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STATUTORY INSTRUMENTS

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**1993 No. 484**

**The Housing Benefit and Community  
Charge Benefit (Subsidy) Order 1993**

**PART II**

**HOUSING BENEFIT SUBSIDY**

**Interpretation of Part II**

2.—(1) In this Part of this Order, unless the context otherwise requires—

“the 1982 Act” means the Social Security and Housing Benefits Act 1982(1);

“allowance” means a rent allowance;

“authority” means a housing, rating or local authority or, as the case may be, in Scotland, a levying authority;

“board and lodging accommodation” means—

- (a) accommodation provided for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which are both cooked or prepared and consumed in that accommodation or associated premises; or
- (b) accommodation provided in a hotel, guest house, lodging house or some similar establishment,

but it does not include accommodation in a residential care home or nursing home within the meaning of regulation 19(3) of the Income Support (General) Regulations 1987(2) nor in a hostel within the meaning of regulation 12A of the Housing Benefit Regulations(3);

“housing benefit subsidy” means subsidy under section 135(1) of the Act (rate rebate, rent rebate and rent allowance subsidy payable) and under section 30(1A) of the Social Security Act 1986(4)(community charge rebate subsidy payable);

“rebate” means a rent, rate or community charge rebate excluding, in the case of England and Wales, any Housing Revenue Account rebates(5);

“relevant date” has the same meaning as in Schedule 6;

“scheme” means the housing benefit scheme as defined in section 123 of the Social Security Contributions and Benefits Act 1992(6);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(7);

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(1) 1982 c. 24.

(2) S.I. 1987/1967; relevant amending instruments are S.I. 1988/663, 1445, 2022 and 1989/1678.

(3) Regulation 12A was inserted by regulation 5 of S.I. 1990/546.

(4) 1986 c. 50; section 30(1A) was inserted by regulation 5(b) of S.I. 1988/1483. It was only payable in respect of Scotland in 1988/89.

(5) See the definition of “relevant benefit” in section 135(3) of the Act.

(6) 1992 c. 4.

(7) S.I. 1987/1971, amended by S.I. 1988/661, 909, 1444, 1843, 1971, 1989/43, 416, 566, 1017, 1322, 1990/546, 671, 1549, 1657, 1775, 2564, 1991/235, 1599, 2910, 1992/50, 201, 432, 1026, 1101, 1326, 1585 and 2148.

“the Rent Officers Order” means the Rent Officers (Additional Functions) Order 1990(8) or, as the case may be, the Rent Officers (Additional Functions) (Scotland) Order 1990(9);

“the Scottish Regulations” means the Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988(10);

“termination date” has the same meaning as in Schedule 6;

and other expressions shall have the same meanings as in the Housing Benefit Regulations or, as the case may be, the Scottish Regulations.

(2) In this Part of this Order—

“housing benefit qualifying expenditure” means the total of rebates and allowances granted by the authority during the relevant year, less—

- (a) the deductions specified in article 13; and
- (b) where, under subsection (8) of section 134 of the Act(11)(arrangements for housing benefit), the authority has modified any part of the scheme administered by it, any amount by which the total of the rebates or allowances which it granted under the scheme during the relevant year exceeds the total of those which it would have granted if the scheme had not been so modified.

#### **Amount of housing benefit subsidy**

3. The amount of an authority’s housing benefit subsidy for the relevant year—

- (a) for the purposes of section 135(2) of the Act (subsidy in respect of rebates or allowances) shall be the amount or total of the amounts calculated in accordance with article 4;
- (b) for the purposes of section 135(5) of the Act (subsidy in respect of the costs of administering housing benefit) may include an additional sum in respect of the costs of administering housing benefit calculated in accordance with Schedule 1.

#### **Rebates and allowances**

4.—(1) Subject to any adjustment in accordance with paragraph (3), for the purposes of section 135(2) of the Act, an authority’s housing benefit subsidy for the relevant year shall, subject to paragraph (2), be—

- (a) in the case of an authority to which articles 5, 6, 7, 8, 9, 10 and 11 do not apply, 95 per cent. of its housing benefit qualifying expenditure;
- (b) in the case of an authority to which at least one of those articles is relevant an amount equal to the aggregate of—
  - (i) 95 per cent. of so much of its housing benefit qualifying expenditure as remains after deducting from total qualifying expenditure the amount of expenditure attributable to the rebates or allowances to which each of those articles which is relevant applies; and
  - (ii) the appropriate amount calculated in respect of the rebates or allowances under each such article,

plus, in each case, the additions, where applicable, under article 12 but subject, in each case, to the deduction, where applicable, under article 14.

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(8) S.I. 1990/428, amended by S.I. 1991/426.

(9) S.I. 1990/396, amended by S.I. 1991/533.

(10) S.I. 1988/1890, amended by S.I. 1989/43, 361, 972 and 1990/127.

(11) Section 134(8) allows modifications of the housing benefit scheme so as to provide for the disregard from income of a war disablement pension or a war widow’s pension.

(2) Where the authority is the Scottish Homes or a new town corporation in Scotland, its housing benefit subsidy for the relevant year shall include a further sum being—

- (a) in the case of an authority to which sub-paragraph (a) of paragraph (1) applies, 5.5 per cent. of its housing benefit qualifying expenditure, but subject to the relevant maximum specified in column (2) of Schedule 3; or
- (b) in the case of an authority to which sub-paragraph (b) of paragraph (1) applies, 5.5 per cent. of so much of its housing benefit qualifying expenditure as remains after the deductions set out in paragraph (1)(b)(i), but subject to the relevant maximum specified in column (2) of Schedule 3.

(3) Where, during the relevant year there is a period overrun in respect of either rebates or allowances, or both, then the housing benefit subsidy for the authority for that year shall be adjusted by the deduction from the subsidy otherwise due under this article of—

- (a) an amount equal to the percentage, as calculated in accordance with paragraph 2 of Schedule 4, of that part of the housing benefit qualifying expenditure for that authority attributable to expenditure in respect of allowances to the extent that the overrun relates to allowances; and
- (b) an amount equal to the percentage, as calculated in accordance with paragraph 3 of Schedule 4, of that part of the housing benefit qualifying expenditure for that authority attributable to expenditure in respect of rebates to the extent that the overrun relates to rebates.

### **Backdated benefit**

5.—(1) Subject to paragraph (2), where—

- (a) during the relevant year an authority has, under paragraph (15) of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations or paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989(12)(time and manner in which claims are to be made), treated any claim for a rebate or allowance as made on a day earlier than that on which it is made; and
- (b) any part of that authority's housing benefit qualifying expenditure is attributable to such earlier period,

for the purposes of article 4(1)(b)(ii), the appropriate amount for the relevant year in respect of such part shall be 25 per cent. of the housing benefit qualifying expenditure so attributable.

(2) This article shall not apply in a case to which article 9 applies.

### **Disproportionate rent increase**

6.—(1) Except in a case to which paragraph (6) or (7) applies, and for the purposes of article 4(1)(b)(ii), where the average rent increase differential, as calculated in accordance with paragraph (4), for an appropriate authority has a value greater than zero, the appropriate amount for such part of the housing benefit qualifying expenditure as is attributable to rent rebates granted during the relevant year shall be 25 per cent. of that portion of the housing benefit qualifying expenditure as is determined in accordance with paragraph (4).

(2) For the purposes of paragraphs (3) and (4)—

- (a) the value of C shall be determined by dividing B by A where—

A is the average rent charged by the authority to Category A tenants on the first relevant date, and

B is the average rent charged by the authority to Category B tenants on the second relevant date;

(b) the value of F shall be determined by dividing E by D where–

D is the average rent for Category B tenants on the first relevant date, and

E is the average rent for Category B tenants on the second relevant date;

(c) the value of I shall be determined by dividing H by G where–

G is the average rent charged by the authority in respect of Category 1 dwellings on the second relevant date, and

H is the average rent charged by the authority in respect of Category 1 dwellings on the third relevant date; and

(d) the value of L shall be determined by dividing K by J where–

J is the average rent charged by the authority in respect of Category 2 dwellings on the second relevant date,

K is the average rent charged by the authority in respect of Category 2 dwellings on the third relevant date.

(3) In this article the average rent increase differential for each appropriate authority shall be calculated by applying the formula–

$$(C \times I) - (F \times L)$$

where

C, F, I and L each has the value determined in accordance with paragraph (2).

(4) The portion of housing benefit qualifying expenditure attributable to rent rebates granted during the relevant year and referred to in paragraph (1), shall be determined by dividing the average rent increase differential by the product of  $(F \times L)$ , where F and L have the values given to them in paragraph (2) respectively.

(5) In this article–

“average” means the arithmetic mean;

“Category A tenants” means tenants of the authority, other than a specified person, who on the first and second relevant dates were in receipt of rent rebates and were resident at the same address on both dates;

“Category B tenants” means tenants of the authority, other than a specified person, who were not in receipt of rent rebates on the first and second relevant dates but were resident at the same address on both dates;

“Category 1 dwellings” means dwellings rented out by the authority on both the second and the third relevant dates in respect of which, on the third relevant date, the persons, other than a specified person, liable to pay such rent were in receipt of rent rebates;

“Category 2 dwellings” means dwellings rented out by the authority on both the second and the third relevant dates in respect of which, on the third relevant date, the persons, other than a specified person, liable to pay such rent were not in receipt of rent rebates;

“first relevant date” means a date, other than a day falling in a rent free period, determined by the authority, occurring in March 1989;

“second relevant date” means the 11th November 1991;

“third relevant date” means the date in March 1993 which is the same as the first relevant date, but if the date in March 1993 falls in a rent free period the date in March which is closest to it and which does not fall in a rent free period;

“rent” means either—

- (a) the payments specified in sub-paragraphs (a) to (j) in paragraph (1) of regulation 10 of the Housing Benefit Regulations (rent)<sup>(13)</sup>; or
- (b) the eligible rent,

as the authority may determine, provided that wherever the expression “rent” occurs in paragraph (2) it has the same meaning throughout in relation to that authority; and

“a specified person” means a person required to pay an amount to an authority under section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(14)</sup> for accommodation which is board and lodging accommodation.

(6) This article shall not apply in a case to which either article 9 or 10 applies.

(7) In England and Wales this article shall only apply to expenditure attributable to rent rebates granted by new town corporations and the Development Board for Rural Wales.

### **Treatment of high rents**

7.—(1) Subject to paragraphs (3) and (4), where any part of the housing benefit qualifying expenditure of an authority within an area listed in column 1 of Schedule 5 is attributable to any allowance granted in respect of a person whose weekly eligible rent exceeds the threshold specified in relation to that area in column 2 of that Schedule, for the purposes of article 4(1)(b)(ii), the appropriate amount in respect of that allowance shall be calculated in accordance with paragraph (2).

(2) Where paragraph (1) applies—

- (a) if the allowance granted is the same as or is less than the excess of eligible rent over the threshold, the appropriate amount shall be 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such allowance;
- (b) if the allowance granted is greater than the excess of the eligible rent over the threshold, the appropriate amount shall be 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such allowance which is equal to the excess, and 95 per cent. of that part of the housing benefit qualifying expenditure attributable to the balance.

(3) Paragraph (1) shall not apply to an allowance payable by an authority in respect of rents which exceed the threshold—

- (a) which are registered in respect of a dwelling under Part IV, V or VI of the Rent Act 1977<sup>(15)</sup> or Part V, VI or VII of the Rent (Scotland) Act 1984<sup>(16)</sup> or which have been determined by a rent assessment committee in respect of a dwelling under Part I of the Housing Act 1988<sup>(17)</sup> or Part II of the Housing (Scotland) Act 1988<sup>(18)</sup>; or
- (b) which have been referred to the rent officer under the Rent Act 1977 or the Rent (Scotland) Act 1984 but not registered by him because he is satisfied that the rent is at or below the fair rent level; or
- (c) where a rent assessment committee has not made a rent determination because they are satisfied that the rent is at or below the fair rent level and a rent officer is not required to

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<sup>(13)</sup> Regulation 10(1) was amended by S.I. 1988/1971.

<sup>(14)</sup> 1987 c. 26.

<sup>(15)</sup> 1977 c. 42.

<sup>(16)</sup> 1984 c. 58.

<sup>(17)</sup> 1988 c. 50.

<sup>(18)</sup> 1988 c. 43.

make a determination under paragraph 7(2) of Schedule 1 of the Rent Officers Order(19); or

- (d) where the relevant tenancy is one to which, before 15th January 1989, the provisions of sections 56 to 58 of the Housing Act 1980(20)(assured tenancies) applied; or
  - (e) where the relevant dwelling is situated within the area of a housing action trust established under Part III of the Housing Act 1988(21)(Housing Action Trust Areas); or
  - (f) where the dwelling is an excluded tenancy by virtue of paragraph 3 or 10 of Schedule 1A to the Housing Benefit Regulations(22)(excluded tenancies).
- (4) This article shall not apply in a case to which article 8 or 9 applies.

### **Rent officers' determinations**

8.—(1) Where this article applies, in respect of that part of the housing benefit qualifying expenditure which is attributable to allowances granted for the period beginning on the relevant date and ending on the termination date, the appropriate amount, for the purposes of article 4(1)(b)(ii), shall be calculated in accordance with Schedule 6.

(2) This article applies where—

- (a) an authority applies to a rent officer for a determination to be made under the Rent Officers Order in relation to a dwelling; and
- (b) the officer makes a determination under that Order.

(3) Except in a case to which paragraph (4) applies, this article also applies where an authority is required to apply for a determination in relation to a dwelling during the relevant year under regulation 12A of the Housing Benefit Regulations(23)(requirement to refer to rent officers) which a rent officer would be required to make, but the authority fails to apply for that determination.

(4) This paragraph applies in a case where—

- (a) the dwelling (A) is in a hostel; and
- (b) by virtue of regulation 12A(2) of the Housing Benefit Regulations an application for a determination in respect of that dwelling (A) is not required because the dwelling is regarded as similar to another dwelling (B) in that hostel in respect of which a determination has been made, and in such a case the determination made in respect of dwelling (B) shall, for the purposes of this article, be treated as if it were a determination in respect of dwelling (A).

(5) This article also applies where a rent officer has made a determination in respect of a tenancy of a dwelling and by virtue of paragraph 2 of Schedule 1A to the Housing Benefit Regulations(24)(excluded tenancies) a new determination is not required in respect of another tenancy of the dwelling, and in such a case the determination made shall, for the purposes of this article, be treated as if it were a determination made in respect of that tenancy.

(6) Where a determination as to the rent which a landlord might reasonably be expected to obtain in respect of a dwelling is made by a rent assessment committee following a determination made by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order, this article shall cease to apply in so far as it relates to a determination made by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order from the date on which the rent assessment committee's determination takes effect.

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(19) Paragraph 7(2) of Schedule 1 was amended by S.I. 1991/426.

(20) 1980 c. 51; sections 56 to 58 were partially repealed by section 140 of, and Schedule 18 to, the Housing Act 1988.

(21) 1988 c. 50.

(22) Schedule 1A was inserted by regulation 13 of S.I. 1990/546.

(23) Regulation 12A was inserted by regulation 5 of S.I. 1990/546.

(24) Schedule 1A was inserted by regulation 13 of S.I. 1990/546; and paragraph 2 was amended by S.I. 1991/235.

(7) Where no determination as to the rent which a landlord might reasonably be expected to obtain in respect of a dwelling is required to be made by the rent officer in accordance with article 5(2) of the Rent Officers Order(25) this article shall cease to apply in so far as it relates to a determination made by a rent officer under paragraph 1 of Schedule 1 to the Rent Officers Order from the date of the application to the rent assessment committee, or 1st April 1992, whichever is the later date.

### **Treatment of certain residential accommodation**

9. Where any part of an authority's housing benefit qualifying expenditure is attributable to rebates or allowances granted under the 1982 Act to persons in respect of accommodation provided under—

- (a) sections 21 to 24 and 26 of the National Assistance Act 1948(26)(provision of accommodation); or
- (b) section 21(1) of and paragraph 1 or 2 of Schedule 8 to the National Health Service Act 1977(27)(prevention, care and after-care); or
- (c) section 59 of the Social Work (Scotland) Act 1968(28)(provision of residential and other establishments) where board is available to the claimant,

for the purposes of article 4(1)(b)(ii), the appropriate amount for the relevant year shall be 90 per cent. of the housing benefit qualifying expenditure so attributable.

### **Homeless cases**

10.—(1) Where paragraph (3) applies, any part of the housing benefit qualifying expenditure of an authority within an area listed in column (1) of Schedule 7 attributable to any rebate granted in respect of a person whose weekly eligible rent exceeds the threshold specified in relation to that area in column (2) of that Schedule, then for the purposes of article 4(1)(b)(ii), the appropriate amount in respect of that rebate shall be calculated in accordance with paragraph (2).

(2) Where paragraph (1) applies—

- (a) if the rebate granted is the same as or is less than the amount by which the eligible rent exceeds the threshold, the appropriate amount shall be—
  - (i) in the case of rebates granted in respect of rents specified in paragraph (3)(d), nil per cent. of that part of the housing benefit qualifying expenditure attributable to such rebates; and

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(25) Article 5(2) was amended by regulation 2 of [S.I. 1991/426](#) in the case of England and Wales and by regulation 2 of [S.I. 1991/533](#) in the case of Scotland.

(26) [1948 c. 29](#); section 21 was amended by the Local Government Act 1972 ([c. 70](#)), Schedule 23, paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 ([c. 32](#)), Schedule 4, paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 ([c. 48](#)), Schedule, and the National Health Service Act 1977 ([c. 49](#)), Schedule 15, paragraph 5. Section 22 was amended by the Social Work (Scotland) Act 1968 ([c. 49](#)), section 87(4) and Schedule 9, Part 1; the Supplementary Benefits Act 1976 ([c. 71](#)), Schedule 7, paragraph 3; the Housing (Homeless Persons) Act 1977 ([c. 48](#)), Schedule; the Social Security Act 1980 ([c. 30](#)), section 20, Schedule 4, paragraph 2(1) and Schedule 5, Part II; the Health and Social Services and Social Security Adjudications Act 1983 ([c. 41](#)), section 20(1)(a) and the Social Security Act 1986 ([c. 50](#)), section 86 and Schedule 10, Part II, paragraph 32. Section 24 was amended by the National Assistance (Amendment) Act 1959 ([c. 30](#)), section 1(1); the National Health Service (Scotland) Act 1972 ([c. 58](#)), Schedule 6, paragraph 82; the Local Government Act 1972 ([c. 70](#)), Schedule 23, paragraph 2; the National Health Service Reorganisation Act 1973 ([c. 32](#)), Schedule 4, paragraph 45 and the Housing (Homeless Persons) Act 1977 ([c. 48](#)), Schedule. Section 26 was amended by the Health Services and Public Health Act 1968 ([c. 46](#)), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 ([c. 49](#)), Schedule 9, Part I and applied by section 87(3); the Local Government Act 1972 ([c. 70](#)), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 ([c. 48](#)), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 ([c. 41](#)), section 20(1)(b).

(27) [1977 c. 49](#); paragraphs 1 and 2 of Schedule 8 were amended by section 30 and Schedule 10, Part I of the Health and Social Services and Social Security Adjudications Act 1983 ([c. 41](#)); paragraph 1 was also amended by the Education Reform Act 1988 ([c. 40](#)) section 237 and Schedule 12, Part I, paragraph 22; paragraph 2 was also amended by section 148, Schedule 4 of the Mental Health Act 1983 ([c. 20](#)).

(28) [1968 c. 49](#).

- (ii) in the case of rebates granted in respect of rents specified in paragraph (3)(a) to (c), 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such rebates;
- (b) if the rebate granted is greater than the amount by which the eligible rent exceeds the threshold, the appropriate amount shall be—
  - (i) in the case of rebates granted in respect of rents specified in paragraph (3)(d), nil per cent. of that part of the housing benefit qualifying expenditure attributable to such rebates which is equal to the excess; and
  - (ii) in the case of rebates granted in respect of rents specified in paragraph (3)(a) to (c), 25 per cent. of that part of the housing benefit qualifying expenditure attributable to such rebates which is equal to the excess,
 and 95 per cent. of that part of the housing benefit qualifying expenditure attributable to the balance.
- (3) This paragraph applies where a rebate is payable by an authority in respect of rents which exceed the threshold, which—
  - (a) a person is required to pay to an authority under section 69(2)(b) of the Housing Act 1985<sup>(29)</sup> or section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(30)</sup>, as the case may be, for board and lodging accommodation made available to that person;
  - (b) a person is required to pay to an authority under section 69(2)(b) of the Housing Act 1985 or section 35(2)(b) of the Housing (Scotland) Act 1987, as the case may be, for accommodation, which the authority holds on a licence agreement from a landlord, made available to that person;
  - (c) a person is required to pay to an authority for accommodation outside the Housing Revenue Account, which the authority holds on a lease granted for a term not exceeding 3 years, made available to that person;
  - (d) in the case of Scotland, a person is required to pay to an authority for accommodation within the Housing Revenue Account, which the authority holds on a lease granted for a term not exceeding 3 years, made available to that person.

### **Overpayment of rebates or allowances**

**11.—**(1) Subject to paragraph (7), where any part of an authority's housing benefit qualifying expenditure is attributable to an overpayment of rebates or allowances made and discovered in the relevant year, for the purposes of article 4(1)(b)(ii), the appropriate amount for the year in respect of such part shall be calculated in accordance with paragraph (2).

- (2) Subject to paragraphs (3), (4), (5) and (6), the appropriate amount shall be—
  - (a) in the case of an overpayment caused by an error of the authority making the payment, 15 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment; and
  - (b) in the case of an overpayment caused by departmental error, 95 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment as has not been recovered by the authority and nil per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment as has been recovered by the authority; and
  - (c) in the case of a technical overpayment, 15 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment for a period not exceeding 2 benefit weeks beginning with the benefit week after the week in which the change of

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<sup>(29)</sup> 1985 c. 68.

<sup>(30)</sup> 1987 c. 26.

circumstances is disclosed to the authority and thereafter nil per cent. of the housing benefit qualifying expenditure attributable to the overpayment; and

- (d) where a rebate has been granted in advance and the authority subsequently identifies a recoverable overpayment which does not arise from a change in circumstances, the amount appropriate to that overpayment as specified in paragraph (2)(a) or (e) of this article, as the case may be, for a period continuing not later than 2 benefit weeks beginning with the benefit week after the week in which that overpayment is so identified by that authority and thereafter nil per cent. of the housing benefit qualifying expenditure attributable to that overpayment; and
- (e) in the case of any other overpayment, 25 per cent. of that part of the housing benefit qualifying expenditure attributable to the overpayment.

(3) In paragraph (2)(a) and article 12(1)(b)(i) “overpayment caused by an error of the authority making the payment” means an overpayment caused by a mistake made or something done or omitted to be done by that authority, where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

(4) In paragraph (2)(b) and article 12(1)(b)(ii) “overpayment caused by departmental error” means an overpayment caused by a mistake made or something done or omitted to be done by an officer of the Department of Social Security or the Department of Employment, acting as such, or a decision of an adjudication officer, social security appeal tribunal or Social Security Commissioner appointed in accordance with sections 38(1), 40(1), 51(1) and 52(1) of the Act (appointment of adjudication officers, chairmen and members of social security appeal tribunals and Commissioners) where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(5) In paragraph (2)(c) and article 12(1)(b)(iii) “technical overpayment” means that part of an overpayment which occurs as a result of a rebate being granted in advance and a change in circumstances reduces or eliminates entitlement to that rebate beginning with the benefit week following the week in which the change is disclosed to the authority.

(6) This article shall not apply to that part of any rebate or allowance to which paragraph (15) of regulation 72 of the Housing Benefit Regulations or, as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations or paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989<sup>(31)</sup>(time and manner in which claims are to be made) applies.

(7) Any reference in this article to an overpayment shall not include any rebate or allowance for any benefit period overrun or other period immediately following expiry of the specified period determined under regulation 66 of the Housing Benefit Regulations<sup>(32)</sup>except for so much of any rebate or allowance to which the claimant would not have been entitled had a claim for that period been duly made and determined.

### **Additions to housing benefit subsidy**

**12.—**(1) The additions referred to in article 4(1) shall be of the following amounts where—

- (a) following the loss, destruction or non-receipt, or alleged loss, destruction or non-receipt of original instruments of payment, an authority makes duplicate payments and the original instruments have been or are subsequently encashed, an amount equal to 25 per cent. of the amount of the duplicate payments;
- (b) subject to paragraph (2), during the relevant year it is discovered that an overpayment of rebate or allowance has been made in one or more of the years ending 31st March 1989,

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<sup>(31)</sup> S.I. 1989/1322.

<sup>(32)</sup> Regulation 66 was amended by S.I. 1988/1971 and 1989/1322.

31st March 1990, 31st March 1991, and 31st March 1992, as the case may be, and an amount is to be deducted under article 13 in relation to that overpayment, an amount equal to—

- (i) in the case of an overpayment caused by an error of the authority making the payment, within the meaning of article 11(3), 15 per cent. of the overpayment;
- (ii) in the case of an overpayment caused by departmental error, within the meaning of article 11(4), 95 per cent. of so much of the overpayment as has not been recovered by the authority and nil per cent. of the overpayment which has been recovered by the authority;
- (iii) in the case of a technical overpayment, within the meaning of article 11(5), 15 per cent. of the overpayment for a period not exceeding 2 benefit weeks, beginning with the benefit week after the week in which the change of circumstances is disclosed to the authority and thereafter nil per cent. of the overpayment; or
- (iv) in the case of any other overpayment, 25 per cent. of the overpayment.

(2) The amount under paragraph (1)(b) shall not include an amount in relation to an overpayment of community charge rebate made in the year ending 31st March 1990, but discovered in the relevant year as a result of a reduction in the amount a person is liable to pay in consequence of regulations made under section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987<sup>(33)</sup>(reduced liability for personal community charge).

### **Deductions to be made in calculating housing benefit subsidy in respect of rebates or allowances**

**13.**—(1) The deductions referred to in article 2(2)(a) are, subject to paragraph (2), to be of the following amounts where—

- (a) a tenant of an authority, who is in receipt of a rent rebate, while continuing to occupy, or when entering into occupation of, a dwelling as his home, either under his existing tenancy agreement or by entering into a new tenancy agreement—
  - (i) is during, or was at any time prior to, the relevant year able to choose whether or not to be provided with any services, facilities or rights and chooses or chose to be so provided; or
  - (ii) is during, or was at any time prior to, the relevant year able to choose either to be provided with any services or facilities or, whether or not in return for an award or grant from the authority, to provide such services or facilities for himself; or
  - (iii) would be able during, or would have been able at any time prior to, the relevant year to exercise the choice set out in sub-paragraph (i) or (ii) of this paragraph if he were not or had not at that time been in receipt of a rent rebate,

the amounts attributable during the relevant year to such services, facilities or rights whether they are or would be expressed as part of the sum fixed as rent, otherwise reserved as rent or expressed as an award or grant from the authority;
- (b) during the relevant year a person becomes entitled to a rent-free period which has not been, or does not fall to be, taken into account in calculating the amount of rent rebate to which he is entitled under the Housing Benefit Regulations, the amount of rebate which is or was payable to him in respect of such rent free period;
- (c) during the relevant year an award in the form of a payment of money or monies worth, a credit to the person's rent account or in some other form is made by an authority to one

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(33) 1987 c. 47. Section 9A was inserted by section 143 of the Local Government and Housing Act 1989 (c. 42), and is preserved by section 118 of the Local Government Finance Act 1992 (c. 14).

of its tenants in receipt of rent rebate, whether or not the person is immediately entitled to the award, the amount or value 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) made under section 137 of the Local Government Act 1972<sup>(34)</sup>(power of local authorities to incur expenditure for certain purposes not otherwise authorised);
  - (iv) except where sub-paragraph (a)(ii) applies, made as reasonable compensation for reasonable repairs or redecoration the tenant has, or has caused to be, carried out whether for payment or not and which the authority would otherwise have carried out or have been required to carry out; or
  - (v) of a reasonable amount made as compensation for loss, damage or inconvenience of a kind which occurs only exceptionally suffered by the tenant by virtue of his occupation of his home;
- (d) during the relevant year the weekly amount of rebate or allowance is increased under paragraph (8) of regulation 69 of the Housing Benefit Regulations or, as the case may be, regulation 57 of the Scottish Regulations (calculations of weekly amounts), the amount of such increase;
- (e) during the relevant year it is discovered that a payment of community charge rebate has been overpaid in the relevant year as a result of the reduction in the amount a person is liable to pay in consequence of regulations made under section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987 (reduced liability for personal community charge), the amount of the overpayment;
- (f) subject to article 15, during the relevant year it is discovered that a rebate or allowance has been paid under the 1982 Act in excess of entitlement, the amount of such excess;
- (g) during the relevant year an amount is recovered in relation to an overpayment of a rebate or allowance which was caused by departmental error within the meaning of article 11(4), where the overpayment had occurred and been discovered in a year earlier than the relevant year, the amount so recovered;
- (h) during the relevant year it is discovered that an overpayment of rebate or allowance has been made in one or more of the years ending 31st March 1989, 31st March 1990, 31st March 1991 and 31st March 1992, as the case may be, the amount of such overpayment, but only to the extent that—
- (i) the amount of the overpayment or any part of it has not been deducted from qualifying expenditure under article 3 of the Housing Benefit (Subsidy) Order 1989<sup>(35)</sup>or of the Housing Benefit (Subsidy) Order 1990<sup>(36)</sup> or under article 4 of the 1991 Order or of the 1992 Order, as the case may be; and
  - (ii) the amount of the overpayment or any part of it does not include an amount to which paragraph (15) of regulation 72 of the Housing Benefit Regulations or paragraph (7) of article 2 of the Community Charge Benefits (Transitional) Order 1989<sup>(37)</sup>, or as the case may be, paragraph (18) of regulation 59 of the Scottish Regulations (time and manner in which claims are to be made) applied;

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<sup>(34)</sup> 1972 c. 70; section 137 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 44; the Local Government Finance Act 1982 (c. 32), section 34, Schedule 5, paragraph 5, the Local Government Act 1986 (c. 10), section 3 and by the Local Government and Housing Act 1989 (c. 42), section 194, Schedule 12.

<sup>(35)</sup> S.I. 1989/607.

<sup>(36)</sup> S.I. 1990/785.

<sup>(37)</sup> S.I. 1989/1322.

- (j) during the relevant year any instrument of payment issued by an authority during that year is returned to that authority without being presented for payment or is found by that authority to have passed its date of validity without being presented for payment, the amount of any such instrument.

(2) Where in relation to any amount of a rebate or allowance a deduction falls to be made under two or more sub-paragraphs of paragraph (1) only the higher or highest or, where the amounts are equal, only one amount, shall be deducted.

#### **Deduction from housing benefit subsidy**

**14.** Where during the relevant year it is found by an appropriate authority that any instrument of payment issued by it during the period of 4 years ending on 31st March 1992 has been returned to that authority without having been presented for payment or has passed its date of validity without having been presented for payment, the deduction referred to in article 4(1) shall be the amount of any subsidy that has been paid to that authority in respect of any such instrument.

#### **Modification of housing benefit subsidy on payments in excess of entitlement**

**15.—**(1) Notwithstanding any provision made under the 1982 Act in respect of housing benefit paid in excess of entitlement under that Act, where an overpayment of such benefit to which any such provision applies made in a certificated case is discovered in the relevant year, an authority's housing benefit subsidy in respect of such a payment shall be calculated as set out in paragraph (2).

(2) The amount of that subsidy shall be—

- (a) in the case of an overpayment caused by an error of the authority making the payment, within the meaning of article 11(3), 15 per cent. of the overpayment; and
- (b) in the case of an overpayment caused by departmental error, within the meaning of article 11(4), 95 per cent. of so much of the overpayment as has not been recovered by the authority; and
- (c) in the case of any other overpayment, 25 per cent. of the overpayment.

(3) In paragraph (1) “certificated case” has the meaning assigned to that expression by regulation 2(1) of the Housing Benefit Regulations 1985(**38**)(interpretation) as previously in force.