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STATUTORY INSTRUMENTS

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**2007 No. 2868**

**The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007**

**Insertion of regulations 12B, 12C and 12D into the Housing Benefit Regulations 2006**

5. After regulation 12 (rent)(1)insert—

**“Eligible rent**

**12B.**—(1) The amount of a person’s eligible rent shall be determined in accordance with the provisions of this regulation except where regulations 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) apply, or paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies.

(2) Subject to paragraphs (3), (4) and (6), the amount of a person’s eligible rent shall be the aggregate of such payments specified in regulation 12(1) as that person is liable to pay less—

- (a) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (5);
- (b) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1; and
- (c) where he is liable to make payments in respect of any service charges to which regulation 12(1)(e) does not apply, but to which paragraph 3(2) of Part 1 of Schedule 1 (unreasonably low service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Part 1 of Schedule 1.

(3) Where the payments specified in regulation 12(1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion of those payments as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(4) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in regulation 12(1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.

(5) The amount of the deduction referred to in paragraph (2) shall be—

- (a) if the dwelling occupied by the claimant is a self-contained unit, except in a case to which sub-paragraph (c) applies, the amount of the charges;
- (b) in any other case, except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing

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(1) Regulation 12A was inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations. A new Schedule 10 is substituted by regulation 20 of these Regulations. The new Schedule 10 does not include regulation 12A.

the area of the dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;

- (c) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.

(6) In any case where it appears to the relevant authority that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to that authority to be an appropriate rent in that particular case.

#### **Eligible rent and maximum rent**

**12C.**—(1) This regulation applies where a maximum rent has been, or is to be, determined in accordance with regulation 13 (maximum rent).

(2) Where this regulation applies, except where paragraph (3) applies, the amount of a person's eligible rent shall be the maximum rent, subject to paragraphs (3), (4) and (6) of regulation 12B.

(3) In a case where the maximum rent is derived from a single room rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order the eligible rent shall be the maximum rent subject to paragraphs (3) and (6) of regulation 12B.

#### **Eligible rent and maximum rent (LHA)**

**12D.**—(1) This regulation applies where, by virtue of paragraphs (2) or (3) of regulation 13C (when a maximum rent (LHA) is to be determined), a maximum rent (LHA) has been, or is to be, determined in accordance with regulation 13D (determination of a maximum rent (LHA)).

(2) Where this regulation applies, except where paragraphs (3)(a) (protection on death) or (5)(a) (13 week protection) apply,—

- (a) the amount of a person's eligible rent shall be the maximum rent (LHA); and
- (b) it shall apply until the earlier of—
  - (i) the determination of a maximum rent (LHA) by virtue of regulation 13C(2) (d) (change of category of dwelling, death or change of dwelling for an LHA case);
  - (ii) the determination of a maximum rent (LHA) by virtue of regulation 13C(3) (anniversary of LHA date); or
  - (iii) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.

(3) Subject to paragraph (7), where the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a), (b) (new claim on or after 7th April 2008) or (d)(i) or (ii) (change of category of dwelling or death relating to an LHA case) and the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any linked person, the eligible rent shall be—

- (a) either—
  - (i) the eligible rent which applied on the day before the death occurred; or

- (ii) in a case where there was no eligible rent, subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent), the reckonable rent due on that day; or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent determined in accordance with sub-paragraph (a).
- (4) For the purpose of paragraph (3), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.
- (5) Subject to paragraphs (6) and (7), where a relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a) or (b) (new claim on or after 7th April 2008) and the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, the eligible rent shall be—
- (a) an eligible rent determined in accordance with regulation 12B(2); or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent referred to in sub-paragraph (a).
- (6) Paragraph (5) shall not apply where a claimant or the claimant's partner, was previously entitled to benefit in respect of an award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of the claimant's current award of housing benefit.
- (7) Where a person's eligible rent has been determined in accordance with—
- (a) paragraph (3)(a) (protection on death), it shall apply until the first of the following events occurs—
    - (i) the period of 12 months from the date of death has expired;
    - (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
    - (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death) in relation to a subsequent death; or
    - (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.
  - (b) paragraph (5)(a) (13 week protection), it shall apply until the first of the following events occurs—
    - (i) the first 13 weeks of the claimant's award of housing benefit have expired;
    - (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
    - (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death); or
    - (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.

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**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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(8) Where an eligible rent ceases to apply by virtue of paragraph (7)(a)(i) (expiry of protection on death) or (7)(b)(i) (expiry of 13 week protection), the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (3)(a) and (5)(a).”