

A8

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A8 *Savings provisions*

The 50% top-up

CP Regs, Sch 3 para 8

- 8.00 Claimants in the private rented sector who claimed HB **before** 6 October 1997 and were subject to the LRR rules, could get 50% of the difference between the LRR and the appropriate rent to a maximum of twice the LRR, if the appropriate rent was higher than the LRR.

Amdt Regs 1997 Reg 4

Note: In this context, 'appropriate rent' is defined as either the claim-related rent or, if the rent officer has not made such a determination, the contractual rent less any ineligible charges included in it, other than fuel, meals or water charges.

- 8.01 Claimants who were receiving the 50% top-up on 5 October 1997 continue to receive the top-up when renewing their claims, provided they

- remain continuously entitled to HB at the same dwelling, and
- continue to have their HB calculated under the LRR rules

- 8.02 However, entitlement to the 50% top-up stops if

- the claimant
 - moves home, or
 - stops getting HB, or
- a new rent officer determination or a change results in the LRR becoming equal to or more than the claim-related or contractual rent, eg a change to their dwelling

- 8.03 You can consider a claimant to have changed their dwelling if they

- increase or decrease the size of their dwelling, eg if they rent additional or less space from the landlord
- change room in a premises, such as a HMO or hotel
- occupy a houseboat or mobile home and move to a new site

Consider any new claim under the appropriate rules.

- 8.04 Once lost, the 50% top up cannot be regained. Certain claimants who become young individuals may also lose their top-up, eg a claimant previously accommodated by the authority turns 22 years of age.

8.05-8.40

8.05 Someone whose HB was not restricted by the LRR and so did not receive a top-up cannot be awarded the top-up for a subsequent HB award.

8.06-8.19

Claimants moving from sick to work/ training for work - welfare to work

8.20 The Jobcentre Plus office gives everybody who becomes a welfare to work beneficiary a copy of form BF220B or BF220D. The form shows the date when the beneficiary will have been on the scheme for 52 weeks. It also tells the claimant to show the letter to the authority if they are making a new claim for HB before that date.

8.21-8.29

Transitional protection regulations for HB

8.30 From 5 October 1998, HB regulations were amended to allow for linking periods of up to 52 weeks for certain claimants who move from incapacity to work or training for work.

8.31 The regulations affected by this change are the

- **1995 regulations**, ie regulation 10 of the Housing Benefit (General) Amendment Regulations 1995 [SI 1995 No 1644], and
- **1997 regulations**, ie regulation 4 of the Housing Benefit and Council Tax Benefit (General) Amendment Regulations 1997 [SI 1997 No 852]

8.32-8.39

1995 regulations

8.40 Regulation 10 of the 1995 regulations allows certain HB claimants to be assessed under regulation 10 and 11 of the Housing Benefit (General) Regulations 1987 as they were in force on 1 January 1996, the so called 'old' scheme. Regulation 4 of the 1997 regulations allows certain claimants to keep the 50% top-up between the local reference rent and the property specific rent.

8.41 From 5 October 1998, transitional protection is extended to cover breaks in claims during the first 52 week on the welfare to work scheme. To benefit from this extension, the claimant must

SS (Welfare to Work) Regs 1998, Reg 11

- have been receiving HB continuously for the same dwelling between 1 January 1996 and the time they become a welfare to work beneficiary, or
- be treated as being continuously entitled and receiving HB under another provision of regulation 10 of the 1995 regulations

8.42 The transitional protection extension applies if, within the 52 week period, a welfare to work beneficiary re-applies for HB following **any** break in HB entitlement. Under the new provisions, if the claimant reclaims from

- **the original dwelling**, their claim is determined under regulations 10 and 11 of the HB regulations as they stood at 1 January 1996
- **a different dwelling**, their claim can only be determined under regulations 10 and 11 of the HB regulations as they stood at 1 January 1996 if they had to move because the original dwelling became uninhabitable as a result of fire, flood, explosion or natural catastrophe

Consequential Provisions Regs Sch 3 Para 5

8.43 Although a beneficiary's partner cannot benefit directly from the 52 week linking period, they can still gain from the other provisions of regulation 10 of the 1995 regulations which refer to the 'partner of the previous beneficiary'. These apply when the beneficiary leaves the household within the 52 week period and the former partner makes a new claim for HB within four weeks of them leaving.

8.44 Similarly, if a welfare to work beneficiary dies within the 52 week period and a member of their household makes a claim for HB for the same dwelling within four weeks, they can benefit from the relevant parts of regulation 10 of the 1995 regulations.

8.45-8.69

1997 regulations

8.70 The 1997 regulations allow certain HB claimants to keep the 50% top-up provided they

- were getting the LRR on 5 October 1997, and
- have been continuously entitled to and getting HB for the same dwelling since then

8.71 Regulation 12 of the Social Security (Welfare to Work) Regulations 1998 extends the 1997 transitional protection to certain welfare to work beneficiaries who break their HB claim during the first 52 weeks of the welfare to work period. **Note:** This provision applies equally to claimants whose partner is the welfare to work beneficiary.

8.72-8.149

- 8.72 Under the new provisions, the 50% top-up is protected provided that:
- when the beneficiary joined the Welfare to Work scheme the HB claimant had been getting HB for the same dwelling for a period that included 5 October 1997
 - the claimant re-applies for HB within the 52 week period
- 8.73 Unlike the 1995 regulations, the savings provision in the 1997 regulations only protects the claimant, **and** only if they remain at the same dwelling.

8.74-8.99

Young individuals who claimed before 6 October 1997

- 8.100 Young individuals who claimed before 6 October 1997 may have had the 50% top-up included in the LRR calculation of the maximum rent before comparing it to the SRR. If that led to a maximum rent figure **lower than the SRR**, they keep entitlement to the top-up for so long as that results in a maximum rent below the SRR.
- 8.101 If the maximum rent figure obtained using the 50% top-up resulted in a figure **higher than the SRR**, their HB would be restricted to the SRR. Since the claimant does not actually receive the top-up, they **do not keep the right to have it included in the calculation**. For future HB awards the SRR would be compared to the maximum rent resulting from the LRR calculation **without the 50% top-up, even if this results in a figure less than the SRR**.

8.102-8.149

Care homes and independent hospitals in the private and voluntary sectors - transitional protection

CP Regs, Sch 3 para 9

8.150 Those people in registered homes who retained access to HB before 1 April 1993 fall into three groups

- people in remunerative work. If they were entitled to HB on 31 March 1993, or became entitled, for example through a later successful claim to backdated benefit, they keep that entitlement after 1 April 1993 for as long as they live in the same home and otherwise remain entitled to HB. Once they move away, other than for a period of temporary absence when they can be treated as occupying their accommodation, or are no longer entitled to HB for any reason, they lose their right to transitional protection and no longer have access to HB in respect of a home's fees. HB is not available to people who entered a care home or independent hospital on or after 1 April 1993 in this group

CP Regs, Sch 3 Para 9

- people paying a commercial rent in homes run by a close relative. If they were entitled to HB on 31 March 1993, or became entitled, for example through a later successful claim to backdated benefit, they keep that entitlement after 1 April 1993 for as long as they live in the same home and otherwise remain entitled to HB. Once they move away, other than for a period of temporary absence when they can be treated as occupying their accommodation, or are no longer entitled to HB for any reason, they lose their right to transitional protection and no longer have access to HB in respect of a home's fees. HB is not available to people who entered a care home or independent hospital on or after 1 April 1993 in this group, and

CP Regs, Sch 3 Para 9

- people in a care home or independent hospital who were or became entitled to HB for such accommodation on 29 October 1990. These people have life-long eligibility for HB (provided they satisfy the other conditions of entitlement) under normal rules whilst resident in any type of care home or independent hospital

8.151-8.999