefit Regulations 2006

3.—(1) The Housing Benefit Regulations 2006(7) 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 within the meaning of section 1(7) of the Welfare Reform Act;” and

(b) after the definition of “Jobseekers Act” insert—

““jobseeker’s allowance” means a jobseeker’s allowance within the meaning of section 1(4) of the Jobseekers Act;”.

(3) After regulation 72D(8) (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 was 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 was 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—

(5) Sub-paragraph (q) was inserted by S.I. 2010/1907 and amended by S.I. 2010/2430.

(6) Paragraph (14E) was inserted by S.I. 2010/1907 .

(7) S.I. 2006/213.

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

“PART 8A

Benefit cap

Circumstances in which a benefit cap will apply

75A. Unless regulation 75E applies, a benefit cap applies where the relevant authority makes a determination that 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; and
- (b) in any other case, the claimant is entitled,

during the reference period 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, 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).

Manner of calculating the amount of welfare benefits

75C.—(1) Where the amount of a welfare benefit payable is less than the amount of entitlement, the relevant authority must use the amount calculated in accordance with this regulation.

- (2) The relevant authority must use the amount of benefit payable plus the amount of—
 - (a) any deduction in respect of an overpayment of benefit;
 - (b) any deduction pursuant to Schedule 9 of the Social Security (Claims and Payments) Regulations 1987⁽⁹⁾ (deductions from benefit and direct payment to third parties);
 - (c) any deduction pursuant to regulation 5 of the Council Tax (Deductions from Income Support) Regulations 1993⁽¹⁰⁾ (deductions from debtor's income support, state pension credit, jobseeker's allowance or employment and support allowance);
 - (d) any deduction pursuant to regulation 4 of the Fines (Deduction from Income Support) Regulations 1992⁽¹¹⁾ (deductions from offender's income support, state pension credit or jobseeker's allowance);
 - (e) any reduction pursuant to Part 5 of the Jobseeker's Allowance Regulations (sanctions);
 - (f) any reduction pursuant to regulation 8 of the Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011⁽¹²⁾ (consequences of failure to participate in the Scheme);
 - (g) any reduction pursuant to regulation 8 of the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011⁽¹³⁾ (consequences of failure to participate in the Scheme);

⁽⁹⁾ S.I. 1987/1968.

⁽¹⁰⁾ S.I. 1993/494.

⁽¹¹⁾ S.I. 1992/2182.

⁽¹²⁾ S.I. 2001/688.

⁽¹³⁾ S.I. 2011/917.

- (h) any reduction pursuant to regulation 63 of the Employment and Support Allowance Regulations (reduction of employment and support allowance);
- (i) any disqualification or reduction pursuant to the Social Security (Loss of Benefit) 2001(14).

(3) Where child tax credit is subject to a deduction by way of recovery of an overpayment which arose in the previous tax year, the relevant authority must use the amount of child tax credit awarded less the amount of that deduction.

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 the minimum amount.

Exceptions to the benefit cap

75E.—(1) The benefit cap does not apply where—

- (a) the claimant is, or the claimant and the claimant's partner are jointly, entitled to working tax credit;
- (b) subject to paragraph (2), the claimant or the claimant's partner satisfied the condition in regulation 75F(2) on the day preceding the day specified in regulation 75F(1);
- (c) 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;
- (d) the claimant or the claimant's partner is receiving an industrial injuries benefit by virtue of Part 5 of the Act;
- (e) the claimant or the claimant's partner is receiving an attendance allowance;
- (f) the claimant or the claimant's partner is receiving a war pension;
- (g) 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;
- (h) 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 paragraphs (e), (f) or (g) but—
 - (i) that person is not receiving it under regulation 6 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991(15);
 - (ii) it is withheld under article 53 of the Naval, Military and Air Forces etc (Disablement and Death) Pensions Order 2006 (maintenance in hospital or an institution)(16);

(14) S.I. 2001/4022.

(15) S.I. 1991/2740.

(16) S.I. 2006/606.

(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⁽¹⁷⁾;

(2) Where paragraph (1)(b) applies, the benefit cap does not apply for a consecutive period of 39 weeks starting on the day specified in paragraph 75F(1).

(3) In this regulation “war pension” has the meaning in regulation 2 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 consequences of service as members of the armed forces of the Crown;
- (c) a payment which is made 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 forces of the Crown and whose service in such capacity terminated before 31st March 1973 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;
- (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 paragraphs (a) to (c).

39 week exception where the claimant or claimant’s partner was previously in work

75F.—(1) For the purposes of regulation 75E(1)(b) and (2) the period of 39 weeks starts on the day after the last day of the work referred to in paragraph (2) .

(2) The condition referred to in regulation 75E(1)(b) is that the relevant authority is satisfied that—

- (a) for at least 50 weeks out of the 52 weeks immediately preceding that last day of work the person (P)—
 - (i) was engaged in work for payment, or in the expectation of payment; and
 - (ii) was not entitled to income support, a jobseeker’s allowance or an employment and support allowance; and
- (b) in the last full week before the day referred to in paragraph (1) P was engaged in that work for at least 16 hours;

(3) For the purposes of this regulation, P is 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.

Interpretation

75G. For the purposes of regulation 96(10) of the Welfare Reform Act 2012 and this Part—

“couple”—

- (a) where the claimant is a member of a polygamous marriage, means the claimant and the member of the polygamous marriage to whom the claimant was first married; and
- (b) in any other case, has the meaning in regulation 2,

⁽¹⁷⁾ S.I. 1991/2890.

and where the claimant is a member of a polygamous marriage, references to the claimant's partner are to the member of the polygamous marriage to whom the claimant was first married;

"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 calculated in accordance with s. 130 of the Act;
- (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."

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 make amendments to 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 3(5) inserts a new Part 8A into the Housing Benefit Regulations to make provision for the benefit cap. New regulation 75A provides that a benefit cap applies when the amount welfare benefits to which a claimant or a claimant and claimant's partner are entitled exceeds the relevant amount. The relevant amount is defined in new regulation 75F as £350 for a single claimant who is not responsible for a child or young person and £500 for other claimants. Regulation 75F 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 50p, the local authority must reduce housing benefit by such amount as would leave entitlement of 50p.

Regulation 75E provides for exceptions to the benefit cap. These apply where the claimant or the claimant's partner is entitled to working tax credit or is in receipt of 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.

There is also a time-limited exception where the claimant or the claimant's partner was in work for 50 out of the 52 weeks before that work ended. This applies for 39 weeks from the day after the last day in respect of which that person received payment. Regulation 75F makes further provision relating to this exception.

Regulation 75G prescribes the meaning of couple, reference period, relevant amount and welfare benefit for the purposes of section 96 of the Welfare Reform Act 2012.

Regulation 2 of these Regulations makes amendments to 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.

Regulation 3(2) makes consequential amendments to regulation 2. Regulation 3(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.

A full impact assessment has not been published for this instrument as it has no impact on the private sector or civil society organisations.