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STATUTORY INSTRUMENTS

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**2006 No. 213**

**The Housing Benefit Regulations 2006**

[<sup>F1</sup>PART 8A

Benefit cap

**Textual Amendments**

- F1** Pt. 8A inserted (15.4.2013) by [The Benefit Cap \(Housing Benefit\) Regulations 2012 \(S.I. 2012/2994\)](#), regs. 1, **2(5)** (as amended by [S.I. 2013/388](#), reg. 2, [Sch. para. 51](#); [S.I. 2013/546](#), regs. 1, **2**; and [S.I. 2013/591](#), art. 2(1), [Sch. para. 48\(2\)](#))

**Circumstances in which a benefit cap will apply**

**75A.** Unless regulation 75E or 75F applies, a benefit cap applies where the relevant authority makes a determination that during the reference period the total amount of welfare benefits to which—

- (a) where the claimant is a member of a couple, each member of the couple is or jointly are entitled; or
- (b) in any other case, the claimant is entitled,

exceeds the relevant amount.

**Determination of whether a benefit cap applies**

**75B.** The relevant authority need not determine whether the benefit cap applies, or whether to change the amount of any reduction made in accordance with regulation 75D, unless it receives notification from the Secretary of State that the benefit cap may apply or that there has been a change in the amount of a welfare benefit to which the claimant is entitled (but nothing shall prevent the relevant authority making a determination as to whether the benefit cap applies, or the amount of any reduction, if it has information or evidence suggesting that it should do so).

**Manner of calculating the amount of welfare benefits**

**75C.—**(1) When calculating the total amount of welfare benefits, the relevant authority must use the amount of a welfare benefit to which a person is entitled unless paragraph (2), (3) or (4) applies.

(2) Where the welfare benefit is housing benefit, the relevant authority—

- (a) where the dwelling is [<sup>F2</sup>accommodation specified in regulation 75H (specified accommodation)], must use the amount of nil; and
- (b) in any other case, must not take account of any reduction under regulation 75D and must use the amount to which the claimant would be entitled by virtue of section 130 of the Act.

*Status: Point in time view as at 10/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit Regulations 2006, PART 8A. (See end of Document for details)*

(3) Where the welfare benefit is an employment and support allowance, the relevant authority must disregard that benefit where a person is disqualified for receiving it by virtue of section 18 of the Welfare Reform Act.

(4) Where an amount of a welfare benefit other than jobseeker's allowance or employment and support allowance is taken into account as income in accordance with Part 6 (income and capital), or would be so taken into account if the relevant authority were required to calculate the claimant's income, the relevant authority must use that amount.

(5) The amount of a welfare benefit for the purpose of paragraph (4) includes any amount of that benefit which would have been payable but for any loss of benefit under, or by virtue of, section 6B, 7 or 9 of the Social Security Fraud Act 2001.

#### Textual Amendments

**F2** Words in reg. 75C(2)(a) substituted (10.4.2014) by [The Housing Benefit and Universal Credit \(Supported Accommodation\) \(Amendment\) Regulations 2014 \(S.I. 2014/771\)](#), regs. 1(2), 3(2)

#### Reduction of housing benefit

**75D.**—(1) Subject to paragraph (2), where the benefit cap applies, the relevant authority must reduce the amount of housing benefit to which the claimant is entitled by virtue of section 130 of the Act by the amount by which the total amount of welfare benefits exceeds the relevant amount.

(2) Where the reduction would reduce the claimant's housing benefit to less than the minimum amount of housing benefit provided for in regulation 75 (minimum housing benefit), the relevant authority must reduce the claimant's housing benefit by such amount as will leave the claimant entitled to that minimum amount.

#### Exception to the benefit cap: current or recent work

**75E.**—(1) The benefit cap does not apply where paragraph (2) applies or during the period specified in paragraph (3).

(2) This paragraph applies where the claimant is, or the claimant and the claimant's partner are jointly, entitled to working tax credit.

(3) The specified period is, where paragraph (4) applies, the consecutive period of 39 consecutive weeks starting on the day specified in paragraph (5).

(4) This paragraph applies where the relevant authority is satisfied that, for at least 50 weeks out of the 52 weeks immediately preceding their last day of work, the claimant or the claimant's partner ("P")—

- (a) was employed or engaged in work for payment, or in the expectation of payment; and
- (b) was not entitled to income support, a jobseeker's allowance or an employment and support allowance,

and, for the purposes of sub-paragraph (a), P is employed or engaged in work for any day on which P is on maternity leave, paternity leave or adoption leave or is in receipt of statutory sick pay.

(5) The specified day is the day after the last day on which P was employed or engaged in the work referred to in paragraph (4).

#### Exception to the benefit cap: receipt of specified benefit

**75F.**—(1) The benefit cap does not apply where—

- (a) the claimant or the claimant's partner is receiving an employment and support allowance under Part 1 of the Welfare Reform Act which includes a support component;
  - (b) the claimant or the claimant's partner is receiving an industrial injuries benefit by virtue of Part 5 of the Act;
  - (c) the claimant or the claimant's partner is receiving an attendance allowance;
  - (d) the claimant or the claimant's partner is receiving a war pension;
  - (e) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible, is receiving a disability living allowance;
  - (ea) the claimant, the claimant's partner or a young person for whom the claimant or the claimant's partner is responsible, is receiving a personal independence payment or an armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;
  - (f) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible is entitled to a payment listed in sub-paragraph (b), (c), (d), (e) or (ea) but—
    - (i) that person is not receiving it under regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991;
    - (ii) it is withheld under article 53 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (maintenance in hospital or an institution);
    - (iii) that person is not receiving it under regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991;
    - (iv) that payment is not payable in accordance with regulations made under section 85 (care home residents) or section 86(1) (hospital in-patients) of the Welfare Reform Act 2012;
  - (g) the claimant is receiving universal credit.
- (2) In this regulation "war pension" has the meaning in regulation 2 (interpretation) and includes—
- (a) a guaranteed income payment;
  - (b) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
  - (c) a payment which is made under any of—
    - (i) the Order in Council of 19th December 1881;
    - (ii) the Royal Warrant of 27th October 1884;
    - (iii) the Order by His Majesty of 14th January 1922,to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973
  - (d) a pension paid by the government of a country outside Great Britain which is analogous to a war pension or any of the pensions or payments mentioned in sub-paragraphs (a) to (c).

## Interpretation

**75G.** For the purposes of section 96 of the Welfare Reform Act 2012 and this Part—

“couple” has the meaning in regulation 2 unless the claimant is a member of a polygamous marriage, in which case it means the claimant and the member of the polygamous marriage to whom the claimant was first married and references to the claimant’s partner are to that member of that marriage;

“reference period” means a benefit week;

“relevant amount” is—

- (a) for a single claimant, £350; and
- (b) for all other claimants, £500;

“welfare benefit” means—

- (a) bereavement allowance;
- (b) carer’s allowance;
- (c) child benefit;
- (d) child tax credit;
- (e) an employment and support allowance;
- (f) guardian’s allowance;
- (g) housing benefit;
- (h) incapacity benefit;
- (i) income support;
- (j) a jobseeker’s allowance;
- (k) maternity allowance;
- (l) severe disablement allowance;
- (m) widowed mother’s allowance ;
- (n) widowed parent’s allowance;
- (o) widow’s pension.]

## [<sup>F3</sup>Specified accommodation

**75H.**—(1) The accommodation referred to in regulation 75C(2)(a) is accommodation to which one or more of the following paragraphs applies.

(2) This paragraph applies to accommodation which is exempt accommodation within the meaning of paragraph 4(10) of Schedule 3 to the Consequential Provisions Regulations.

(3) This paragraph applies to accommodation—

- (a) which is provided by a relevant body;
- (b) into which the claimant has been admitted in order to meet a need for care, support or supervision; and
- (c) where the claimant receives care, support or supervision.

(4) This paragraph applies to accommodation which—

- (a) is provided by a relevant authority or a relevant body to the claimant because the claimant has left the home as a result of domestic violence; and

- (b) consists of a building, or part of a building, which is used wholly or mainly for the non-permanent accommodation of persons who have left their homes as a result of domestic violence.
- (5) This paragraph applies to accommodation—
- (a) which would be a hostel within the meaning of regulation 2(1) (interpretation) but for it being owned or managed by a relevant authority; and
- (b) where the claimant receives care, support or supervision.
- (6) In this regulation—
- “coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;
- “controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;
- “domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—
- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,
- regardless of the gender or sexuality of the victim;
- “relevant body” means a—
- (a) council for a county in England for each part of whose area there is a district council;
- (b) housing association;
- (c) registered charity; or
- (d) voluntary organisation.]

#### **Textual Amendments**

- F3** [Reg. 75H](#) inserted (10.4.2014) by [The Housing Benefit and Universal Credit \(Supported Accommodation\) \(Amendment\) Regulations 2014 \(S.I. 2014/771\)](#), regs. 1(2), **3(3)**

**Status:**

Point in time view as at 10/04/2014.

**Changes to legislation:**

There are currently no known outstanding effects for the The Housing Benefit Regulations 2006, PART 8A.