

---

STATUTORY INSTRUMENTS

---

**1995 No. 872**

**The Housing Benefit and Council  
tax Benefit (Subsidy) Order 1995**

**PART II**

**HOUSING BENEFIT SUBSIDY**

**Interpretation of Part II**

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

“allowance” means a rent allowance;

“authority” means a housing or, as the case may be, local 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(1) nor in a hostel within the meaning of regulation 12A of the Housing Benefit Regulations(2);

“development corporation” has the meaning ascribed to it in section 2 of the New Towns (Scotland) Act 1968(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 rebate excluding, in the case of England and Wales, any Housing Revenue Account rebates(5);

“relevant date” has the meaning it is given for the purposes of Schedule 6 in paragraph 7 of that Schedule;

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

---

(1) S.I. 1987/1967; relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1992/3147 and 1993/2119.

(2) Regulation 12A was inserted by regulation 5 of S.I. 1990/546 and amended by S.I. 1993/317.

(3) 1968 c. 16.

(4) 1968 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 Social Security Administration Act 1992.

(6) 1992 c. 4.

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(7);  
 “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);  
 “termination date” has the meaning it is given for the purposes of Schedule 6 in paragraph 8 of that Schedule, and other expressions used in this Order and in the Housing Benefit Regulations shall have the same meanings in this Order as in those Regulations.

(2) In this Part of this Order—

“housing benefit qualifying expenditure” means the total of rebates and allowances, including any payments under regulation 91 of the Housing Benefit Regulations (payments on account of a rent allowance), granted by the authority during the relevant year, less—

- (a) the deduction, if any, calculated for that authority in article 6;
- (b) any allowances to which paragraph (7) of article 8 or paragraph 6 of Schedule 6, as the case may be, apply;
- (c) any rebates to which paragraph (4) of article 9 applies;
- (d) the deductions specified in article 11, and
- (e) where, under subsection (8) of section 134 of the Act(10) (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 Schedules 1 and 2.

#### **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 5,7,8 and 9(1) to (3) 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

---

(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, 2148, 3147, 1993/317, 518, 963, 1150, 1249, 1540, 2118, 1994/470, 578, 1003, 2137 and 3061.

(8) S.I. 1990/428, amended by S.I. 1991/426, 1993/652, 1994/568 and 3040.

(9) S.I. 1990/396, amended by S.I. 1991/533, 1993/646, 1994/582 and 3108.

(10) Section 134(8) allows modification 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.

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 articles 9(5), 10 and 13(2), but subject, in each case, to the deductions, where applicable, under articles 12 and 13(3).

(2) Where the authority is the Scottish Homes or a development corporation, 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, 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 50 per cent. of the housing benefit qualifying expenditure so attributable.

(2) This article shall not apply in a case to which article 10(1)(b)(ii) applies.

### **Disproportionate rent increase**

6.—(1) Except where paragraph (5) or (6) applies, in the case of an authority in Scotland or the Development Board for Rural Wales, where the average rent increase differential, as calculated in accordance with paragraph (2), for such an authority has a value greater than zero, the deduction from housing benefit qualifying expenditure specified in article 2(2)(a) shall be that proportion of the sum calculated for that authority in accordance with paragraph (4).

(2) The average rent increase differential for each appropriate authority shall be calculated by applying the formula—

$$(I + A) \times \left\{ \frac{B}{C} \times \frac{D}{E} \right\} - I$$

where

A, B, C, D and E each has the value determined in accordance with paragraph (3).

(3) For the purposes of paragraph (2)—

- (a) the value of A shall be the proportion calculated for that authority pursuant to paragraphs (3) and (4) of article 6 of the 1994 Order;
- (b) the value of B shall be the average rent charged by the authority in respect of Category 1 dwellings on the final date;
- (c) the value of C shall be the average rent charged by the authority in respect of Category 1 dwellings on the specified date;
- (d) the value of D shall be the average rent charged by the authority in respect of Category 2 dwellings on the specified date, and
- (e) the value of E shall be the average rent charged by the authority in respect of Category 2 dwellings on the final date.

(4) The sum referred to in paragraph (1) shall be that part of housing benefit qualifying expenditure attributable to rent rebates granted during the relevant year before any deduction by reason of this article but less any part of such expenditure to which article 4(1)(b)(ii) applies.

(5) This article shall not apply in the case of an authority

- (a) which has—
  - (i) set the rent for the relevant year according to the type, condition, class or description of the dwellings and the services, facilities or rights provided to the tenants, where that rent is reasonable having regard to those matters;
  - (ii) not taken account of whether a tenant was a beneficiary when setting rents for the relevant year, and
  - (iii) not let dwellings, either in the relevant year or in either of the two previous years, to beneficiaries irrespective of their housing needs;

or

(b) where—

- (i) any increases in rent between the specified date and the final date were of the same percentage and applied on the same day to all tenants irrespective of whether they were beneficiaries, and
- (ii) the average rent increase differential calculated in accordance with article 6 of the 1994 Order for that authority had a value which was zero or less than zero.

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

(7) In this article (and, in the case of the definition of “beneficiary”, also in article 11(2))

“average” means the arithmetic mean;

“beneficiary” means a person who is entitled or likely to become entitled to a rebate;

“Category 1 dwellings” means dwellings rented out by the authority on both the specified date and the final date in respect of which, on the final date, the persons liable to pay such rent were in receipt of rebates;

“Category 2 dwellings” means dwellings rented out by the authority on both the specified date and the final date in respect of which, on the final date, the persons liable to pay such rent were not in receipt of rebates;

“final date” means the 31st March 1995, but if that day 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;

“specified date” means the date in March 1994 which was defined as the third relevant date for that authority in article 6(5) of the 1994 Order, and

“rent” means either—

- (a) the payments specified in sub-paragraphs (a) to (i) in paragraph (1) of regulation 10 of the Housing Benefit Regulations (rent)**(11)**; 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.

### **Treatment of high rents**

7.—(1) Subject to paragraphs (3) and (4), where any part of the housing benefit qualifying expenditure of an authority whose area is or lies within an area identified 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**(12)** or Part V, VI or VII of the Rent (Scotland) Act 1984**(13)** or which have been determined by a rent assessment committee in respect of a dwelling under Part I of the Housing Act 1988**(14)** or Part II of the Housing (Scotland) Act 1988**(15)**; or
- (b) where the relevant tenancy is one to which, before 15th January 1989, the provisions of sections 56 to 58 of the Housing Act 1980**(16)** (assured tenancies) applied; or
- (c) where the relevant dwelling is situated within the area of a housing action trust established under Part III of the Housing Act 1988 (Housing Action Trust Areas); or
- (d) where the dwelling is an excluded tenancy by virtue of paragraph 3 or 10 of Schedule 1A to the Housing Benefit Regulations**(17)** (excluded tenancies); or
- (e) where an authority applies to a rent officer for a determination to be made under the Rent Officers Order in relation to a dwelling, but the officer is not required to make any determination under that Order.

---

**(11)** Regulation 10(1) was amended by [S.I. 1988/1971](#).

**(12)** 1977 c. 42.

**(13)** 1984 c. 58.

**(14)** 1988 c. 50.

**(15)** 1988 c. 43.

**(16)** 1951 c. 51; sections 56 to 58 were partially repealed by section 140 of, and Schedule 18 to, the Housing Act 1988.

**(17)** Schedule 1A was inserted by regulation 13 of [S.I. 1990/546](#).

(4) This article shall not apply in a case to which article 8 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) This article also 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(18) (requirement to refer to rent officers) 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).

(4) 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(19) (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.

(5) 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 that paragraph from the date on which the rent assessment committee's determination takes effect.

(6) Where

- (a) a determination under paragraph 1 of Schedule 1 to the Rent Officers Order has been made by the rent officer, and
- (b) an application is made to the rent assessment committee and, had that application been made before the reference to the rent officer which led to that determination, the rent officer would, in accordance with article 5(2) of the Rent Officers Order(20), not have made such a determination, this article shall cease to apply in so far as it relates to that determination under that paragraph from the date of that application, or 1st April 1994, whichever is the later date.

(7) Except in a case to which paragraph (3) applies, this article does not apply 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 which a rent officer would be required to make, but the authority fails to apply for that determination and any allowance granted in such a case shall, subject to article 11(4), be deducted from housing benefit qualifying expenditure pursuant to article 2(2)(b).

---

(18) Regulation 12A was inserted by regulation 5 of S.I. 1990/546 and amended by S.I. 1993/317.

(19) Schedule 1A was inserted by regulation 13 of S.I. 1990/546; and paragraph 2 was amended by S.I. 1991/235, 1993/317 and 1249.

(20) Article 5(2) was amended by S.I. 1991/426 in the case of England and Wales and by S.I. 1991/533 in the case of Scotland.

### **Additions in respect of homeless and short lease cases**

9.—(1) Subject to paragraphs (4) and (5), where paragraph (3) applies, any part of the housing benefit qualifying expenditure of an authority identified 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 authority 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 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 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 after deducting that excess.

(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>(21)</sup> or section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(22)</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.

(4) Where, in Scotland—

- (a) 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, and
- (b) an authority identified in column (1) of Schedule 7, has granted any rebate in respect of such payments,

the amount of any such rebate shall, subject to article 11(4), be deducted from housing benefit qualifying expenditure, pursuant to article 2(2)(c), and the addition, if any, in respect of such rebates, referred to in article 4(1), shall be calculated in accordance with paragraph (5).

(5) Where paragraph (4) applies

- (a) if the rebate granted is in respect of a person whose weekly eligible rent does not exceed the threshold specified in relation to that authority in column (2) of Schedule 7 (“the relevant threshold”), then the addition shall be 95 per cent. of that rebate;
- (b) if the rebate granted is the same as or is less than the amount by which the eligible rent exceeds the relevant threshold, there shall be no addition, and
- (c) if the rebate granted is greater than the amount by which the eligible rent exceeds the threshold, there shall be no addition in respect of such part of such rebate which is equal

---

(21) 1985 c. 68.

(22) 1987 c. 26.

to the excess, but there shall be an addition of 95 per cent. of that part of such rebate attributable to the balance after deducting that excess.

### **Other additions to housing benefit subsidy**

- 10.**—(1) Subject to paragraphs (8) and (9), the additions referred to in article 4(1) are—
- (a) where 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 paragraphs (2) and (3) where during the relevant year it is discovered that an overpayment of rebate or allowance has been made and an amount is to be deducted under article 11 in relation to that overpayment, an amount equal to—
    - (i) in the case of an overpayment caused by departmental error, 95 per cent. of so much of the overpayment as has not been recovered by the authority;
    - (ii) in the case of a fraudulent overpayment 95 per cent. of the overpayment; or
    - (iii) except where head (i) or (ii) applies, 25 per cent. of the overpayment;
  - (c) where, during the relevant year, it is discovered that an overpayment in respect of which a deduction was made under article 11 of the 1994 Order (other than a deduction under sub-paragraph (1)(g) of that article) was a fraudulent overpayment the difference, if any, between 95 per cent. of any such overpayment and the amount of any housing benefit subsidy that has been paid to that authority in respect of that overpayment.
- (2) The amount under paragraph (1)(b) shall not include an amount in relation to—
- (a) an overpayment caused by an error of the authority making the payment, or
  - (b) any technical overpayment.
- (3) Where an overpayment is caused by departmental error, but some or all of that overpayment is recovered by the appropriate authority, no addition shall be applicable to the authority in respect of the amount so recovered.
- (4) In paragraphs (1)(b)(i) and (3) and in article 11(1)(e) “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 paragraphs (1)(b)(ii) and (c), in article 11(1)(f) and in paragraph 1 of Schedule 8 “fraudulent overpayment” means an overpayment in respect of a period falling wholly or partly after 31st March 1993 and which—
- (a) is so classified by an officer of the authority, designated for that purpose by the authority, after that date; and
  - (b) occurs as a result of the payment of a rebate or allowance arising in consequence of—
    - (i) a breach of section 112 of the Act (false representations for obtaining benefit), or
    - (ii) knowingly failing to report a relevant change of circumstances, contrary to the requirements of regulation 75 of the Housing Benefit Regulations(23) (duty to notify

---

(23) Regulation 75 was amended by S.I. 1990/546.



change of circumstances), with intent to obtain or retain such a rebate or allowance for himself or another.

(6) In paragraph (2)(a) “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.

(7) In paragraph (2)(b) “technical overpayment” means that part of an overpayment which occurs as a result of a rebate being granted in advance and

- (a) a change in circumstances reduces or eliminates entitlement to that rebate; or
- (b) the authority subsequently identifies a recoverable overpayment which does not arise from a change in circumstances,

but shall not include any part of that overpayment occurring before the benefit week following the week in which the change is disclosed to or identified by the authority.

(8) Except for paragraphs (1)(b)(ii), (1)(c) and (5), this article shall not apply to that part of any rebate or allowance in respect of a case to which paragraph (15) of regulation 72 of the Housing Benefit Regulations (time and manner in which claims are to be made) applies.

(9) Any reference in this article to an overpayment shall not include any rebate or allowances for any period overrun or other period immediately following expiry of the specified period determined under regulation 66 of the Housing Benefit Regulations(24) 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.

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

**11.**—(1) The deductions referred to in article 2(2)(d) are, subject to paragraph (4), to be of the following amounts where—

- (a) subject to paragraphs (2) and (3), 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 (“improvements”) 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 improvements or, whether or not in return for an award or grant from the authority, to provide such improvements 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 improvements 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 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(25) or section 83 of the Local Government (Scotland) Act 1973(26) (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 pursuant to paragraph (2) of regulation 61 of the Housing Benefit Regulations(27), the amount of such increase;
- (e) 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 10(4), the amount so recovered where the overpayment had occurred and been discovered in a year earlier than the relevant year;
- (f) during the relevant year a fraudulent overpayment, within the meaning of article 10(5), is identified, the amount of the overpayment, but only to the extent that the amount of overpayment or any part of it has not been deducted from qualifying expenditure under article 4 of the 1994 Order;
- (g) subject to sub-paragraphs (e) and (f) of paragraph 1(1), during the relevant year it is discovered that an overpayment of rebate or allowance has been made, the amount of such overpayment, but only to the extent that—
- (i) the amount of overpayment or any part of it has not been deducted from qualifying expenditure under article 3 of the Housing Benefit (Subsidy) Order 1989(28) or of the Housing Benefit (Subsidy) Order 1990(29) or under article 4 of respectively the 1991 Order, the 1992 Order, the 1993 Order or the 1994 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(30), or as the case may be, paragraph (18) of regulation 59 of the Housing Benefit (Community

---

(25) 1972 c. 70; section 137 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 3), 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.

(26) 1973 c. 65; section 83 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43) sections 6 and 50; the Rating and Valuation Amendment (Scotland) Act 1987 (c. 31), section 9; the Local Government Act 1986 (c. 10), section 3; the Abolition of Domestic Rates (Scotland) Act 1987 (c. 47), Schedule 1, paragraph 27; and by the Local Government and Housing Act 1989 (c. 42), section 36(9).

(27) Regulation 61(2) was inserted by S.I. 1994/578.

(28) S.I. 1989/607.

(29) S.I. 1990/785.

(30) S.I. 1989/1322.

Charge Rebates) (Scotland) Regulations 198837 (time and manner in which claims are to be made) applied;

- (h) 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) No deduction shall be made under paragraph 1(a) in a case where the eligible rent for a tenant has been increased in a case to which that sub-paragraph would apply but—

- (a) any such services, facilities or rights (“improvements”)—
  - (i) relate solely to the physical needs of the property in question or the needs of that tenant; and
  - (ii) the increased rent in relation to such improvements is reasonable;
- (b) the tenant was eligible whether or not he was a beneficiary, and
- (c) the authority has not let properties, to which they intend to make improvements, either in the relevant year or in the two years preceding that year, solely or largely to beneficiaries.

(3) In paragraph (2) “beneficiary” has the meaning it is given for the purposes of article 6 by paragraph (7) of that article.

(4) Where in relation to any amount of a rebate or allowance a deduction falls to be made under two or more of article 8(7), article 9(4), paragraph 6 of Schedule 6, or the sub-paragraphs of paragraph (1), as the case may be, only the higher or highest, or, where the amounts are equal, only one amount, shall be deducted.

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

**12.** Where during the relevant year it is found by an authority that any instrument of payment issued by it during the period of 6 years ending on 31st March 1994 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 housing benefit subsidy that has been paid to that authority in respect of any such instrument.

### **Additions to and deductions from housing benefit subsidy in respect of benefits savings**

**13.—(1)** Where this article applies, the addition to or, as the case may be, deduction from housing benefit subsidy referred to in article 4(1) shall be calculated in accordance with Part II of Schedule 8.

(2) This article applies in the case of an authority to which paragraph 2 of Schedule 8 applies and in such a case the addition shall be calculated in accordance with that paragraph.

(3) This article also applies in the case of an authority to which paragraph 4 of Schedule 8 applies and in such a case the deduction shall be calculated in accordance with that paragraph.