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STATUTORY INSTRUMENTS

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**1998 No. 3257**

**SOCIAL SECURITY**

**The Housing Benefit (General)  
Amendment (No. 2) Regulations 1998**

<i>Made</i>	- - - -	<i>22nd December</i> <i>1998</i>
<i>Laid before Parliament</i>		<i>4th January 1999</i>
<i>Coming into force</i>	- -	<i>25th January 1999</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 123(1)(d), 130(4), 137(1) and (2)(i) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned<sup>(2)</sup>, and after reference to the Social Security Advisory Committee<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit (General) Amendment (No. 2) Regulations 1998.

(2) Subject to paragraph (3), these Regulations shall come into force on 25th January 1999.

(3) Where a claimant is in receipt of an award of housing benefit on 25th January 1999, these Regulations shall come into force in respect of that individual on the day after the last day of the benefit period in respect of which that award is made.

(4) In these Regulations—

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987<sup>(4)</sup>; and

“benefit period” has the meaning given to it in regulation 66 of the Housing Benefit Regulations.

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(1) 1992 c. 4; section 137(1) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.  
(2) See the Social Security Administration Act 1992 (c. 5), section 176(1).  
(3) See the Social Security Administration Act 1992, section 172(1).  
(4) S.I.1987/1971.

### **Amendment of regulation 3 of the Housing Benefit Regulations**

2. For paragraph (3) of regulation 3(5) of the Housing Benefit Regulations there shall be substituted the following paragraph:

“(3) Sub-paragraphs (d) and (e) of paragraph (2) shall not apply to any person who is treated as if he were not liable to make payments in respect of a dwelling under paragraph (1) of regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling).”.

### **Amendment of regulation 7 of the Housing Benefit Regulations**

3. For paragraph (1) of regulation 7 of the Housing Benefit Regulations(6) there shall be substituted the following paragraphs:

“(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where–

- (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
- (b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;
- (c) his liability under the agreement is–
  - (i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners, or
  - (ii) to his partner’s former partner and is in respect of a dwelling which his partner and his partner’s former partner occupied before they ceased to be partners;
- (d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;
- (e) subject to paragraph (1B), his liability under the agreement is to a company or a trustee of a trust of which–
  - (i) he or his partner,
  - (ii) his or his partner’s close relative who resides with him, or
  - (iii) his or his partner’s former partneris, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;
- (f) his liability under the agreement is to a trustee of a trust of which his or his partner’s child is a beneficiary;
- (g) subject to paragraph (1B), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;
- (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises except where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;
- (i) his occupation, or his partner’s occupation, of the dwelling is a condition of his or his partner’s employment by the landlord.

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(5) The relevant amending instrument is S.I. [1989/416](#).

(6) The relevant amending instrument is S.I. [1990/2564](#).

- (j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies as his home) by, a religious order;
- (k) except where paragraph (2) applies, he is in residential accommodation;
- (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under part VII of the Contributions and Benefits Act.

(1A) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law.

(1B) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme.”.

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

22nd December 1998

*Angela Eagle*  
Parliamentary Under-Secretary of State,  
Department of Social Security

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations substitute more detailed provision for the provision in regulation 7(1) of the Housing Benefit (General) Regulations 1987 for determining whether a person is to be treated as not liable to make payments in respect of a dwelling (regulation 3).

A consequential amendment is made to the definition of “non-dependant” in regulation 3 of those Regulations (regulation 2).

These Regulations do not affect any claimant, who is in receipt of an award of housing benefit on 25th January 1999, for the remainder of the benefit period in respect of which that award is made (regulation 1(3)).

These Regulations do not impose a charge on business.