
 S T A T U T O R Y I N S T R U M E N T S

2000 No. 637**SOCIAL SECURITY****The Social Security (Payments to Reduce Under-occupation) Regulations 2000**

Made - - - - - *6th March 2000*

Laid before Parliament *10th March 2000*

Coming into force - - *3rd April 2000*

The Secretary of State for Social Security in exercise of the powers conferred upon him by sections 79(1), (3), (4), (5), (6), (8) and (9) and 83(1), (4), (6) and (8) of the Welfare Reform and Pensions Act 1999(a) and section 136(3) and (5) of the Social Security Contributions and Benefits Act 1992(b) and section 12(1) and (4) of the Jobseekers Act 1995(c), after consultation with organisations appearing to him to be representative of the authorities concerned(d), hereby makes the following Regulations:

Citation, commencement, expiry and interpretation

1.—(1) These Regulations may be cited as the Social Security (Payments to Reduce Under-occupation) Regulations 2000.

(2) These Regulations shall come into force on 3rd April 2000 and shall cease to have effect on 31st March 2003.

(3) In these Regulations, unless the context otherwise requires—

“designated office” has the same meaning as in the Housing Benefit Regulations;

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

“ineligible service charges” means those amounts referred to in regulation 10(3)(a), (b) and (c) of, and determined in accordance with Schedule 1 to, the Housing Benefit Regulations;

“payment” means a payment to reduce under-occupation in accordance with these Regulations;

“rent” means all those payments in respect of a dwelling specified in regulation 10(1) of the Housing Benefit Regulations subject to any apportionment in accordance with paragraphs (4) and (5) of that regulation and, in relation to any year in which there is or will be a rent-free period (as referred to in regulation 70 of the Housing Benefit Regulations), the rent shall be averaged over 52 weeks.

(4) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;

(b) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

(a) 1999 c. 30.

(b) 1992 c. 5.

(c) 1995 c. 18.

(d) See section 176(1)(a) of the Social Security Administration Act 1992.

(e) S.I. 1987/1971.

Entitlement to payment to reduce under-occupation by housing benefit claimants

2. A housing benefit claimant who—
- (a) is entitled to housing benefit;
 - (b) occupies a dwelling in an area of a local authority named in Schedule 1; and
 - (c) meets the under-occupation criteria specified in regulation 4,
- shall be entitled to a payment.

Application for a payment to reduce under-occupation by housing benefit claimants

3.—(1) A housing benefit claimant may apply in writing for a payment to the local authority in whose area the dwelling which he occupies is situated and he shall provide that authority with such information as is necessary to enable the authority to consider the application and calculate the amount of the payment (if any).

(2) Where a housing benefit claimant is for the time being unable to act, any person able to act on his behalf in relation to housing benefit may act on his behalf in relation to a payment(a).

(3) Anything required by these Regulations to be done by or to any housing benefit claimant who is for the time being unable to act may be done by or to the person able to act on his behalf in relation to housing benefit and the receipt of any such person shall be a good discharge to the authority for any payment made.

- (4) A local authority to whom an application for a payment is made shall—
- (a) consider whether the claimant satisfies the conditions of entitlement to a payment; and
 - (b) reply to the claimant (making a payment offer if appropriate),
- within 14 days of receiving all necessary information or as soon as reasonably practicable thereafter.

Under-occupation criteria

4. The under-occupation criteria are that—
- (a) the housing benefit claimant occupies a dwelling in the public or social rented sector at the time he applies for a payment;
 - (b) that dwelling exceeds the accommodation needs of its occupiers determined in accordance with the size criteria which are set out in Schedule 2;
 - (c) the housing benefit claimant has expressed an interest in moving to a qualifying dwelling (whether or not in the same local authority area as the dwelling he currently occupies);
 - (d) the rent in respect of the qualifying dwelling after deducting ineligible service charges in respect of that dwelling is less than the rent in respect of the dwelling occupied after deducting ineligible service charges in respect of that dwelling; and
 - (e) once the person has moved to the qualifying dwelling, the owner of the property vacated will have vacant possession of the dwelling.

Calculation of a payment to reduce under-occupation by housing benefit claimants

- 5.—(1) A payment shall be calculated according to the formula—

$$\frac{1}{2} \times (A - B) \times 156$$

where—

A is the housing benefit claimant's rent in respect of the dwelling he occupies at the time he applies for a payment less the ineligible service charges in respect of that dwelling; and

B is the housing benefit claimant's rent in respect of the qualifying dwelling to which he has expressed an interest in moving less the ineligible service charges in respect of that dwelling.

(a) See regulation 71(2), (3), (4) and (5) of the Housing Benefit Regulations which states the circumstances in which a person may act on behalf of another in relation to housing benefit.

(2) The calculation described in paragraph (1) does not require that an application be made to a rent officer for a determination and accordingly the exception described in regulation 10(3)(b) of the Housing Benefit Regulations will not apply in calculating the ineligible service charges.

Reductions in payment

6.—(1) A local authority may reduce the amount of a payment by an amount equal to the sum of—

- (a) any arrears of rent payable by the person whether in respect of his current dwelling or any formerly occupied by him; and
- (b) any amount paid to that person by way of housing benefit which is a recoverable overpayment within the meaning of the Housing Benefit Regulations.

(2) If the local authority reduces a payment it shall pay to the person or persons to whom the rent arrears are, or overpayment is, due an amount equal to the deduction that was made in respect of those arrears or that overpayment.

Reply to application and offer of payment

7.—(1) A local authority which receives an application for a payment from a housing benefit claimant shall reply advising him—

- (a) whether or not he is entitled to the payment and the reasons for that decision; and
- (b) of his right under regulation 9 to make written representations to the authority about the reply and the last day on which representations can be made.

(2) Where a person is entitled to a payment, the authority shall also make a payment offer which shall—

- (a) state the amount of the payment and how it has been calculated (including any deductions which have been made);
- (b) state that the amount will be payable if the person accepts the offer and moves to the qualifying dwelling within six months of that acceptance;
- (c) inform the person that—
 - (i) he is under no obligation to accept the payment and move from his current dwelling;
 - (ii) it would be in his interests to seek independent advice about how accepting the payment and moving to the qualifying dwelling would affect him (including the effect, if any, on the person's right to buy and security of tenure);
 - (iii) if he wishes to accept the offer he must do so within 21 days of its receipt; and
 - (iv) if he does not accept the offer he may make written representations to the local authority about it within 21 days of its receipt.

Time and manner of replies and offers to applicants or representations

8.—(1) Any application or other document that is to be given or sent to a local authority shall be deemed to have been given or sent on the day it is received at any one of its designated offices.

(2) Any reply or offer or other document that is to be given or sent by a local authority to any person shall be deemed to have been given or sent if sent by post to that person's last known or notified address, on the date it was posted.

(3) The times specified by regulation 9 for making representations may be extended for special reasons by the local authority, even though the time specified may have already expired.

(4) Any application for an extension of time shall be in writing, shall be sent or delivered to any one of the designated offices and shall be determined by the local authority.

(5) There shall be no review or appeal of a decision of the authority under paragraphs (3) or (4).

Review of decision and payment offer

9.—(1) A person to whom the local authority has replied in respect of an application (and offered a payment as the case may be) may make written representations to that authority about that decision and, if appropriate, any offer made within 21 days of the reply being given.

(2) Any written representations must be signed and dated by the person who is making them.

(3) The authority shall review its decision (including the offer as the case may be) in the light of those representations within 14 days of receiving the representations or as soon as reasonably practicable thereafter.

(4) The authority shall notify the person who made the representations of the outcome of its review.

(5) The notification shall include a statement—

- (a) as to whether or not the authority's decision in respect of the application (including the offer as the case may be) has been revised;
- (b) of the reasons for any revision made; and
- (c) of the matters referred to in regulation 7(2) except that instead of informing the person of his right to make representations the notice shall inform him of his right to appeal and shall specify the last date on which an appeal can be brought.

Appeals

10.—(1) Subject to paragraph (2), a person may appeal to a County Court or a Sheriff Court against—

- (a) a local authority's decision on a payment where the decision has been confirmed on review, or
- (b) a decision on a payment given by a local authority on review.

(2) An appeal may only be made to a Sheriff Court if the appellant is resident in the area over which that Court has jurisdiction and has been so resident since the date the local authority gave notice of the outcome of its review.

(3) An appeal must be made within 21 days of the date the local authority gives notice of the outcome of its review and shall be made by—

- (a) filing an appellant's notice, in the case of an appeal to a County Court, or
- (b) summary application, in the case of an appeal to a Sheriff Court.

Payments by local authorities

11. Where a person has—

- (a) accepted a payment offer; and
- (b) moved to the qualifying dwelling in respect of which the payment was calculated not later than six months after accepting that offer,

the local authority that made the offer shall pay to that person an amount equal to that stated in the payment offer.

Effect of payment to reduce under-occupation on benefits

12.—(1) In the Schedules to the Regulations mentioned in paragraph (2) below the following paragraph shall be added (in each case at the end of the Schedule and taking the next consecutive number)—

“Any payment made to a person under regulation 11 of the Social Security (Payments to Reduce Under-occupation) Regulations 2000, but only for a period of 52 weeks from the date of payment.”

(2) The Schedules to the Regulations are—

- (a) Schedule 5 to the Housing Benefit Regulations;
- (b) Schedule 5 to the Council Tax Benefit (General) Regulations 1992(a);

(a) S.I. 1992/1814.

- (c) Schedule 10 to the Income Support (General) Regulations 1992(a); and
- (d) Schedule 8 to the Jobseeker's Allowance Regulations 1996(b).

Overpayments

13.—(1) Where a payment has been made to a person and the local authority that made the payment subsequently determines that the value at the time the payment offer was made of A or B (as defined in regulation 5) differs from the value of A or B that was used to calculate the payment, the payment made is in excess of entitlement to the extent that it exceeds the amount that would have been offered if the values of A or B as subsequently determined had been used to calculate the payment.

(2) A payment in excess of entitlement shall not be recoverable if it was caused by official error where the person who made the application (whether the housing benefit claimant or a person acting on his behalf) could not, at the time of receipt of the payment offer or the payment reasonably have been expected to realise that the payment was in excess of entitlement.

(3) In paragraph (2) “official error” means a mistake made, whether in the form of an act or omission, by the local authority to whom the application was made, any other local authority from which that authority has obtained information needed to consider the application, an officer or person acting for either authority, an officer of the Department of Social Security or the Department of Employment acting as such or a person providing services to either Department, where the person who made the application (whether the housing benefit claimant or a person acting on his behalf) did not cause or materially contribute to that mistake, act or omission.

Reimbursement of local authorities by the Secretary of State

14.—(1) Where a local authority has submitted a final audited claim in accordance with Schedule 3 and complied with that Schedule as required and the authority's auditor has certified on the claim form that he is satisfied that—

- (a) the final claim is properly calculated; and
- (b) the payments for which reimbursement is claimed have been properly paid,

the Secretary of State shall reimburse the local authority in respect of payments to which that final audited claim relates.

(2) Where a local authority has submitted an interim claim in accordance with Schedule 3 and complied with that Schedule as required the Secretary of State may pay to the local authority such sum as he considers appropriate in the circumstances, but—

- (a) the sum paid following the submission of the interim claim made under paragraph 1(1)(a) of Schedule 3 shall not exceed the sum claimed; and
- (b) the sum paid following the submission of the interim claim made under paragraph 1(1)(b) of Schedule 3 shall not exceed the difference between the sum claimed in respect of the year and the sum, if any, paid following the submission of the interim claim made under paragraph 1(1)(a) of Schedule 3.

(3) Where the Secretary of State has paid sums to an authority following receipt of an interim claim the reimbursement under paragraph (1) shall not exceed that balance payable after deducting the sums already paid.

(4) Where it appears to the Secretary of State that the sums or reimbursement paid to a local authority under this article exceeds the amount needed to reimburse that authority the Secretary of State may recover that excess.

(5) Without prejudice to any other method of recovery that excess may be recovered by withholding further reimbursement from that authority.

(a) S.I. 1987/1967.

(b) S.I. 1996/207.

Time limits on replies and payment offers

15. Nothing in these Regulations shall authorise a local authority to reply or make a payment offer in respect of an application for a payment made on or after 31st March 2003.

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

6th March 2000

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

SCHEDULE 1

Regulation 2

LOCAL AUTHORITIES WHO MAY MAKE PAYMENTS

London Borough of Croydon
London Borough of Haringey
London Borough of Newham

SCHEDULE 2

Regulation 4(b)

SIZE CRITERIA

1. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)—
 - (a) a married couple or an unmarried couple (within the meaning of Part VII of the Social Security Contributions and Benefits Act 1992);
 - (b) a person who is not a child;
 - (c) two children of the same sex;
 - (d) two children who are less than 10 years old;
 - (e) a child.
2. The number of rooms (excluding any allowed under paragraph (1)) suitable for living in allowed are—
 - (a) if there are less than four occupiers, one;
 - (b) if there are more than three and less than seven occupiers, two; and
 - (c) in any other case, three.

SCHEDULE 3

Regulation 14

CONDITIONS ON CLAIMS BY LOCAL AUTHORITIES FOR REIMBURSEMENT

Interim claims

- 1.—(1) A local authority shall submit an interim claim for reimbursement of payments that it has made—
 - (a) by 30th November in any year, in respect of payments it has made on or after 1st April and on or before 30th September of that year; and
 - (b) by 31st May in any year commencing on or after 1st April 2001, in respect of payments it has made on or after 1st April of the preceding year and before 1st April of that year.
- (2) All interim claims submitted by an authority consequent on this paragraph shall be made on the claim form supplied by the Secretary of State and shall be signed by the officer who is responsible for finance pursuant to section 151 of the Local Government Act 1972(a).

Final audited claim

- 2.—(1) A local authority shall submit an audited final claim for reimbursement of payments it has made on or after 1st April of any year and before 1st April of the following year, by 31st December of that following year.
- (2) A final audited claim submitted by an authority consequent on this paragraph shall be made on the claim form supplied by the Secretary of State and shall be signed by the officer who is responsible for finance pursuant to section 151 of the Local Government Act 1972.

Requirement to keep records and provide information

- 3.—(1) A local authority submitting a claim for reimbursement shall provide to the Secretary of State such information, as the Secretary of State so requires, or as may otherwise be necessary, to satisfy him that—
 - (a) the claim is accurate and properly calculated; and

(a) 1972 c. 70.

(b) the payments in respect of which reimbursement is claimed were properly so paid.

(2) A local authority submitting a claim for reimbursement shall keep and, where the Secretary of State requires it or it is otherwise appropriate to do so, produce records with a bearing on that claim.

Requirements of audit of final claim

4. A local authority shall—
- (a) provide such information; and
 - (b) keep and, where asked to do so, produce records with a bearing on its claim, as may be required by the auditor or as may be otherwise required to enable that authority to show and its auditor to check, that—
 - (i) the claim made under paragraph 1(1)(b) is properly calculated; and
 - (ii) the relevant payments in respect of which the reimbursement is claimed have been properly paid.

Final condition for reimbursement on a final audited claim

5. A local authority shall satisfy the Secretary of State that its final audited claim for reimbursement is—
- (a) true and complete; and
 - (b) supported and, if appropriate, supplemented by all the information the Secretary of State requires.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force a scheme to pay lump sums to housing benefit claimants who move from under-occupied dwellings in the public or social rented sector to a dwelling which is not under-occupied or is under-occupied to a lesser extent.

The scheme enables payments to housing benefit claimants who occupy dwellings in the area of any of the three local authorities listed in Schedule 1.

Regulations 2 and 4 specify the conditions of entitlement to a payment.

Regulations 3, 7 and 8 enable applications for payments to be made and require local authorities to consider these applications and reply, making a payment offer if appropriate.

Regulations 5 and 6 state how the payment is to be calculated and the deductions that may be made.

Regulation 9 enables applicants to apply for a review of the local authority's decision on an application. There is a right of appeal from that review to the County Court under regulation 10.

Regulation 11 authorises payments to be made if the person concerned moves to the qualifying dwelling in respect of which the payment offer was made within six months of accepting the offer.

Regulation 12 makes amendments to regulations relating to housing benefit, council tax benefit, income support and jobseeker's allowance so that the payment is disregarded as capital for a period of 52 weeks from the date of payment.

Regulation 13 enables payments to be recovered (in whole or in part) under section 75 of the Social Security Administration Act 1992 if the local authority that made the payment subsequently determine that the information used to calculate the payment was incorrect. However, a payment cannot be recovered if the mistake was made by the authority or other officials and the person who made the application could not have been expected to realise a mistake had been made.

Regulation 14 specifies the conditions which apply to the reimbursement of payments by the Secretary of State under section 79(8) of the Welfare Reform and Pensions Act 1999.

Regulations 1 and 15 state that the regulations expire on 31st March 2003 and no reply or payment offer may be made in respect of an application for a payment received on or after that date.

These Regulations do not impose a charge on business.

S T A T U T O R Y I N S T R U M E N T S

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