

WELFARE REFORM BILL

Draft Regulations and supporting material

*This document refers to the Welfare Reform Bill as brought from the House of Commons on
10 January 2007 [HL Bill 24]*

House of Lords – Committee Stage

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Draft Regulations and supporting material

Structure of this booklet

This booklet contains sets of draft regulations and a series of papers relating to key provisions in the Welfare Reform Bill.

The order of the documents in the booklet follows, as far as possible, the order of the clauses in the Bill. Hence, the draft regulations and papers in the first section of the booklet relate to Part 1 of the Bill and the draft regulations and papers in that section, and in each subsequent section, are generally set out in clause order.

Where it has been more appropriate to discuss topics as a whole, for example the overview of Employment and Support Allowance, or where the draft regulations relating to two or more related clauses have been contained in one set and so do not strictly follow the clause order, the introductory text explains how that has been done.

The draft legislation contained in this document remains a working draft and is provided to make clear the intentions on welfare reform contained in the Bill. The regulations, when finalised, will be subject to Parliamentary scrutiny in the normal way.

Explanatory Notes were published with the Bill on introduction to the House of Lords and can be found on the parliamentary web site at:
<http://www.publications.parliament.uk/pa/ld200607/ldbills/024/en/07024x--htm>

The Department has placed its Memorandum to the Delegated Powers and Regulatory Reform Committee on its own web site at:
<http://www.dwp.gov.uk/welfarereform/>

Part 1 of the Bill

Employment and Support Allowance

Employment and Support Allowance

Supporting information

The Employment and Support Allowance – a new integrated contributory and income-related allowance – will replace Incapacity Benefit and Income Support paid on the grounds of incapacity or sickness for new claimants.

The attached papers and regulations set out more detail of our intentions:

- ESA: the new benefit structure
- What will Employment and Support Allowance claimants be expected to do?
- Case studies illustrating how the new allowance will work in practice
- Supplementary information: deductions from the contributory allowance, clause 3
- Draft regulations for limited capability for work (clause 8), limited capability for work-related activity (clause 9) and work-focused health-related assessments (clause 10)
- Draft regulations for work-focused interviews (clause 11) and action plans (clause 13)
- A requirement for claimants to participate in work-related activity (clause 12 & 14)
- Innovative delivery: Contracting out of functions (clause 15)

Other relevant documents are:

- *A new deal for welfare: Empowering people to work*, DWP (Cm 6730), January 2006
- *A new deal for welfare: Empowering people to work – Consultation report*, DWP (Cm 6859), June 2006
- *Transformation of the Personal Capability Assessment. Report of the Physical Function and Mental Health Technical Working Groups*, September 2006 (www.dwp.gov.uk/welfarereform/tpca.pdf)

The Employment and Support Allowance (ESA) - the new benefit structure

Part 1 of the Welfare Reform Bill (and in particular clauses 1-7; 16-17, 19-23, 27 and Schedules 1-3) sets out the conditions of entitlement to the Employment and Support Allowance. The Employment and Support Allowance will be available to benefit claimants who would currently claim Incapacity Benefit and/or Income Support (on the basis of their illness or disability).

ESA will be available to claimants who either:

- satisfy the National Insurance-related contribution conditions; or
- satisfy income and capital tests; or
- satisfy both

This means that ESA, like Jobseeker's Allowance, has two 'strands': a contributory allowance, and an income-related allowance. The income-related allowance is a means-tested benefit. In the income-related allowance, the claimant's (and their partner's, where relevant) income is deducted from their applicable amount once the benefit has been calculated in the way described below. The way in which income will be calculated will be set out in regulations but will be similar to how we do this now for IS and JSA(IB). In the contributory allowance, the amount of benefit a person is entitled to will only be affected in certain circumstances, for example if the person is also receiving some pension and Pension Protection Fund payments.

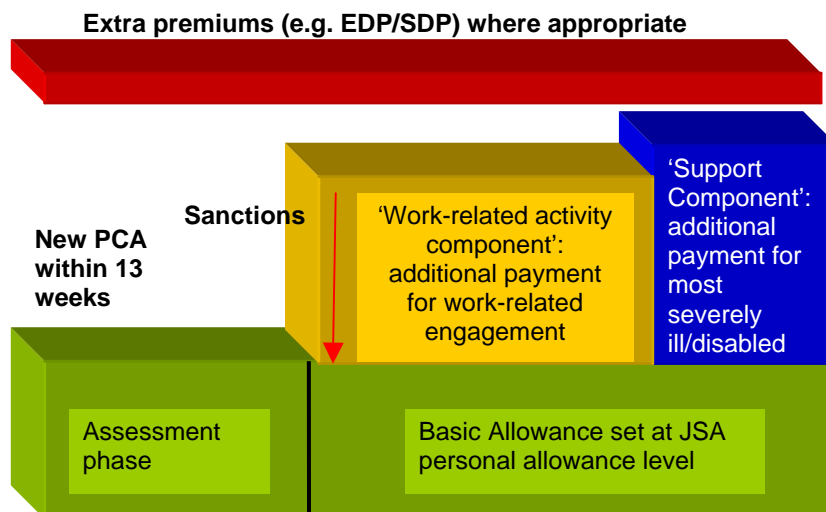
Where are the eligibility conditions and powers relating to income in the Welfare Reform Bill?

- Clause 1 sets out the basic conditions for entitlement to ESA
- Schedule 1 sets out the conditions in more detail
- Clause 16 provides for us to calculate a person's income and capital
- Clause 3 sets out the types of deductions that can be made from the contributory allowance

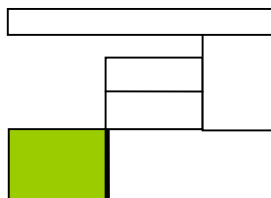
Where possible, the rules for people claiming ESA on contributory grounds, and the rules for those claiming on income-related grounds, are the same. However, there do remain some differences between the two. The key differences are explained below.

Despite these necessary differences, the Employment and Support Allowance proposals address directly a key area for simplification by providing a single integrated income replacement benefit for people who are not working and have an illness or disability. The existing benefit arrangements mean that the majority of claimants have to claim two separate benefits. The new system will be simpler for claimants and staff alike and will provide an improved customer experience.

The benefit will have the following basic structure:



The Assessment Phase



Where is the Assessment Phase in the Welfare Reform Bill?

- Clause 23 (2) and (3) interpret the assessment phase
- The length of the assessment phase will be set out in Regulations
- The assessment phase is also referred to in clauses 2 and 4

The Assessment Phase will usually be a fixed period of 13 weeks during which an initial rate of benefit is paid. During the Assessment Phase we will not make a judgement about the most appropriate level of support for an individual and so the basic benefit will normally be equivalent to the personal age related allowances paid in JSA. The amounts will be related to the customer's age and, for those claiming the income-related benefit, whether or not they have a partner.

In some circumstances, this phase can be extended: for example, in cases where it is not possible to complete the assessment phase in 13 weeks due to the customer being too ill to attend a face-to-face examination. In these circumstances, however, the appropriate main phase rate of benefit will be backdated to the start of the 14th week so that the customer does not lose out.

For people on the income-related strand of ESA, the Carer Premium, the Pensioner Premium, the Higher Pensioner Premium, the Severe Disability Premium and the Enhanced Disability Premiums will be available on the same grounds as they are now in IS and JSA(IB).

Advance awards: Because of the income-related nature of ESA, there will be some people who, because of other income, would not be entitled to benefit

during the assessment phase, but, if their circumstances otherwise stay the same, would become entitled once the benefit rises after week 13. Regulations to be made under clause 5 of the WR Bill will allow us to ensure that these people will be able to get benefit in these circumstances.

The main phase of ESA

Where is the main phase in the Welfare Reform Bill?

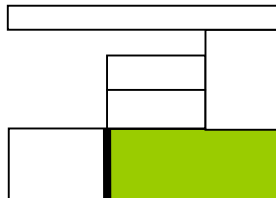
- The 'main phase' is a term we use for ESA once someone has completed the assessment phase. The phrase itself only appears once in the Bill, in a consequential amendment in Schedule 3.
- Clauses 2-7 in particular set out the framework for how and when entitlement to the main phase will be determined
- Clauses 8-9 provide for the Personal Capability Assessment; further details can also be found at pages 19-45 of this booklet

Once the assessment phase is complete and a claimant has satisfied the PCA, the claimant will move on to the main phase of ESA. It may be helpful to think of the main phase benefit as made up of different amounts:

- the basic allowance
- the Work-Related Activity Component or the Support Component
- extra premiums (in income-related benefit only)

This is unlike the existing benefits which increase over time, rewarding the customer for the longevity of the claim. Most claimants with limited capability for work will enter the work-related activity group, whilst those who also have limited capability for work-related activity will enter the support group.

Basic allowance:



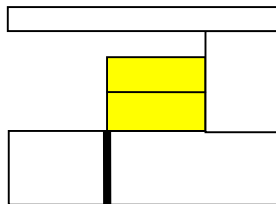
Where is the 'basic allowance' in the Welfare Reform Bill?

- The 'basic allowance' is not a term used in the text of the Welfare Reform Bill – it is a term we use to explain part of the benefit
- We intend to use Clause 2(1)(a) to prescribe the basic allowance for the contributory strand
- We intend to use Clause 4(2)(a) to prescribe the basic allowance for the income-related strand

Different rates for young people (under 25s) will not apply in the main phase of the benefit – the basic rate will be the **same regardless of age**. In the income-related benefit, the basic rate of benefit will provide a higher amount for benefit claimants who are part of a couple.

We plan to set the 'basic allowance' at the same rate as the JSA personal allowances for people who are aged 25 or over.

Work-Related Activity Component

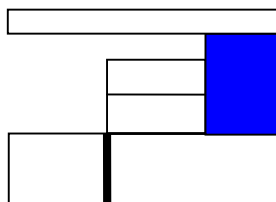


Where is the 'work-related activity component' in the WR Bill?

- Clauses 2(3) and 4(5) set out the conditions of entitlement to the work-related activity component

In addition to the basic allowance, most claimants will also receive a 'work-related activity component' to their benefit once they move onto the main phase. Receiving this higher rate of benefit will be dependent on them carrying out **reasonable steps** to manage their condition and to help move towards the workplace. Receipt of this payment will be dependent upon continued engagement and commitment to undertaking relevant activity, which will be developed with the support and encouragement of specialist Personal Advisers. It follows that the customer may be sanctioned and receive a reduction in benefit for non-participating in required interviews or activity equal to the work-related activity component.

Support Component

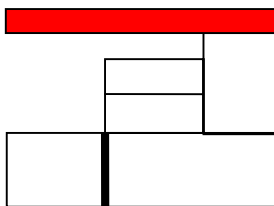


Where is the Support Component in the Welfare Reform Bill?

- Clauses 2(2) and 4(4) set out the conditions of entitlement for the Support Component

A small number of customers with the most severe disabilities or illnesses (those who have been assessed as having 'limited capability for work-related activity') will receive the 'support component' instead of the work-related activity component. This will be set at a higher rate than the work-related activity component, and receipt of it is not dependent on the customer's participation in work-related activity (and so is not subject to sanctions). However, if customers wish, on a voluntary basis, to take appropriate steps towards work, they will be able to do so.

Extra premiums:



Where are the extra premiums in the Welfare Reform Bill?

- The extra premiums do not appear on the face of the Welfare Reform Bill
- We intend to use clause 4(2)(a) to prescribe the premiums that people will be able to receive.

For people who qualify for the income-related strand of the benefit, there will be access to many of the same premiums as are available in Income Support and income-based Jobseeker's Allowance, for example, the Enhanced and Severe Disability Premiums. There will be no Disability Premium available within ESA given that the new benefit supports people differently through the work-related activity and support components.

Existing incapacity benefits customers:

Where are there provisions for existing customers in the Welfare Reform Bill?

- Clause 28 and schedule 4 make provision to migrate existing incapacity benefits customers onto ESA.

Over time, as resources allow, all existing incapacity benefits customers will be migrated across to the Employment and Support Allowance. This will bring all customers together under the same system, helping to smooth the administration of the new benefit and reduce dual-system complexity.

No existing customer will lose out in cash terms. Our principle is then to simplify the system and to bring people onto ESA rules as far as possible.

What will Employment and Support Allowance Claimants be expected to do?

When the new Employment and Support Allowance is introduced the requirements for new claimants of the benefit will be based on the successful Pathways to Work scheme. Clause 11 of the Welfare Reform Bill provides the powers for mandatory work-focused interviews.

We will ask claimants to attend a work-focused interview around 8 weeks after they have claimed. A Personal Adviser will discuss with the claimant their benefit entitlement, their aspirations for work, the steps they might take to help them take up a job and the Pathways-style support that is available to them.

Subsequently most claimants in the Work-Related Activity Group (i.e those not in the Support Group) will have a further series of 5 interviews with a Personal Adviser focused on helping them back to work. These will usually take place approximately monthly although there is flexibility around this. The

information from the work-related health-focused assessment will help inform discussion at these subsequent interviews.

The Pathways-style support on offer will provide a range of options including Condition Management Programmes. There will be no obligation on the claimant to take up this support at the time the benefit is introduced.

The claimant will be provided with an action plan which will reflect the discussion at each interview including the steps a claimant could take to help them take up a job or prepare to return to work.

It is intended that when the claimant has a repeat medical assessment (Personal Capability Assessment) that subsequently they will have a minimum of one additional work-focused interview.

If a claimant is in receipt of the work-related activity component of the benefit and fails to take part in an interview without good cause for doing so, a sanction will be imposed. There are a series of safeguard procedures that will take place before a sanction can be imposed. A work-focused interview can be waived or deferred by the Personal Adviser in certain circumstances.

Where eligibility for the Support Group has not been decided the interview at around week 8 of the claim will be deferred for claimants so severely sick and disabled that such an interview would not be of assistance to them or appropriate for them.

Separate notes are provided on safeguards and waivers and deferrals to describe our policy intentions.

As set out in the Green Paper, as evidence suggests and resources allow we will introduce a requirement for claimants to engage in some work-related activity in the future. This is provided for by Clause 12 and our intentions are addressed in a separate note.

Safeguards before a sanction is imposed

Safeguard procedures are in place in Pathways to Work and we intend to carry these forward into the Employment and Support Allowance.

The safeguards, which are working well in Pathways, ensure that a rigorous process is adhered to before a sanction is imposed to ensure that no one has their benefit reduced inappropriately and to give each individual the chance to comply with the requirements. The purpose of the sanctions regime is not to punish people but rather to provide incentives for claimants to undertake activity that we believe will be beneficial to them.

Safeguards are particularly important for claimants with mental health conditions for whom a home visit will be arranged if a sanction is to be imposed.

The majority of safeguards are not set out in regulations but are in operational guidance to ensure that where necessary they can be adapted if evidence suggests they are not effectively protecting people.

The safeguards procedures are:

- advising the customer at the point of claim about the work-focused interview process;
- contacting the customer before each work-focused interview to remind them that it is due;
- considering in the context of each work-focused interview whether the interview should be waived or deferred;
- notifying the customer of the date, time and place for the work-focused interview and asking them to get in touch if they cannot make it;
- offering them a more convenient location or a home visit where appropriate, and encouraging advocacy support if needed;
- identifying any relevant issues from medical evidence where available, that might impact on attendance;
- visiting those customers with whom there has been no verbal contact prior to the WFI;
- visiting every customer, with their representative if appropriate, with a stated mental health condition or learning disability if a sanction is to be imposed; and
- lifting all sanctions and reinstating benefit in full when the customer participates in a WFI.

Waiving and deferring work-focused interviews

Where appropriate, and within the tests set out in the draft regulations, work-focused interviews can be waived (cancelled) or deferred (rearranged) by Personal Advisers.

Draft regulations allow Personal Advisers to waive an interview when a claimant is very close to returning to employment. For example the claimant had a start date for a job or was undertaking permitted work with a view to increasing their hours and moving off the benefit in the near future. In those circumstances a work-focused interview would not be of assistance as it would not increase the claimant's chances of finding a job.

Draft regulations allow Personal Advisers to defer an interview when it would not be of assistance to the claimant or appropriate in the circumstances. This is the same test that currently applies in Pathways regulations. It can cover a wide range of circumstances such as:

- a worsened fluctuating condition
- a period in hospital
- inability to attend because of an illness
- transport problems on the day
- recent bereavement
- caring responsibilities (eg, for someone severely disabled or terminally ill)

- claimant is in the late stages of pregnancy

Interviews can be deferred for a range of periods. If it is a problem on the day of the interview (e.g. transport problems), the interview would be rearranged in the days after the original date. However where the problems are more long term, such as a period of time in hospital, then the deferment would be until the person had come out of hospital and recovered, which could be a few months.

The deferral test in regulations is designed to be wide because of the huge range of circumstances it might have to cover. As in Pathways to Work, Personal Advisers will have to apply the deferral test reasonably and we will provide them with guidance and training on the type of circumstances where a waiver or deferral would be appropriate. Giving similar powers to Personal Advisers has been successful in Pathways and we believe allowing the people who deal with customers week to week are best placed to make these decisions.

We do not believe it is appropriate for waivers to be used more widely under the new benefit because it is important that claimants engage with the package of 6 interviews in order to give them the appropriate back to work support. Where deferrals are used we accept this may mean that the period over which claimants are required to take part in work-focused interviews will be longer for some claimants.

Case Studies

Case Study 1 – Sarah

Background

Sarah, 38, enjoyed her work as a successful chartered accountant until she suffered a major stroke that left her with severe mobility and communication problems. She spends several months in hospital recovering and rehabilitating, during which time her husband begins to make enquiries about ESA, as he is concerned about finances when Sarah's Statutory Sick Pay stops.

Sarah's husband Peter contacts Jobcentre Plus and makes a claim for ESA on her behalf.

The assessment phase

It becomes clear from the initial written evidence gathering that Sarah is likely to be in the support group because of the severity of her condition. It is decided that Sarah's claim can be assessed without the need for a face-to-face examination, based on the written and medical evidence already provided. As the effects of her stroke remain acute and she has very restricted mobility, she is not required to attend the week 8 Work-Focused Interview (WFI). Sarah is placed in the support group and it is recommended that she is re-assessed after one year.

The main phase

Sarah continues to receive her ESA, including the support component. Her condition gradually improves, and at her next Personal Capability Assessment (PCA), which includes a face-to-face medical examination, she is assessed as not having limited capability for work-related activity. This means she moves into the work-related activity group, which has the effect of a small reduction in her benefit. Sarah asks for this decision to be reconsidered on the basis of additional medical evidence from her GP, but the reconsideration process confirms the decision (and Sarah decides not to appeal). She attends her first WFI, where she and her personal adviser use the Work-Focused Health-Related Assessment (WFHRA) report as a starting point to discuss steps that she could take to help her prepare to return to work, and an action plan is agreed with her.

Given the outcome of the reconsideration process, the personal adviser uses the WFI to discuss with Sarah what is involved in being in the work-related activity group, reassuring her that her needs will be taken into account and decisions about work-related activity will always be the result of discussion between Sarah and the personal adviser.

Sarah's action plan helps her to focus on realistic priorities, which include continuing her speech therapy treatment, participating in a condition management programme, and, in time, doing some voluntary work in a charity shop to help improve her confidence in communication. She is determined to get back to some kind of work, although she recognises that it may not be the kind of work she did before her stroke. Her WFHRA helped her to think about what might be suitable for her, and she is positive about finding something for the future that she can enjoy as much as she enjoyed her career before the stroke.

Case Study 2 – Dave

Background

Dave, 30, has depression and is currently unable to work. He has claimed ESA in the past under similar circumstances, but 18 months ago he left the benefit to start work in an IT company. However, Dave's depression recently became more severe after a family bereavement, and he could not continue in his job.

Dave contacts Jobcentre Plus and makes a claim for ESA.

The assessment phase

Because Dave had previously claimed ESA but left to pursue work, the linking rules mean he can return to the same level of benefit that he had before he left. He moves straight into the main phase of the benefit, but he requests a PCA because he believes his condition has worsened since his earlier period on ESA.

The main phase

Dave receives ESA, including the work-related activity component. He is entitled to a contributory allowance and his allowance also includes an income-related element. This is because Dave's entitlement on the income-related strand of ESA is greater than the rate of the contributory allowance, due to his personal circumstances. He is married (so qualifying for the couple rate) and neither he nor his wife has any income. A WFI is arranged for him, but Dave does not turn up, and when his adviser contacts him to find out why, Dave isn't clear about his reasons for non-attendance.

As a safeguard, a home visit is arranged, to find out more about Dave's non-attendance and to explain the range of opportunities and support mechanisms that are available to him through ESA. Dave is also made aware of his responsibilities and the possibility that his benefit will be sanctioned, if he doesn't meet the conditionality requirements, by reducing the amount of his benefit by an amount equal to 50% of the work-related activity component in the first instance (if the reduction affects the income-related element of Dave's benefit, Dave's entitlement to the "passport" income-related benefits, like free school meals for his children, would be protected). Dave explains that a recent change in medication affected him adversely and that he had not fully grasped the WFI requirement. It is decided that Dave had good cause for not attending the WFI, and there was a good reason why he couldn't have explained this within the 5 day period for showing good cause. Therefore, he will not be sanctioned for his non-attendance. It is agreed and logged in the action plan that Dave's main priority needs to be managing his condition, which will help him towards a successful return to suitable work.

Case Study 3 - Brian

Background

Brian, 50, worked for himself as a builder. He developed back and leg pain that meant he began to really struggle with his day-to-day activities, and eventually could no longer work. His GP agrees that Brian is unable to do his normal work, but encourages him to try to remain as active as possible to help his condition.

Brian contacts Jobcentre Plus and makes a claim for ESA.

Brian is awarded ESA at the assessment phase rate, and receives the income-related strand of the allowance because his wife only works part-time and he did not fully meet the contribution conditions (it has only been a year since Brian became self-employed and before that he was out of work. This means that he doesn't meet the first contribution condition - i.e. he hasn't paid sufficient Class 1 or Class 2 National Insurance contributions on earnings in any of the past 3 tax years).

The assessment phase

The PCA process for Brian takes longer than the standard 13 weeks because he was too ill to attend the scheduled face-to-face medical assessment. During the 13th week of his claim Brian contacts the Jobcentre Plus office to check what's happening with the assessment of his claim. Soon afterwards Brian is informed he meets the criteria for the work-related activity component, which is backdated to the beginning of week 14 of his claim.

The week 8 WFI is focused on exploring Brian's work history, skills and experience, and initiating an action plan for how he can help prepare himself to return to work.

The main phase

On the day that Brian's second WFI was due to take place, one of Brian's children falls ill and he has to stay at home to look after her because his wife is at work. He phones his personal adviser who agrees to defer the WFI until the following week. At the WFI, Brian and his personal adviser discuss support he may wish to take up, focusing around condition management and development of new skills. Brian and his adviser agree an action plan reflecting their discussion. Brian's WFHRA indicated that manual labour as a builder is not currently a feasible work option for him, and he expressed an interest in office work. After taking part in an administrative skills course, Brian is successful in finding a job in the office of a large builder's merchants. Access to Work funding is secured to make reasonable adjustments for Brian – including purchasing a specialist chair to support his back – and during the first year of working he receives a £40 weekly Return to Work credit to supplement his earnings in the new job.

Case Study 4 – Stephen

Background

Stephen is 20 years old and has struggled with mental health problems since he was 15. He experiences schizophrenic symptoms but it is difficult to predict when these will occur because his condition fluctuates. Stephen managed to complete his studies at college but his schizophrenia has been getting worse and he has been unable to work.

Stephen contacts Jobcentre Plus and makes a claim for ESA.

Although he has not built up a sufficient contributions record, the special qualifying condition for young people means that he can access the contributory allowance once he has medical evidence for his limited capability for work for 196 continuous days.

The assessment phase

Stephen completes the initial face-to-face PCA. He attends the week 8 WFI, where he meets his personal adviser and gains further understanding of the support available and what participating in WFIs requires. Two weeks later he learns that he has been assessed as having limited capability for work, and that he will be placed in the work-related activity group for the main phase of the benefit. His work-focused health-related assessment report advises that because of Stephen's fluctuating condition, there will be a need for flexibility in the kind of work-related activity he can engage in.

The main phase

The basic rate of ESA for Stephen increases, because he is no longer on the young people's rates of benefit that apply during the assessment phase, and on top of this he receives the work-related activity component. At his next WFI, he and the personal adviser start to review what was discussed at his previous WFI, and how future WFIs will be scheduled. The PA is aware that Stephen has a fluctuating condition and that on the days when his schizophrenic symptoms are bad, he might neither be able to attend the WFI, nor even be capable of letting the personal adviser know this in advance. This is exactly the case at the time of Stephen's third WFI and the adviser accepts Stephen had good cause for not attending, and re-arranges the WFI for the following week. Following advice from the WFHRA, Stephen concentrates on work opportunities that offer the flexibility he needs to be able to work only on days where he experiences no symptoms. After 7 months on ESA he successfully finds flexible work in a college library, where the workload is not dependent on deadlines and Stephen can take days off when his symptoms are bad, without jeopardising his employment. His entitlement to ESA ends, but he receives a Working Tax Credit (WTC) (he qualifies for this because he previously received ESA, and he meets the condition of having "a disability that puts you at a disadvantage in getting a job").

Case Study 5 – Jennifer

Background

Jennifer, 45, was recently diagnosed with lymphoma (cancer of the immune system), and she is now following a course of treatment that includes intravenous chemotherapy.

Jennifer contacts Jobcentre Plus and makes a claim for ESA. She does not meet the contribution conditions (she has not done sufficient paid work in any of the last 3 tax years to meet the first contribution condition), and because her partner has some earnings from his part-time job, she is also not entitled to the income-related allowance in the assessment phase. However, if she was to be assessed as having limited capability for work, and become entitled to one of the two ESA components, she would qualify for an income-related allowance. In this case, Jennifer is not paid any allowance in the assessment phase, but her claim remains open and she continues to participate in the ESA regime.

The assessment phase

Jennifer does not receive any ESA in the assessment phase. Medical evidence on her condition is provided by her GP and consultants, and it is decided that Jennifer is to be treated as having limited capability for work and limited capability for work-related activity, on the grounds that she is receiving intravenous chemotherapy. There is no need for a face-to-face examination. People undergoing certain very invasive forms of cancer treatment, like Jennifer, automatically qualify for ESA with the support component.

The main phase

Jennifer receives ESA, including the support component. She had started a part-time job in a local gift shop just before her diagnosis, and she wants to continue working 2 or 3 hours a week there, if it fits in around her treatment. She is allowed to do this under earnings rules for income-related ESA. As a member of the support group, Jennifer has the option of volunteering to participate in work-related activity, but she decides against this for the time being.

Clause 3

Deductions from contributory allowance

Our intention is that the powers in Clause 3 should be used to apply deductions from contributory ESA in the same way as applies to Incapacity Benefit currently.

There are presently two types of deductions from Incapacity Benefit. Firstly, deductions in relation to personal or private pension, or periodic Pension Protection Fund payments, which exceed £85 a week. In those cases, half of the excess over £85 is deducted from the recipient's Incapacity Benefit.

We intend, through regulations under Clause 2 and Clause 3 to bring similar rules forward into ESA¹.

The second reduction relates to local councillors. Currently, where someone is elected as a local councillor, any activity they undertake as a councillor is ignored for certain benefit purposes. We intend to reflect that rule in regulations we make under paragraph 10 of Schedule 2.

Alongside this, the system recognises that where a person is receiving payments in connection with being a councillor, it is right that the amount of any Incapacity Benefit is reduced by the amount by which those payments, after the deduction of reasonable expenses, exceed £86 per week. We intend, through regulations under Clause 2 and Clause 3, to bring this rule forward into contributory ESA. These regulations will have the same effect as in Incapacity Benefit currently².

¹ See section 30DD of the Social Security Contributions and Benefits Act 1992 together with regulations 20 to 25 of the Social Security (Incapacity Benefit) Regulations 1994.

² See section 30E of the Social Security (Contributions and Benefits) Act 1992 together with regulations 8 and 9 of the Social Security (Incapacity Benefit) Regulations 1994

Clause 8 Limited Capability for Work

The Employment and Support Allowance (Limited Capability for Work) Regulations 2007

These regulations set out the criteria for, and manner of, determining whether a person's capability for work is limited by his physical or mental condition and if so, whether it is so limited that it is unreasonable to require him to work, and as a consequence, that he should be entitled to the Employment and Support Allowance.

Regulation 3 sets out the circumstances in which a person will be determined as having limited capability for work. Regulation 5 sets out the information that will be required to determine whether or not they have limited capability for work. Regulation 7 provides that a person may be called for a medical examination to determine whether he has limited capability for work.

Regulation 6 provides for the consequences that will flow from a failure by the claimant to provide information that is requested from him in accordance with the regulations. Under regulation 6, a person who fails to provide information when asked to do so will be treated as not having limited capability for work, unless he can show good cause for his non-compliance. Regulation 7 makes equivalent provision for a person who fails, without good cause, to attend or participate in a medical examination, to be treated as not having limited capability for work.

Regulation 8 sets out which factors are to be taken into account in deciding whether there is good cause for failure to comply with a request to provide information or to attend a medical examination on request.

Regulations 4 and 12 provide for people in certain circumstances (for example people who are terminally ill or people who fall into prescribed exceptional circumstances) to be treated as having limited capability for work irrespective of whether they would meet the test of limited capability for work at that time.

Regulations 9 and 10 provide for people receiving certain types of regular medical treatment or hospital inpatients to be treated as having limited capability for work on any day during which they are receiving treatment or are in hospital.

Regulation 11 provides that where a person has limited capability for work at the commencement of a day or it develops during that day will be treated as having limited capability for work throughout the day.

Regulation 13 provides for claimants to be treated as having limited capability for work until the test of limited capability for work is carried out, where he meets certain conditions (for example, by providing a medical certificate of limited capability for work from his General Practitioner).

The test of limited capability for work used in the regulations (see regulation 3(2)) determined limited capability for work by the extent to which a person who has specific disease or bodily or mental disablement is capable or incapable of performing prescribed activities, found in the Schedule to the regulations. Part I of the Schedule contains activities characterising physical function, which are broken down into descriptors. Part II of the Schedule contains activities characterising mental, cognitive and intellectual function. They are also broken down into descriptors. The extent to which a claimant can or cannot carry out an activity is determined by which descriptor applies to him. Where a claimant meets a descriptor, he will be awarded the points corresponding to that descriptor. If a claimant scores 15 points or more on the assessment, whether by a single descriptor or by a combination of descriptors from different activities (including a mixture of physical and mental function activities) he will be determined as having limited capability for work.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Employment and Support Allowance (Limited Capability
for Work) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by [section] 8 of and Schedule 2 to the Welfare Reform [Act 2007]:

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work) Regulations 200[7] and shall come into force on [date] 200[7].

Interpretation

2. In these Regulations—

“confinement” has the meaning given to it by section 171(1) of the Social Security Contributions and Benefits Act 1992;

“descriptor” means, in relation to an activity specified in column (1) of the Schedule, a descriptor in column (2) of that Schedule which describes a person’s ability to perform that activity;

“doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom of whom the Secretary of State may request a medical opinion, a person registered or recognised as such in the country in which he pursues his medical practice;

“enactment” includes an enactment comprised in, or in an instrument made under,—

- (a) an Act; or
- (b) an Act of the Scottish Parliament;

“health care professional” means a member of a profession (whether or not regulated by, or by virtue of, any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals;

“limited capability for work assessment” means the assessment set out in the Schedule to these Regulations and defined in regulation 3(2) of these Regulations;

“medical evidence” means—

- (a) evidence from a health care professional approved by the Secretary of State, and
- (b) evidence (if any) from any health care professional or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“relevant disease” means—

- (c) in England and Wales, any disease, food poisoning, infection, infectious disease or notifiable disease—
 - (i) to which Section 20(1) of the Public Health (Control of Disease) Act 1984⁽³⁾ (stopping of work to prevent spread of disease) applies; or
 - (ii) to which—
 - (aa) regulation 3 (public health enactments applied to certain diseases) of, and Schedule 1 to,
 - (bb) regulation 9(1) (provisions for preventing the spread of typhus and relapsing fever) of, and Schedule 3 to, or
 - (cc) regulation 9(2) (provisions for preventing the spread of food poisoning and food borne infections) of, and Schedule 4 to,the Public Health (Infectious Diseases) Regulations 1988⁽⁴⁾ applies; or
 - (iii) to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979⁽⁵⁾ applies; or
 - (iv) to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 ⁽⁶⁾ applies; and
- (d) in Scotland, any food poisoning or infectious disease to which section 71(1) of the Health Services and Public Health Act 1968⁽⁷⁾ (compensation for stopping employment to prevent spread of disease in Scotland) applies.

Determination of limited capability for work

3.—(1) For the purposes of Part I of the Welfare Reform [Act 2007], whether a person’s capability for work is limited by his physical or mental condition and the limitation is such that it is not reasonable to require him to work shall be determined on the basis of a limited capability for work assessment of the person concerned in accordance with these Regulations.

(2) The limited capability for work assessment is an assessment of the extent to which a person who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in the Schedule or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) For the purpose of Part I of the Welfare Reform [Act 2007] a person will have limited capability for work if, by adding the points listed in column (3) against any descriptor listed in the Schedule, he obtains a total score of at least:—

- (a) 15 points in respect of descriptors specified in Part I;
- (b) 15 points in respect of descriptors specified in Part II; or
- (c) 15 points in respect of descriptors specified in Parts I and II.

(4) In assessing the extent of a person’s incapacity to perform any activity listed in Part I of the Schedule, he shall be assessed as if he were wearing any prosthesis with which he is fitted or, as the case may be, wearing or using any aid or appliance which he normally wears or uses.

⁽³⁾ 1984 c.22; section 20 was amended by section 59 of, and Schedule 3 to, the Food Safety Act 1990 (c.16).

⁽⁴⁾ S.I.1988/1546.

⁽⁵⁾ S.I.1979/1434.

⁽⁶⁾ S.I. 1979/1435.

⁽⁷⁾ 1968 c.46; section 71 was amended by section 64 of, and Schedule 6 to, the National Health Service (Scotland) Act 1972 (c.58) and section 180 of, and Schedule 14 to, the Local Government etc. (Scotland) Act 1994 (c.39).

(5) In assessing the extent of a person's incapacity to perform any activity listed in Part I or Part II of the Schedule, it is a condition that his incapacity to perform the activity arises from—

- (a) a specific bodily disease or disablement;
- (b) a specific mental illness or disablement; or
- (c) as a direct result of treatment provided by a registered medical practitioner, for such a disease, illness or disablement.

(6) Where more than one descriptor specified for an activity applies to a person, only the descriptor with the highest score in respect of each activity which applies to him is to be counted.

Certain persons to be treated as having limited capability for work

4.—(1) A person is to be treated as having limited capability for work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

- (a) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (b) that he is receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy;
- (c) that he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found not to have limited capability for work;
- (d) that he is:
 - (i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or
 - (ii) otherwise prevented from working pursuant to an enactment, by reason of his being a carrier, or having been in contact with a case, of a relevant disease.
- (e) that in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
- (f) that in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Social Security (Medical Evidence) Regulations 1976, on any day in the period—
 - (i) beginning with the first date of the 6th week before the expected week or her confinement or the actual date of her confinement, whichever is earlier; and
 - (ii) ending on the 14th day after the actual date of her confinement if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

Information required for determining capability for work

5.—(1) Subject to paragraph (2), the information or evidence required to determine whether a person has limited capability for work is—

- (a) evidence of limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence required in each case);
- (b) any information relating to a person's ability to perform the activities referred to in the Schedule as the Secretary of State may request in the form of a questionnaire; and
- (c) any such additional information as the Secretary of State may request.

(2) Where the Secretary of State is satisfied that he has sufficient information to determine whether a person has limited capability for work without the information specified in paragraph (1)(b), that information will not be required for the purposes of making the determination.

(3) Paragraph (1) shall not apply in relation to a determination—

- (a) whether a person does not have limited capability for work for the purposes of a claim for jobseeker's allowance; or
- (b) whether a person is to be treated as having limited capability for work under any of regulations 4, 9 and 10.

Failure to provide information

6.—(1) Where a person fails without good cause to comply with the Secretary of State's request that he provide the information referred to in regulation 5(1)(b), he is, subject to paragraph (2), to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the Secretary of State sent the person the first request for the information; and
- (b) the Secretary of State sent that person a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

Person may be called for a medical examination

7.—(1) Where it falls to be determined whether a person has limited capability for work, he may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or to submit himself to such an examination, he shall be treated as not having limited capability for work.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to him at least 7 days in advance, or unless he agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause

8. The matters to be taken into account in determining whether a person has good cause under regulations 6 or 7 (failure to provide information or attend a medical examination) include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability he has.

Hospital in-patients

9. A person shall be treated as having limited capability for work on any day on which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Persons receiving regular treatment

10.—(1) The following provisions of this regulation apply to a person receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

(2) A person referred to in paragraph (1) shall be treated as having limited capability for work on any day on which he is engaged in that treatment.

Person to be treated as having limited capability for work throughout a day

11. A person who at the commencement of any day has, or thereafter develops limited capability for work in accordance with the limited capability for work assessment shall be treated as having limited capability for work throughout that day.

Exceptional circumstances

12.—(1) A person who does not have limited capability for work in accordance with the limited capability for work assessment shall be treated as having limited capability for work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that he is suffering from a severe life threatening disease in relation to which—

- (a) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
- (b) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.

Conditions for treating a person as having limited capability for work until the assessment of limited capability for work has been carried out

13.—(1) A person shall, if the conditions set out in paragraph (2) are met, be treated as having limited capability for work until such time as he has been assessed in accordance with the limited capability for work assessment or he falls to be treated as not having limited capability for work in accordance with regulation 6 or 7.

(2) The conditions are—

- (a) that the person provides evidence of his limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence required in each case); and
- (b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to his entitlement to any benefit, allowance or advantage which is dependent on him having limited capability for work, that the person does not have limited capability for work or is to be treated as not having limited capability for work under regulation 5 or 6 unless—
 - (i) he is suffering from some specific disease or bodily or mental disablement from which he was not suffering at the time of that determination; or
 - (ii) a disease or bodily or mental disablement from which he was suffering at the time of that determination has significantly worsened; or
 - (iii) in the case of a person who was treated as not having limited capability for work under regulation 5 (failure to provide information), he has since provided the information requested by the Secretary of State under that regulation.

Signed by the authority of the Secretary of State for Work and Pensions

Date

Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE

Regulation 3

**DISABILITIES WHICH MAY DEMONSTRATE A PERSON HAS
LIMITED CAPABILITY FOR WORK**

PART 1

PHYSICAL DISABILITIES

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
1. Walking with a walking stick or other aid if such aid is normally used.	1(a)	Cannot walk at all.	15
	(b)	Cannot walk more than 30 metres on level ground without repeatedly stopping or severe discomfort.	15
	(c)	Cannot walk up or down two steps even with the support of a handrail.	15
	(d)	Cannot walk more than 50 metres on level ground without stopping or severe discomfort.	9
	(e)	Cannot walk more than 200 metres on level ground without stopping or severe discomfort.	6
	(f)	None of the above apply.	0
2. Standing and sitting.	2(a)	Cannot stand for more than 10 minutes, unassisted by another person, even if free to move around, before needing to sit down.	15
	(b)	Cannot sit in a chair with a high back and no arms for more than 10 minutes before needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	15
	(c)	Cannot rise to standing from sitting in an upright chair without physical assistance from another person.	15
	(d)	Cannot move between one seated	15

		position and another seated position located next to one another without receiving physical assistance from another person.	
	(e)	Cannot stand for more than 30 minutes, even if free to move around, before needing to sit down.	6
	(f)	Cannot sit for more than 30 minutes without having to move from a chair with a high back and no arms because the degree of discomfort makes it impossible to continue sitting.	6
	(g)	None of the above apply.	0
3. Bending or kneeling.	3(a)	Cannot bend to touch knees and straighten up again.	15
	(b)	Cannot bend or kneel, or bend and kneel, or squat, as if to pick a light object, such as a piece of paper, situated 15cm from the floor on a low shelf, and to move it and straighten up again without the help of another person.	9
	(c)	Cannot bend or kneel, or bend and kneel, or squat, as if to pick a light object off the floor and straighten up again without the help of another person.	6
	(d)	None of the above apply.	0
4. Reaching.	4(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b)	Cannot put either arm behind back as if to put on a coat or jacket.	15
	(c)	Cannot raise either arm to top of head as if to put on a hat.	9
	(d)	None of the above apply.	0

5. Picking up and moving or transferring by the use of the upper body and arms (excluding all other activities specified in Part I of this Schedule).	5(a)	Cannot pick up and move a one litre plastic jug full of liquid with either hand.	15
	(b)	Cannot pick up and move a two litre plastic jug full of liquid with either hand.	9
	(c)	Cannot pick up and move a light but bulky object, such as an empty cardboard box, requiring the use of both hands together.	6
	(d)	None of the above apply.	0
6. Manual dexterity.	6(a)	Cannot turn a “star-headed” sink tap with either hand.	15
	(b)	Cannot pick up a £1 coin or equivalent with either hand.	15
	(c)	Cannot turn the pages of a book with either hand.	15
	(d)	Cannot physically use a pen or pencil.	9
	(e)	Cannot physically use a conventional keyboard or mouse.	9
	(f)	Cannot do up / undo small buttons, such as shirt or blouse buttons.	9
	(g)	Cannot turn a “star-headed” sink tap with one hand but can with the other.	6
	(h)	Cannot pick up a £1 coin or equivalent with one hand but can with the other.	6
	(i)	Cannot pour from an open 0.5 litre carton full of liquid.	6
	(j)	None of the above apply.	0
7. Speech.	7(a)	Cannot speak at all.	15

	(b)	Speech cannot be understood by strangers.	15
	(c)	Strangers have great difficulty understanding speech.	9
	(d)	Strangers have some difficulty understanding speech.	6
	(e)	None of the above apply.	0
8. Hearing with a hearing aid or other aid if normally worn	8(a)	Cannot hear at all.	15
	(b)	Cannot hear well enough to be able to hear someone talking in a loud voice in a quiet room, sufficiently clearly to distinguish words	15
	(c)	Cannot hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish words.	9
	(d)	Cannot hear someone talking in a loud voice in a busy street, sufficiently clearly to distinguish words.	6
	(e)	None of the above apply.	0
9. Vision including visual acuity and visual fields, in normal daylight or bright electric light, with glasses or other aid to vision if such aid is normally worn.	9(a)	Cannot see at all.	15
	(b)	Cannot see well enough to read 16 point print at a distance of greater than 20cm.	15
	(c)	Has 50% or greater reduction of visual fields.	15
	(d)	Cannot see well enough to recognise a friend at a distance of at least 5 metres.	9
	(e)	Has 25% or more but less than 50% reduction of visual fields.	6
	(f)	Cannot see well enough to recognise	6

		a friend at a distance of at least 15 metres.	
	(g)	None of the above apply.	0
10 (a) Continence other than enuresis (bed wetting) where claimant does not have an artificial stoma or urinary collecting device.	10(a)(i)	Has no voluntary control of the evacuation of the bowel.	15
	10(a)(iii)	Has no voluntary control of the voiding of the bladder.	15
	10(a)(iii)	Loses control of bowel so that he cannot control the full evacuation of the bowel at least once a month.	15
	10(a)(iv)	Loses control of bladder so that he cannot control the full voiding of the bladder at least once a week.	15
	10(a)(v)	Loses control of bowels so that he cannot control the full evacuation of the bowel occasionally.	9
	10(a)(vi)	Loses control of bladder so that he cannot control the full voiding of the bladder at least once a month.	6
	10(a)(vii)	Risks losing control of bowels or bladder so that he cannot control the full evacuation of the bowel or the full voiding of the bladder if not able to reach a toilet quickly.	6
	10(a)(viii)	None of the above apply.	0
10(b) Continence where claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.	10(b)(i)	Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person.	15
	10(b)(ii)	Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents.	15
	10(b)(iii)	Has no voluntary control over the evacuation of the bowel.	15
	10(b)(iv)	Loses control of the bowel so that he	15

		cannot control the full evacuation of the bowel at least once a month.	
	10(b)(v)	Loses control of the bowel so that he occasionally cannot control the full evacuation of the bowel.	9
	10(b)(vi)	Risks losing control of the bowel so that he cannot control the full evacuation of the bowel if not able to reach a toilet quickly.	6
	10(b)(vii)	None of the above apply.	0
10(c) Continence other than enuresis (bed wetting) where claimant has an artificial stoma.	10(c)(i)	Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person.	15
	10(c)(ii)	Is unable to affix, remove or empty stoma appliance without causing leakage of contents.	15
	10(c)(iii)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over the voiding of the bladder.	15
	10(c)(iii)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, loses control of bladder so that he cannot control the full voiding of the bladder at least once a week.	15
	10(c)(iv)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, loses control of bladder so that he cannot control the full voiding of the bladder at least once a month.	9
	10(c)(v)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, risks losing control of the bladder so that he cannot control the full voiding of the bladder if not able to reach a toilet quickly.	6
	10(c)(vi)	None of the above apply.	0

11. Remaining conscious during waking moments.	11(a)	Has an involuntary episode of lost or altered consciousness, without warning, resulting in significantly disrupted awareness or concentration at least once a week.	15
	(b)	Has an involuntary episode of lost or altered consciousness, without warning, resulting in significantly disrupted awareness or concentration at least once a month.	9
	(c)	Has an involuntary episode of lost or altered consciousness, without warning, resulting in significantly disrupted awareness or concentration at least twice in the six months immediately preceding the assessment.	6
	(d)	None of the above apply.	0

PART 2

MENTAL, COGNITIVE AND INTELLECTUAL FUNCTION ASSESSMENT

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
12. Learning or comprehension in the completion of tasks.	12(a)	Cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all.	15
	(b)	Needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before he is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it.	15
	(c)	Needs to witness a demonstration of how to carry out a simple task, before he is able to learn or understand how to complete the task successfully, but would be unable to	9

		successfully complete the task the following day without receiving a verbal prompt from another person.	
	(d)	Needs to witness a demonstration of how to carry out a moderately complex task, such as the steps involved in operating a washing machine to correctly clean clothes, before he is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person.	6
	(e)	Needs verbal instructions as to how to carry out a simple task before he is able to learn or understand how to complete the task successfully, but would be unable, within a period of less than one week, to successfully complete the task without receiving a verbal prompt from another person.	6
	(f)	None of the above apply.	0
13. Memory and concentration.	13(a)	On a daily basis, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by another person in the presence of the claimant.	15
	(b)	For the majority of the time, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by another person in the presence of the claimant.	9
	(c)	Frequently forgets or loses concentration to such an extent that overall day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed.	6
	(d)	None of the above apply.	0

14. Getting about.	14(a)	Cannot get to any specified place, with which he is, or would be, familiar.	15
	(b)	Is unable to get to a specified place with which he is familiar, without being accompanied by another person on each occasion.	15
	(c)	For the majority of the time, is unable to get to a specified place with which he is familiar, without being accompanied by another person.	9
	(d)	Is frequently unable to get to a specified place with which he is familiar without being accompanied by another person.	6
	(e)	None of the above apply.	0
15. Coping with change.	15(a)	Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed.	15
	(b)	Cannot cope with expected changes in routine (such as a pre-arranged permanent change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
	(c)	Cannot cope with minor, unforeseen changes in routine (such as an unexpected change of the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
	(d)	None of the above apply.	0
16. Execution of tasks.	16(a)	Is unable to successfully complete any everyday task.	15
	(b)	Takes more than twice the length of time it would take a person without any form of mental disablement, to	15

		successfully complete an everyday task with which he is familiar.	
	(c)	Takes more than one and a half times but no more than twice the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which he is familiar.	9
	(d)	Takes one and a half times the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which he is familiar.	6
	(e)	None of the above apply.	0
17. Initiating and sustaining personal action.	17(a)	Cannot initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	15
	(b)	Cannot initiate or sustain personal action without requiring daily verbal prompting given by another person, in the presence of the claimant.	15
	(c)	Cannot initiate or sustain personal action without requiring verbal prompting given by another person in the presence of the claimant for the majority of the time.	9
	(d)	Cannot initiate or sustain personal action without requiring frequent verbal prompting given by another person in the presence of the claimant.	6
	(e)	None of the above apply.	0
18. Propriety of behaviour with other people.	18(a)	Has unpredictable outbursts of, aggressive, disinhibited, or bizarre behaviour, being either: (i) sufficient to cause disruption to others on a daily basis, or (ii) of such severity that although occurring less frequently than on a	15

		daily basis, no reasonable person would be expected to tolerate them.	
	(b)	Has a completely disproportionate reaction to minor events or to criticism to the extent that he has an extreme violent outburst leading to threatening behaviour or actual physical violence.	15
	(c)	Has unpredictable outbursts of, aggressive, disinhibited or bizarre behaviour, sufficient in severity and frequency to cause disruption for the majority of the time.	9
	(d)	Has a strongly disproportionate reaction to minor events or to criticism, to the extent that he cannot manage overall day to day life when such events or criticism occur.	9
	(e)	Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient to cause frequent disruption	6
	(f)	Frequently demonstrates a moderately disproportionate reaction to minor events or to criticism but not to such an extent that he cannot manage overall day to day life when such events or criticism occur.	6
	(g)	None of the above apply.	0
19. Dealing with other people.	19(a)	Is unaware of impact of own behaviour to the extent that: (i) has difficulty relating to others even for brief periods, such as a few hours; or (ii) causes distress to others on a daily basis.	15
	(b)	Misinterprets verbal or non-verbal communication to the extent of causing significant distress to himself on a daily basis.	15
	(c)	Is unaware of impact of own behaviour to the extent that: (i) has difficulty relating to others for longer periods, such as a day	9

		or two, or (iii) causes distress to others for the majority of the time.	
	(d)	Misinterprets verbal or non-verbal communication to the extent of causing significant distress to himself for the majority of the time.	9
	(e)	Is unaware of impact of own behaviour to the extent that: (i) has difficulty relating to others for prolonged periods, such as a week; or (ii) frequently causes distress to others.	6
	(f)	Misinterprets verbal or non-verbal communication to the extent of causing significant distress to himself on a frequent basis.	6
	(g)	None of the above apply.	0
20. Coping with social situations.	20(a)	Normal activities, for example, visiting new places or engaging in social contact, are precluded because of overwhelming fear or anxiety.	15
	(b)	Normal activities, for example, visiting new places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety.	9
	(c)	Normal activities, for example, visiting new places or engaging in social contact, are frequently precluded, due to overwhelming fear or anxiety.	6
	(d)	None of the above apply.	0
21. Awareness of hazard.	21(a)	Reduced awareness of the risks of everyday hazards (such as boiling water or sharp objects) would lead to daily instances of or to near-avoidance of: (i) injury to self or others; or (ii) significant damage to property or possessions,	15

- to such an extent that overall day to day life cannot successfully be managed.
- (b) Reduced awareness of the risks of everyday hazards would lead for the majority of the time to instances of or to near-avoidance of:
(i) injury to self or to others; or
(ii) significant damage to property or possessions
to such an extent that overall day to day life cannot successfully be managed without daytime supervision from another person. 9
- (c) Reduced awareness of the risks of everyday hazards has led or would lead to frequent instances of or to near avoidance of:
(i) injury to self or to others; or
(ii) significant damage to property or possessions
but not to such an extent that overall day to day life cannot be managed when such incidents occur. 6
- (d) None of the above apply. 0
-

Clause 9 Limited capability for work-related activity

The Employment and Support Allowance (Limited Capability for Work-related Activity) Regulations 2007

These Regulations set out the criteria for, and manner of determining whether a person's capability for work-related activity is limited by his physical or mental condition and if it is, whether the limitation is such that it is unreasonable to require him to undertake work-related activity. The consequence of a claimant being found to have limited capability for work-related activity will be that he will be placed in the support group.

Regulation 2 sets out the circumstances in which a person will be determined as having limited capability for work-related activity. Regulation 4 sets out the information that is required to determine whether a person falls into the support group.

Having limited capability for work-related activity is based on a person demonstrating a severe level of functional limitation. But regulation 3 provides for people in certain circumstances (for example the terminally ill) to be treated as having limited capability for work-related activity and therefore to be entitled to be placed in the support group, even though they might have minimal or no actual limitation of function at that time.

Regulation 5 sets out the consequences that will flow in the event of a failure by the claimant to provide information that is requested from him. Under the provisions in regulation 5, a person who fails to provide information when asked to do so will be treated as not having limited capability for work-related activity (and therefore not entitled to be in the support group), unless they can show good cause for their non-compliance.

Regulation 6 provides that a medical examination may be arranged to establish whether a person has limited capability for work-related activity. Under regulation 6, a person who fails to attend a medical examination on request will be treated as not having limited capability for work-related activity, unless they can show good cause for that failure.

Regulation 7 lists some of the factors that will be taken into account when considering whether a person had shown good cause for a failure to provide requested information or to attend a medical examination upon request.

The schedule sets out the type of activities which will be tested to ascertain whether someone should be considered to have limited capability for work.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Employment and Support Allowance (Limited Capability
for Work-Related Activity) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by [section] 9 of and Schedule 2 to the Welfare Reform [Act 2007]:

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work-Related Activity) Regulations 200[7] and shall come into force on [date] 200[7].

Determination of limited capability for work-related activity

2.—(1) For the purposes of Part I of the Welfare Reform [Act 2007], a person's capability for work-related activity is limited by his physical or mental condition and the limitation is such that it is not reasonable to require him to undertake such activity if one or more of the descriptors set out in the Schedule applies to him.

(2) A descriptor applies to a person if that descriptor applies to him for the majority of the time or, as the case may be, on the majority of the occasions on which he undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a person, he is to be assessed as if he were wearing any prosthesis with which he is fitted or, as the case may be, wearing or using any aid or appliance which he normally wears or uses.

Certain persons to be treated as having limited capability for work-related activity

3.—(1) A person is to be treated as having limited capability for work-related activity if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

- (a) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (b) that he is receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy;

- (c) that he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found not to have limited capability for work-related activity;
- (d) that in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

Information required for determining capability for work-related activity

4.—(1) Subject to paragraph (2), the information or evidence required to determine whether a person has limited capability for work-related activity is—

- (a) any information relating to the descriptors set out in the Schedule that the Secretary of State may request in the form of a questionnaire; and
- (b) any such additional information as the Secretary of State may request.

(2) Where the Secretary of State is satisfied that he has sufficient information to determine whether a person has limited capability for work-related activity without the information specified in paragraph (1)(a), that information will not be required for the purposes of making the determination.

Failure to provide information

5.—(1) Where a person fails without good cause to comply with the Secretary of State's request that he provide the information referred to in regulation 4(1)(a), he is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the Secretary of State sent the person the first request for the information; and
- (b) the Secretary of State sent that person a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

Person may be called for a medical examination

6.—(1) When it falls to be determined whether a person has limited capability for work-related activity, he may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or to submit himself to such an examination, he is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to him at least 7 days in advance, or unless he agreed to accept a shorter period of notice whether given in writing or otherwise.

(4) The reference in paragraph (1) to a health care professional is to a member of a profession (whether or not regulated by, or by virtue of, any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals.

Matters to be taken into account in determining good cause

7. The matters to be taken into account in determining whether a person has good cause under regulations 5 or 6 (failure to provide information or attend a medical examination) include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability he has.

Signed by the authority of the Secretary of State for Work and Pensions

Date Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE

Assessment of whether a person has limited capability for work-related activity

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
1. Walking or moving on level ground—	Cannot— (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel his wheelchair, more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.
2. Rising from sitting and transferring from one seated position to another—	Cannot complete both of the following— (a) rise to standing from sitting in an upright chair without receiving physical assistance from another person; and (b) move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule)—	Cannot pick up and move 0.5 litre carton full of liquid with either hand.
4. Reaching—	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
5. Manual dexterity—	Cannot— (a) turn a “star-headed” sink tap with either hand; or (b) pick up a £1 coin or equivalent with either hand.

6. Continence—

(a) Continence other than enuresis (bed wetting) where claimant does not have an artificial stoma or urinary collecting device—

- (a) has no voluntary control over bowel evacuation;
- (b) has no voluntary control over voiding of bladder;
- (c) loses control of bowel so that he cannot control the full evacuation of the bowel at least once per week;
- (d) loses control of bladder so that he cannot control the full voiding of the bladder at least once a week;
- (e) fails to control full evacuation of the bowel at least once a week, owing to a severe disorder of mood or behaviour; or
- (f) fails to control full voiding of the bladder at least once a week, owing to a severe disorder of mood or behaviour.

(b) Continence where claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter—

- (a) is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person;
- (b) is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents;
- (c) has no voluntary control over bowel evacuation;
- (d) loses control of bowel so that he cannot control the full evacuation of the bowel at least once per week; or
- (e) fails to control full evacuation of the bowel at least once a week, owing to a severe disorder of mood or behaviour.

(c) Continence other than enuresis (bed wetting) where claimant has an artificial stoma—

- (a) is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person;
- (b) is unable to affix, remove or empty stoma appliance without causing leakage of contents;
- (c) where the claimant's artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of bladder;
- (d) where the claimant's artificial stoma relates solely to the evacuation of the bowel, loses control of the bladder so that he cannot control the full voiding of the bladder at least once per week; or
- (e) where the claimant's artificial stoma relates solely to the evacuation of the bowel, fails to control the full voiding of the bladder at least once a week, owing to a severe disorder of mood or behaviour.

7. Maintaining personal hygiene—

Cleaning own torso

- (a) cannot clean own torso (excluding own back) without receiving physical assistance from another person;
- (b) cannot clean own torso (excluding own back) without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) cannot clean own torso (excluding own back) without receiving regular prompting given by another person in the physical presence of the claimant; or
- (d) owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving—
 - (i) physical assistance from another person, or
 - (ii) regular prompting given by another person in the physical presence of the claimant.

8. Eating and drinking—

(a) Conveying food or drink to his mouth.

- (a) cannot convey food or drink to his mouth without receiving physical assistance from another person;
- (b) cannot convey food or drink to his mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) cannot convey food or drink to his mouth without receiving regular prompting given by another person in the physical presence of the claimant; or
- (d) owing to a severe disorder of mood or behaviour, fails to convey food or drink to his mouth without receiving—
 - (i) physical assistance from another person, or
 - (ii) regular prompting given by another person in the physical presence of the claimant.

(b) Chewing or swallowing food or drink

- (a) cannot chew or swallow food or drink;
- (b) cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) cannot chew or swallow food or drink without receiving regular prompting given by another person in the physical presence of the claimant; or
- (d) owing to a severe disorder of mood or behaviour, fails to—
 - (i) chew or swallow food or drink; or

- (ii) chew or swallow food or drink without regular prompting given by another person in the physical presence of the claimant.
9. Learning or comprehension in the completion of tasks—
- (a) cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all;
- (b) needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before he is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it;
- or
- (c) fails to do any of the matters referred to in (a) or (b) owing to a severe disorder of mood or behaviour.
10. Personal action—
- (a) cannot initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks);
- (b) Cannot initiate or sustain personal action without requiring daily verbal prompting given by another person in the presence of the claimant; or
- (c) fails to initiate or sustain basic personal action without requiring daily verbal prompting given by another person in the presence of the claimant, owing to a severe disorder of mood or behaviour.
11. Communication—
- (a) none of the following forms of communication can be achieved by the claimant—
- (i) speaking (to a standard that may be understood by strangers);
- (ii) writing (to a standard that may be understood by strangers);
- (iii) typing (to a standard that may be understood by strangers)
- (iv) sign language to a standard equivalent to Level 3 British Sign Language;
- (b) none of the forms of communication referred to in (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;
- (c) Misinterprets verbal or non-verbal communication to the extent of causing distress to himself on a daily basis; or
- (d) effectively cannot make himself understood to others because of his disassociation from reality owing to a severe disorder of mood or behaviour.

Clause 10 Work-Focused Health-Related Assessment

The Employment and Support Allowance (Work-Focused Health Related Assessment) Regulations 2007

These Regulations set out the criteria for requiring a person to undergo a work-focused health-related assessment, and for the manner of carrying out the assessment.

Regulation 2 sets out the conditions under which a person will be required to undergo a work-focused health-related assessment. Regulation 3 specifies the steps required for a person to have participated in a work-focused health-related assessment.

The purpose of the assessment is specified in the Act. It is to assess the extent to which a person still has capability for work; the extent to which his capability may be improved by taking of steps in relation to his physical or mental condition; and such other matters as may be prescribed. Regulation 4 specifies these other matters to be assessed.

Regulation 5 specifies the notification to be given to a person that he is required to take part in a work-focused health-related assessment. Regulation 6 specifies the place at which the assessment is to take place.

It is the intention that the work-focused health-related assessment will take place immediately after the assessments for capability for work and work-related activity before a decision about membership of the support group is made. However, regulation 7 provides that the requirement to take part in the work-focused health-related assessment is deferred until after the Secretary of State has made a decision as to whether the person is a member of the support group, if in the opinion of the assessing healthcare professional, it appears that the person satisfies the criteria for membership of the support group.

Regulation 8 sets out the consequences that flow in the event of failure of a person to take part in a work-focused health-related assessment. Under regulation 8 a person who fails to take part in an assessment will be subject to a reduction in the amount of benefit paid, unless they can show good cause for that failure. Regulation 9 specifies the date from which any sanction applies. Regulation 10 specifies the conditions under which any sanction ceases to have effect. Sanctions will work in the same way for both work-focused interviews and for work-focused health-related assessments. Where a customer is subject to a sanction for both, regulation 8(4) contains safeguards ensuring that the combined amount deducted does not exceed 100% of the work-related activity component.

Regulation 11 lists the factors that must be taken into account when considering whether a person had shown good cause for failure to take part in a work-focused health-related assessment.

Customers will be able to appeal against the decisions leading to a sanction i.e. that they failed to take part in the work-focused health-related assessment and that they did not have good cause for doing so because such decisions fall within the provisions for appeals in the Social Security Act 1998. Regulation 12 contains provisions relating to appeals to make clear that there is no appeal against the imposition of the sanction or the amount to be deducted.

DRAFT STATUTORY INSTRUMENTS

2007 No. []

SOCIAL SECURITY

**The Employment and Support Allowance (Work-Focused
Health-Related Assessment) Regulations 2007**

<i>Made</i>	- - - -	[]
<i>Laid before Parliament</i>		[]
<i>Coming into force</i>	- -	[]

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 79(4) and 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(8) and [sections] 10, 23(1)(9), 24(2) and 24(5)(b) of, and paragraph 12 of Schedule 2 to, the Welfare Reform [Act 2007](10):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as The Employment and Support Allowance (Work-Focused Health-Related Assessment Regulations 2007 and come into force on [] .

(2) In these Regulations—

“the Act” means the Welfare Reform [Act 2007];

“benefit week” means any period of seven days corresponding to the week in respect of which an employment and support allowance is due to be paid;

“the Limited Capability for Work-Related Activity Regulations” means the Employment and Support Allowance (Limited Capability for Work-Related Activity) Regulations 2007(11)

“medical examination centre” means premises which are equipped and suitable for conducting a medical examination;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(12).

“relevant person” means a person who is—

- (a) entitled to employment and support allowance;
- (b) not a member of the support group;
- (c) at least 18 years old; and
- (d) under the age at which a woman of the same age attains pensionable age;

(8) 1998 c.4. Section 84 is cited for the meaning given to the word prescribe.

(9) [Section 23(1)] is cited for the meaning given to the word “prescribe”.

(10) 2007 c.X

(11) S.I. 2007/[]

(12) 2005 c.26.

“work-focused interview reduction” means a reduction made to a person’s employment and support allowance in accordance with regulation 11 of the Work-focused Interview Regulations;

“the Work-focused Interview Regulations” means the Employment and Support Allowance (Work-focused Interview) Regulations 2007⁽¹³⁾;

“working day” means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁴⁾ in England, Wales or Scotland.

Requirement to participate in a work-focused health-related assessment

2.—(1) A relevant person must take part in a work-focused health-related assessment when required to do so by the Secretary of State as a condition of continuing to be entitled to the full amount of employment and support allowance payable to him.

(2) Any requirement to take part in a work-focused health-related assessment shall cease to have effect if the person ceases to be a relevant person.

Taking part in a work-focused health-related assessment

3. A relevant person takes part in a work-focused health-related assessment if he—

- (a) attends the work-focused health-related assessment at the time and place notified to him in accordance with regulation 5;
- (b) provides all information which the Secretary of State requests as being necessary for the work-focused health-related assessment; and
- (c) participates in discussions to the extent the Secretary of State considers necessary for the work-focused health-related assessment.

Additional matters to be assessed in the work-focused health-related assessment

4. For the purposes of section 10(7)(c) of the Act, matters to be assessed in the work-focused health-related assessment include—

- (a) difficulties which the relevant person is likely to experience as a result of his physical or mental condition in relation to obtaining or remaining in work and how these might be managed or alleviated;
- (b) the relevant person’s views on the impact of his physical or mental condition in relation to work and his aspirations in relation to work in the light of that condition.

Notification requirements

5.—(1) The health care professional who is to carry out the work-focused health-related assessment, or a person acting on his behalf, must notify the relevant person of the requirement to attend the work-focused health-related assessment including details of the time, date and place of the work-focused health-related assessment.

(2) Notification under paragraph (1) must be given in writing at least seven days before the relevant person is required to attend the work-focused health-related assessment unless the relevant person agrees to accept a shorter period of notice whether given in writing or otherwise.

Determination of the place of the work-focused health-related assessment

6.—(1) Subject to paragraph (2), the work-focused health-related assessment must be carried out in a medical examination centre.

⁽¹³⁾S.I. 2007/[].

⁽¹⁴⁾

(2) A work-focused health-related assessment may take place at the relevant person's home if it is determined that requiring the relevant person to attend elsewhere would cause him undue inconvenience or endanger his health.

Deferral of requirement to take part in a work-focused health-related assessment

7.—(1) Where—

- (a) a health care professional has conducted an assessment in relation to the relevant person in accordance with the Limited Capability for Work-Related Activity Regulations;
- (b) it appears to the health-care professional that—
 - (i) one or more of the descriptors set out in the Schedule to the Limited Capability for Work-Related Activity Regulations applies to the relevant person; or
 - (ii) regulation 3 of those Regulations applies to the relevant person; and
- (c) the Secretary of State has not made a determination about whether the relevant person has limited capability for work-related activity,

the requirement to take part in the work-focused health-related assessment does not apply until such time after the Secretary of State has made a determination in relation to the relevant person's limited capability for work-related activity as the Secretary of State may decide.

(2) Where paragraph (1) applies, the health-care professional must notify the relevant person that the requirement to take part in the work-focused health-related assessment has been deferred, pending determination of his capability for work-related activity.

Reduction for failure to participate

8.—(1) Where the relevant person fails to comply with regulation 2(1) he must show that he had good cause for that failure within five working days of the date on which the Secretary of State notifies him of that failure.

(2) The Secretary of State must determine whether a relevant person has failed to comply with regulation 2(1) and, if so, whether he has shown good cause for that failure in accordance with paragraph (1).

(3) Where the Secretary of State has made a decision that a relevant person who was required to take part in a work-focused health-related assessment has failed to do so and has failed to show good cause for that failure in accordance with paragraph (1), the amount of the employment and support allowance payable to him shall be reduced in accordance with paragraphs (4) to (9).

(4) Subject to paragraphs (5) and (6) the amount of the reduction is—

- (a) 50 per cent. of the amount of the work-related activity component in each of the first four benefit weeks beginning with the week in which the reduction commences in accordance with regulation 9;
- (b) 100 per cent. of the amount of the work-related activity component in each subsequent benefit week.

(5) Where a reduction calculated in accordance with paragraph (4) would result in the amount of employment and support allowance payable falling below 10 pence, the reduction shall be modified so that the amount of employment and support allowance payable is 10 pence.

(6) Where in any benefit week—

- (a) the relevant person is subject to a work-focused interview reduction; and
- (b) a reduction calculated in accordance with paragraph (4) would, when taken together with the work-focused interview reduction, result in his employment and support allowance being reduced by an amount which is greater than 100 per cent. of the work-related activity component,

the reduction shall be modified so that the overall reduction is 100 per cent. of the work-related activity component.

(7) Where a relevant person is entitled to both a contributory allowance and an income-related allowance, any reduction in that person's employment and support allowance must first be applied to the part of that allowance treated as attributable to the person's contributory allowance and only if there is any amount outstanding is it to be applied to the part of that allowance treated as attributable to the person's income-related allowance.

(8) For the purposes of determining the amount of any employment and support allowance payable, a relevant person shall be treated as receiving the amount of any employment and support allowance which would have been payable but for any reduction made in accordance with this regulation.

(9) Where the rate of employment and support allowance payable to a relevant person changes, the rules set out above for a reduction in the amount of employment and support allowance shall be applied to the new rate and any adjustment to the amount of the reduction shall take effect from the beginning of the first benefit week to commence for that person following the change.

Commencement of reduction

9.—(1) Subject to paragraph (2), a reduction under regulation 8 begins on the first day of the benefit week following the date on which it is determined that the relevant person did not have good cause for the failure.

(2) Where the determination that the relevant person did not have good cause for the failure is made during the assessment phase, the reduction begins on the first day of the benefit week following the relevant day.

(3) Where the relevant person remains in the assessment phase after the relevant day—

- (a) the reduction of employment and support allowance is suspended until the first day of the benefit week after the day that the assessment phase in respect of that person ends,
- (b) on that day the reduction continues as if the assessment phase in respect of that person had ended on the relevant day, and
- (c) if his entitlement to the work-related activity component is backdated by virtue of [regulations under section 2(4)(b) and 4(6) (b)], any amount of employment and support allowance is reduced by the amount referred to in paragraph (4).

(4) The amount of the reduction referred to in paragraph (3)(c) is the amount of the reduction to the relevant person's employment and support allowance that would have been made if—

- (a) the assessment phase in respect of the person had ended on the relevant day; and
- (b) the person had been entitled to the work-related activity component from the first day of the benefit week beginning after the relevant day.

(5) In this regulation, the relevant day is the day determined in accordance with regulation[] [the last day of week 14 calculated by reference to when the person became entitled to ESA i.e. the earliest day that the assessment phase can end]

Cessation of reduction

10.—(1) Paragraph (2) applies where a person in respect of whom regulation 8(3) applies—

- (a) is subsequently determined to have taken part in a work-focused health-related assessment, or
- (b) subsequently ceases to be a relevant person.

(2) Any reduction in accordance with regulation 8—

- (a) ceases to have effect on the first day of the benefit week in which either of the requirements in paragraph (1) were met; or
- (b) does not come into effect, if it has not come into effect before either of the requirements in paragraph (1) were met.

(3) Any determination that a relevant person has failed to comply with regulation 2(1) without good cause shall be treated as not having been made if the relevant person's entitlement to the

support component is backdated to the relevant day by virtue of [regulations under sections 2(4)(b) and 4(6)(b)].

Good cause

11. In determining whether a person had good cause for his failure to participate in a work-focused health-related assessment, the following matters are to be taken into account—

- (a) whether the person was outside Great Britain at the time of the notification;
- (b) his state of health at the time of the work-focused health-related assessment;
- (c) the nature of any disability which he has.

Appeals

12.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**15**) are amended as follows.

(2) At the end of Schedule 2 (decisions against which no appeal lies)(**16**) insert—

“Employment and Support Allowance Work-focused health-related assessments

29. A decision of the Secretary of State reducing the amount of a person’s employment and support allowance made under regulation 8(3) of the Employment and Support Allowance (Work-Focused Health-Related Assessment) Regulations.”.

Signed by the authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

(15) S.I.1999/991

(16) Regulation 12 will be subject to the affirmative resolution procedure and will be included in a separate set of regulations.

DRAFT STATUTORY INSTRUMENTS

2007 No. []

SOCIAL SECURITY

**The Employment and Support Allowance (Work-focused
Interviews) Regulations 2007**

Made - - - - []

Laid before Parliament []

Coming into force - - []

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 79(4) and 84 of, and [paragraph 9 of Schedule 2(17)] and paragraph 9 of Schedule 3 to, the Social Security Act 1998(18) and [sections 11, 13, 23(1)(19) and 24(2) and (5)(b) of, and paragraphs 9 and 12 of Schedule 2 to, the Welfare Reform Act 2007(20)].

Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Work-focused Interviews) Regulations 2007.

(2) These Regulations shall come into force on [].

Interpretation

2. In these Regulations—

“action plan” has the meaning given by regulation 7;

“benefit week” means any period of seven days corresponding to the week in respect of which an employment and support allowance is due to be paid;

“a failure decision” has the meaning given by regulation 11;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(21);

“relevant person” has the meaning given by regulation 4;

“working day” means any day except for a Saturday, Sunday, Bank Holiday, Christmas Day or Good Friday.

(17) The regulations made using the power in paragraph 9 of Schedule 2 will be subject to the affirmative resolution procedure and will be made as part of a separate set of regulations.

(18) 1998 c.4. Section 84 is cited for the meaning given to the word “prescribe”.

(19) [Section 23] is cited for the meaning given to the word “prescribed”.

(20) 2007 c.[].

(21) 1995 (c.26).

Work-focused interview

3. The purposes of a work-focused interview are any or all of the following—
- (a) assessing the person's prospects for remaining in or obtaining work;
 - (b) assisting or encouraging the person to remain in or obtain work;
 - (c) identifying activities that the person may undertake to make it more likely that he will remain in or obtain work or be able to do so;
 - (d) identifying training, educational or rehabilitation opportunities for the person which may make it more likely that he will remain in or obtain work or be able to do so;
 - (e) identifying current or future work opportunities, including self-employment opportunities, for the person that are relevant to his needs and abilities.

Requirement to take part in a work-focused interview

4.—(1) The Secretary of State may require a person who satisfies the requirements in paragraph (2) (“a relevant person”) to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of employment and support allowance payable to him.

(2) The requirements referred to in paragraph (1) are that the person is—

- (a) entitled to an employment and support allowance;
- (b) not a member of the support group;
- (c) at least 18 years old;
- (d) under the age at which a woman of the same age attains pensionable age.

(3) A person who is only entitled to a contributory allowance which is payable at a nil rate is to be treated as a person who is not entitled to an employment and support allowance for the purposes of paragraph (2)(a).

(4) A requirement on a relevant person to take part in a work-focused interview ceases to have effect if that person ceases to be a relevant person.

Notification

5.—(1) The Secretary of State must give or send a relevant person a notification specifying the time and place of a work-focused interview.

(2) A work-focused interview may take place at a person's home if it is determined that requiring that person to attend elsewhere would cause him undue inconvenience or endanger his health.

(3) The notification referred to in paragraph (1) may be in writing or by telephone.

Taking part in a work-focused interview

6.—(1) A relevant person is regarded as having taken part in a work-focused interview if he—

- (a) attends for the interview at the place and at the time notified to him by the Secretary of State;
- (b) participates in discussions, if requested by the Secretary of State, about any or all of the matters set out in paragraph (2);
- (c) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (3); and
- (d) assists the Secretary of State in the completion of an action plan.

(2) The matters referred to in paragraph (1)(b) are—

- (a) any activity that he is willing to undertake which may make it more likely that he will obtain or remain in work or be able to do so;
- (b) any such activity that he may have previously undertaken;

- (c) any progress he may have made towards remaining in or obtaining work;
 - (d) any work-focused health-related assessment he may have taken part in.
- (3) The matters referred to in paragraph (1)(c) are—
- (a) his educational qualifications and vocational training;
 - (b) his work history;
 - (c) any paid or unpaid work that he is undertaking;
 - (d) his aspirations for future work;
 - (e) his skills that are relevant to work;
 - (f) his work-related abilities;
 - (g) his opinion as to the extent to which his physical or mental condition restricts his ability to remain in or obtain work;
 - (h) his caring or childcare responsibilities.

Action plan

7.—(1) An action plan is a document that is completed by the Secretary of State and contains—

- (a) a record of a work-focused interview;
- (b) a record of any activity that the relevant person has agreed that he is willing to take which may make it more likely that he will obtain or remain in work or be able to do so; and
- (c) any other information that the Secretary of State considers to be appropriate.

(2) An action plan must be in writing.

(3) The Secretary of State must provide a relevant person with an action plan where that person has attended a work-focused interview.

Deferral of requirement to take part in a work-focused interview

8.—(1) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to the relevant person; or
- (b) appropriate in the circumstances.

(2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(3) Where a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined.

Waiver of requirement to take part in a work-focused interview

9.—(1) A requirement on a relevant person to take part in a work-focused interview may be waived if that interview would not be of assistance to that person because he is likely to be starting or returning to work.

(2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place.

Failure to take part in a work-focused interview

10.—(1) If a relevant person who was required to take part in a work-focused interview has failed to do so then he must show good cause for that failure within 5 working days of the day on which the interview was to take place or, as the case may be, took place.

(2) The Secretary of State must determine whether a relevant person who was required to take part in a work-focused interview has failed to do so and if so whether he has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a relevant person has shown good cause for his failure to take part in a work-focused interview, the Secretary of State may take the following matters into account —

- (a) that the person misunderstood the requirement to take part in the work-focused interview due to his learning, language or literacy difficulties or any misleading information given or sent to him by the Secretary of State;
- (b) that he had difficulties with his normal mode of transport and that no reasonable alternative was available;
- (c) that he was attending an interview with an employer with a view to remaining in or obtaining work;
- (d) that he was pursuing work as a self-employed earner;
- (e) that he was attending a medical or dental appointment and that it would have been unreasonable in the circumstances for him to re-arrange the appointment;
- (f) that he was accompanying a person for whom he has caring responsibilities to a medical or dental appointment and it that it would have been unreasonable for that person to re-arrange the appointment;
- (g) that he, a dependant of his or a person for whom he provides care suffered an accident, sudden illness or relapse of a physical or mental condition;
- (h) that he was attending the funeral of a relative or close friend on the day that he was required to take part in the work-focused interview;
- (i) that his physical or mental condition made it impossible for him to attend at the time and place fixed for the interview;
- (j) that his failure to take part in a work-focused interview at that time resulted from a religious objection;
- (k) any other matter which the Secretary of State considers appropriate.

Reduction of employment and support allowance

11.—(1) Where the Secretary of State has made a decision that a relevant person who was required to take part in a work-focused interview has failed to do so and has failed to show good cause for that failure in accordance with regulation 10(1) (“a failure decision”), the amount of the employment and support allowance payable to that person is reduced in accordance with this regulation.

(2) Regulation 12 applies unless the work-focused interview which the relevant person failed to take part in was due to take place, or took place, while that person was in the assessment phase and in which case regulation 13 applies.

(3) Where a relevant person is entitled to both a contributory allowance and an income-related allowance, any reduction in that person’s employment and support allowance must first be applied to that part of that allowance treated as attributable to the person’s contributory allowance and only if there is any amount outstanding is it to be applied to that part of that allowance treated as attributable to the person’s income-related allowance.

(4) The amount of an employment and support allowance payable to a relevant person is not to be reduced below 10 pence in any benefit week.

(5) For the purposes of determining the amount of any employment and support allowance payable, a relevant person shall be treated as receiving the amount of any employment and support

allowance which would have been payable but for a reduction made in accordance with this regulation.

(6) Where the rate of employment and support allowance payable to a relevant person changes, the rules set out above for a reduction in the amount of employment and support allowance shall be applied to the new rate and any adjustment to the amount of the reduction shall take effect from the beginning of the first benefit week to commence for that person following the change.

Amount of the reduction

12.—(1) The reduction under regulation 11(1) begins on the first day of the benefit week following the date of the failure decision.

(2) The amount of the reduction is—

- (a) 50 per cent. of the amount of the work-related activity component in each of the first four benefit weeks beginning with the week the reduction is first made;
- (b) 100 per cent. of the amount of the work-related activity component in each subsequent benefit week.

Amount of the reduction in the assessment phase

13.—(1) The reduction under regulation 11(1) begins on the first day of the benefit week following the relevant day.

(2) In this regulation and in regulation 14, the “relevant day” is the day determined in accordance with regulation [] [the last day of week 14 calculated by reference to when the person became entitled to ESA i.e. the earliest day that the assessment phase can end].

(3) The amount of the reduction is—

- (a) 50 per cent. of the amount of the work-related activity component in each of the first four benefit weeks beginning with the benefit week following the relevant day;
- (b) 100 per cent. of the amount of the work-related activity component in each subsequent benefit week.

(4) Where the relevant person remains in the assessment phase after the relevant day then—

- (a) the reduction of employment and support allowance is suspended until the first day of the benefit week after the day that the assessment phase in respect of that person ends,
- (b) on that day the reduction continues as if the assessment phase in respect of that person had ended on the relevant day, and
- (c) if his entitlement to the work-related activity component is backdated by virtue of [regulations under sections 2(4)(b) and 4(6)(b)] then any amount of employment and support allowance to be paid to him in respect of that entitlement is reduced by the amount referred to in paragraph (5).

(5) The amount of the reduction referred to in paragraph (4)(c) is the amount of reduction to the relevant person’s employment and support allowance that would have been made if—

- (a) the assessment phase in respect of the person had ended on the relevant day; and
- (b) the person had been entitled to the work-related activity component from the first day of the benefit week beginning after the relevant day.

Cessation of reduction of employment and support allowance

14.—(1) Paragraph (2) applies where a person in respect of whom there has been a failure decision—

- (a) is subsequently determined to have taken part in a work-focused interview, or
- (b) subsequently ceases to be a relevant person.

(2) Any reduction under regulation 11 arising from that failure decision—

- (a) ceases to have effect on the first day of the benefit week in which either of the requirements in paragraph (1) were met; or
 - (b) does not come into effect, if it has not come into effect before either of the requirements in paragraph (1) were met.
- (3) The failure decision is also treated as not having been made if a relevant person's entitlement to the support component is backdated to the relevant day by virtue of [regulations under sections 2(4)(b) and 4(6)(b)].

Appeals and Revision

15.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999⁽²²⁾ are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation)—

(a) at the appropriate place insert the following definition—

““Employment and Support Allowance (WFI) Regulations” means the Employment and Support Allowance (Work-focused Interviews) Regulations [];”;

(b) at the beginning of the definition of “work-focused interview” insert “except in paragraph 28 of Schedule 2,”.

(3) After regulation 3(8B) (revision of decisions) insert—

“(8C) A failure decision with the meaning of regulation 11(1) of the Employment and Support Allowance (WFI) Regulations may be revised by the Secretary of State if—

- (a) a person brings new facts to the notice of the Secretary of State within one month of the date that the failure decision was sent to him;
- (b) those facts could not reasonably have been brought to the Secretary of State's notice within 5 working days of the day on which the interview to which the failure relates was due to take place, or took place; and
- (c) those facts show that he had good cause for his failure to take part in that interview in accordance with regulation 10(1) of the Employment and Support Allowance (WFI) Regulations.

(8D) In paragraph (8C) “working day” has the same meaning as is given to those words in the Employment and Support Allowance (WFI) Regulations.”.

(4) At the end of Schedule 2 (decisions against which no appeal lies)⁽²³⁾ insert—

“Employment and Support Allowance Work-focused Interviews

28. A decision of the Secretary of State—

- (a) reducing the amount of a person's employment and support allowance made under regulation 11(1) of the Employment and Support Allowance (WFI) Regulations;
- (b) deferring or, as the case may be, treating as deferred a requirement to take part in a work-focused interview made under regulation 8(1) of the Employment and Support Allowance (WFI) Regulations;
- (c) waiving a requirement to take part in a work-focused interview made under regulation 9(1) of the Employment and Support Allowance (WFI) Regulations.”.

Signed by the authority of the Secretary of State for Work and Pensions

Date

Parliamentary Under Secretary of State
Department for Work and Pensions

⁽²²⁾S.I. 1999/991.

⁽²³⁾Regulation 15(4) will be subject to the affirmative resolution procedure and so will be included in a separate set of regulations.

Clauses 12 & 14

Requirement to participate in work-related activity

It is intended to require claimants to participate in work-related activity in the future as resources allow. This supports the 'something for something' approach to helping ill and disabled people into work. In exchange for being provided with further support claimants will be expected to engage with the Department beyond just attending work-focused interviews.

The detail of the provision of support and the requirement placed on claimants will be further developed in light of the experience in the rolled-out Pathways to Work areas. There are some principles for the development of this policy we can set out now:

- The level of sanctions applied will never be more than the work-related activity component of the benefit.
- A system of safeguards on sanctions will be in place based on the policy we have set out for work-focused interviews.
- a system of waivers and deferrals will be introduced for work-related activity to allow flexibility in dealing with claimants who are temporarily unable to participate (in particular those claimants who have fluctuating medical conditions).

When mandatory work-related activity is introduced it will apply to most claimants in the Work-Related Activity Group (i.e. those not in the Support Group.) Claimants will be asked to participate in a minimum amount of work-related activity (for example, 1 activity) in a given time period (e.g 4 weeks). In between they will have their work focused interview to discuss what they would like to do in the next period and review what they have done.

To facilitate each claimant doing work-related activity there will be an expansion of the back to work support that is available. It is envisaged that a similar range of options to that in Pathways to Work areas now will be available. This will include condition management-type programmes.

Claimants cannot be forced to undertake a **particular** activity. The intention is that the claimant discusses what activity they believe is appropriate with their Personal Adviser.

However participating in **some** work-related activity will be a requirement of entitlement to the full amount of benefit. Claimants who agree to an activity but then do not carry this out and do **no other** work-related activity can be sanctioned if they did not show good cause for their failure.

Clause 14 provides for a power to direct that a specific activity would not count as work-related activity for a given claimant. It is envisaged this would only be used in very limited circumstances where a given activity was wholly inappropriate for the claimant.

Clause 15

Contracting out of functions

Clause 15 gives powers allowing the Secretary of State to contract out his functions relating to ESA conditionality (clauses 10 to 14 of the Bill).

Such powers will allow private and voluntary sector contractors to apply their specialist knowledge and innovative approach and ensure the best possible support for claimants. Contractors would not practically be able to provide conditionality (in the first instance work-focused interviews) unless granted the functions under Clause 15.

It is envisaged that these functions will initially be the same as those contracted out under provider led Pathways (with the exception of the 'screening' tool that will not be a feature of ESA), namely:

- undertaking Work Focused Interviews (except the initial interview)
- waiving and deferring Work Focused Interviews
- drawing up of action plans.

It is envisaged that, as with Provider Led Pathways, the first work focused interview under ESA will be provided by Jobcentre Plus (under Clause 15 subsections 3 and 4 of the Bill, which allows only part of a function to be contracted out). At the early stage of the claim, whilst eligibility for ESA has not been determined by the medical test, it is appropriate that responsibility for providing support remains with Jobcentre Plus (JCP). This initial interview will also have the secondary purpose of providing information on benefit and service entitlement.

It is currently envisaged that the JCP will retain certain functions through the lifetime of the claim, including those relating to the entitlement and processing of any benefit payments. It will continue to be responsible for payment of the Return to Work Credit (because this is similar to a benefit payment although technically not a benefit). It also, as for Pathways to Work, will have responsibility for making decisions on and imposing sanctions as well as ensuring adherence to the safeguards regime.

The Bill allows for further functions to be subsequently contracted out concerning:

- work-related activity (clause 12) and directions (clause 14)
- sanctions decision making (under Clauses 11 & 12)

Work-related activity

Any functions related to work-related activity (and directions) would only need to be in place as and when conditionality is extended. It is envisaged that the functions contracted out would mirror those relating to work-focused interviews. Therefore the contractor would inform claimants of the

requirement to undertake work-related activity and the timescales in which this activity should be undertaken. However, the level of the requirement and timescales would be set by the Secretary of State and simply applied by the contractor. In addition, the contractor would have responsibility for providing action plans, and making decisions about waivers and deferrals within regulations and guidance.

It is envisaged that in certain circumstances directions would be used if work-related activity undertaken by a claimant was considered inappropriate for that individual. A Personal Adviser (either in a Jobcentre Plus or provider led area) would then give a direction to the effect that the chosen course of action would not be deemed work-related activity. This could be the case, for example, where someone has been doing an art-course over a number of months on the basis that they intended to sell watercolours however they had decided that they wished to pursue an alternative career path but continued to do the art course.

Sanctions decision making

Sanctions decision making is currently the responsibility of Jobcentre Plus. In provider led Pathways areas the provider will inform JCP of a failure to attend a mandatory work-focused interview and supply all relevant information. After usual safeguards are applied to ensure that vulnerable claimants are not being sanctioned due to an inability to comply, a decision maker will determine whether the claimant has participated and whether or not there has been good cause for any failure. This will be the basic model under Clause 15 for provider led areas in ESA.

Clause 15 also allows for the possibility of decision making functions concerning Work Focused Interviews (and the future work-related activity) to be carried out by PVS contractors instead of DWP decision makers. The process for the claimant would be unchanged and any decisions taken would be subject to all the existing rules, safeguards and the continued right of appeal, in order to ensure as far as possible a consistency of treatment for all claimants.

The intention behind such a change would be to allow the organisations that come into face to face contact with claimants to conduct the end to end process. This could potentially speed up the sanctioning process and reinforce the link between non-compliance and sanctions.

There are no current plans to contract out sanctions decision making when ESA is first implemented. However, it is considered that it is right to enable this to be revisited as work-related activity is extended. The Department will also work with providers to establish whether they would be interested in undertaking this function and whether it would deliver an improvement in efficient service.

Part 2 of the Bill

Housing Benefit and Council Tax Benefit

Clauses 29 & 34 The Local Housing Allowance

The Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 and Rent Officers (Housing Benefit Functions) Amendment Order 2007

Clause 29 of the Welfare Reform Bill contains powers relating to the determination of the appropriate maximum housing benefit ("AMHB"), the maximum amount that housing benefit can pay, subject to deductions in relation to a claimant's income. These powers will facilitate the national rollout of the local housing allowance (LHA), which is a new way of calculating housing benefit for deregulated private sector tenants.

The draft regulations provide for the calculation of AMHB for rent rebate cases and private rented sector cases to which the LHA does not apply (based on existing regulations and remade, with amendments, under the new powers). They also provide for the national rollout of the LHA, setting out how the AMHB is calculated for LHA cases. The draft regulations also make provision regarding payment of housing benefit in LHA cases. The draft order is made under existing powers in the Housing Act 1996 but is provided to assist members to understand the proposed operation of the LHA at national rollout.

The LHA bases the maximum amount that can be paid to tenants (subject to deductions for non-dependants and income) on the location of the claimant's home and the size of dwelling he is entitled to based on those living in the dwelling. There will be flat rate amounts for a range of property sizes in different areas. This makes it easier for claimants to see, in advance, the maximum amount of housing costs that housing benefit could meet. As noted in the Welfare Reform Green Paper, claimants will not be able to receive more than £15 a week above their rent. Local authorities will be able to determine the actual amounts of benefit that a claimant should receive by applying the non-dependant deduction and income rules to the flat rate amounts (less any cap deduction) rather than having to wait, in most cases, for the rent officer to make case-specific determinations.

Regulation 13C sets out when the LHA national rollout rules will be applied. This includes new cases, existing cases where the claimant moves home and Pathfinder LHA cases. (Schedule 10 to the Regulations contains provisions which relate to former Pathfinder cases, including a scheme of transitional protection and a delay to the application of the cap in regulations 12E and 12F. Transitional protection is appropriate given the differences between the Pathfinder and rollout models of the local housing allowance).

Regulation 13D sets out how the maximum rent (standard local rate), will be calculated for these cases, including the size of dwelling the claimant will be entitled to and the LHA rate which will be applied in his case. (The LHA rates will be determined in accordance with Schedule 3B of the draft order). The

maximum rent (standard local rate) will be calculated in accordance with regulation 12D or regulations 12E and 12F where the case has Pathfinder transitional protection.

Rent allowance cases which are not subject to the LHA (because they are exempt or they have not yet moved onto the local housing allowance) are dealt with under regulations 12C, 13 and 14 where referral to the rent officer is required.

Rent rebate cases and rent allowance cases where the LHA does not apply and where the amount of Housing benefit to be paid is not limited by reference to the case specific rent officer determination, are dealt with under regulation 12B.

The provisions relating to these non-LHA cases are broadly the same as existing provisions although the regulations have been remade under the new powers and in cases the regulations have been reworked and amended.

The powers in clause 34 enable the Secretary of State to require prescribed persons to provide information or evidence to rent officers which is not linked to determination of a particular claim, but relates generally to information that rent officers require in order to carry out their housing benefit functions.

The regulations provide for existing information sharing provisions to be omitted and insert a new regulation 114A which requires local authorities to provide information to rent officers to enable them to carry out their functions in relation to Housing benefit. Regulation 114A requires local authorities to provide rent officers with monthly information in relation to those claims and awards which are dealt with under the LHA rules and certain other claims and awards. When making case specific housing benefit determinations and generic LHA determinations, rent officers are required to exclude rents led by receipt of housing benefit from their market evidence database to ensure that rents for housing benefit properties do not drive the levels at which individual or generic determinations are made, and thus drive housing benefit expenditure. Regulation 114A ensures that rent officers will regularly receive the information they require to exclude these cases from their database. The regulation also makes provision for certain information to be provided in relation to case specific determinations.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

The Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007

<i>Made</i> - - - -	[] 2007
<i>Laid before Parliament</i>	[] 2007
<i>Coming into force</i> - -	[] 2007

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130(2), 130A(2) to (6), 137(1) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992(**24**), sections 5(1)(p), (2A), (2B), (2C) and (6), 189(4), (5) and (6) and 191 of the Social Security Administration Act 1992(**25**) and paragraph 4(4A) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**26**).

This instrument contains only regulations made by virtue of, or consequential upon, sections 29 and 34 of the Welfare Reform Act 2007(**27**) and is made before the end of the period of six months beginning with the coming into force of those sections.

[In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.]

Citation and commencement

1.—(1) These Regulations may be cited as The Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007.

(2) Subject to the provisions of this regulation, these Regulations shall come into force on [insert rollout date].

(3) Subject to paragraph (6), regulations 3 to 14 (amendment of the Housing Benefit Regulations 2006(**28**)), 17 (amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**29**)), 19 (amendment of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(**30**)), 20 (amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**31**)), 21

(24) 1992 c. 4. [Amendments in Welfare Reform Bill.]

(25) 1992 c. 5 [amendments].

(26) 2000 c. 19. [Amendments in Welfare Reform Bill.]

(27) 2007 c. [].

(28) S.I. 2006/213; relevant amending instruments are S.I. 2005/2502 (as amended by S.I. 2006/217) and S.I. 2006/2378.

(29) S.I. 2006/214 [amendments].

(30) S.I. 2006/217 [amendments].

(31) S.I. 2001/1002; relevant amending instruments are S.I. [2002/1703, 2002/490, 2002/217, 2003/325, 2003/1050,] 2003/1338, [2003/2275,] 2003/2399, 2004/14, [2005/2267] and 2006/217.

(amendment of the Social Security (Claims and Payments) Regulations 1987 (**32**)), 22 (amendment of the Housing Renewal Grants Regulations 1996(**33**)), 23 (amendment of the Income-related Benefits (Subsidy to Authorities) Order 1998(**34**)) and 24 (amendment of the Discretionary Financial Assistance Regulations 2001(**35**)) shall come into force on [insert rollout date] immediately following the coming into force of this regulation.

(4) Subject to paragraph (6), regulations 15 (substitution of regulation 122 of and Schedule 10 to the Housing Benefit Regulations 2006) and 18 (substitution of [SPC equivalent] the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006) shall come into force immediately following the coming into force of the regulations specified in paragraph (3).

(5) This paragraph applies to a case where the eligible rent which applied on [insert the day before rollout date] was determined in accordance with regulation 12 of the Housing Benefit Regulations 2006, or regulation 12 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force on that day.

(6) In a case to which paragraph (5) applies—

- (a) the regulations specified in paragraph (3) shall come into force on the day where, on or after [insert rollout date], a relevant authority is required to—
 - (i) apply to a rent officer by virtue of regulation 14 as in force immediately before the coming into force of the regulations specified in paragraph (3); or
 - (ii) determine a new eligible rent in accordance with regulation 12(3)(b) as in force immediately before the coming into force of the regulations specified in paragraph (3); and
- (b) the regulations specified in paragraph (4) shall come into force immediately after the regulations specified in paragraph (3) come into force for that case.

Amendment of the Housing Benefit Regulations 2006 relating to information sharing

2.—(1) In regulation 14 (requirement to refer to rent officers)—

- (a) omit paragraphs (2), (3) and (9);
- (b) after paragraph (4) insert—

“(4A) The provision of information to the rent officer in accordance with regulation 114A(5) shall be treated as an application to the rent officer under paragraph (1)”.

(2) Omit regulation 114 (evidence and information required by rent officers).

(3) After regulation 113 (interpretation) insert—

“Information or evidence to be provided to rent officers

114A.—(1) This paragraph applies to every claim for or award of housing benefit in the form of a rent allowance where the eligible rent has been, or is to be determined, in accordance with—

- (a) regulation 12(3)(b) (rent) or 12B (eligible rent), as the case may require, except where regulation 13(14) applies;
- (b) regulation 12(3)(a) (rent) or 12C (eligible rent and maximum rent), as the case may require;
- (c) regulation 12A (eligible rent and the maximum rent (standard local rate)) or 12E (eligible rent transitional protection), as the case may require; or

(32) S.I. 1987/1968; relevant amending instruments are S.I. 1991/2284, 1992/2595, 1996/1460, 1999/3178, 2002/3019 and 2006/217.

(33) S.I. 1996/2890; relevant amending instruments are S.I. 2000/531, 2000/973 and 2006/217.

(34) S.I. 1998/562; relevant amending instruments are S.I. 2001/2350 and 2006/217.

(35) S.I. 2001/1167; the relevant amending instrument is S.I. 2006/217.

- (d) regulations 12 (rent) and 13 (maximum rent) of these Regulations as set out in paragraph 5 of Schedule 3 of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.

(2) No earlier than the first, and no later than the fifth, working day of every month a relevant authority shall provide the following information to the rent officer in relation to every claim for or award of housing benefit to which paragraph (1) applied in the preceding month—

- (a) the address, including any room or unit number, house or flat number or name, and the postcode of the dwelling to which the claim or award relates;
- (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
- (c) the date on which the tenancy began;
- (d) the date on which entitlement to housing benefit began; and, where applicable,
- (e) the date on which entitlement to housing benefit ended.

(3) This paragraph applies where the relevant authority is required to apply to the rent officer for a board and attendance determination by virtue of regulation 13D(7) (determination of a maximum rent (standard local rate)).

(4) Where paragraph (3) applies, a relevant authority shall provide the following information in the application to the Rent Officer—

- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling to which the claim or award relates;
- (b) the date on which the tenancy began;
- (c) the length of the tenancy;
- (d) the total amount of those payments referred to in regulation 12(1) (rent) which the claimant is liable to make in respect of the dwelling;
- (e) whether those payments include any charges for water, sewerage or allied environmental services or charges in respect of meals or fuel which are ineligible by virtue of paragraph 2 and Part 2 of Schedule 1 (ineligible service charges);
- (f) where they include any charges that are ineligible for housing benefit by reason of paragraph 1(a)(iv) and (c) to (f) of Schedule 1 (ineligible service charges), that such charges are included, and the value of those charges as determined by that authority pursuant to regulation 12B(2) and that Schedule;
- (g) where the relevant authority has identified charges to which paragraph (f) applies, it shall—
 - (i) deduct those charges from the total amount of those payments which, in accordance with paragraph (d), it has stated that the claimant is liable to make in respect of the dwelling which he occupies as his home; and
 - (ii) notify that total so reduced to the rent officer in its application.

(5) Where a relevant authority has received notification from the rent officer that a substantial part of the rent is attributable to board and attendance, it shall provide the information referred to in paragraphs (7) to (9), except for such information as it has already provided in accordance with paragraph (4).

(6) This paragraph applies where the relevant authority is required to apply to the rent officer for a determination by virtue of regulation 14(1) (requirement to refer to rent officers).

(7) Where paragraph (6) applies, the relevant authority shall provide the information referred to in paragraphs (8) to (10) in the application to the rent officer.

(8) In relation to the dwelling to which the claim or award relates, the relevant authority shall provide information including—

- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling;
 - (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
 - (c) whether the dwelling is a—
 - (i) detached house;
 - (ii) semi-detached house;
 - (iii) terraced house;
 - (iv) maisonette;
 - (v) detached bungalow;
 - (vi) semi-detached bungalow;
 - (vii) flat in a house;
 - (viii) flat in a block;
 - (ix) flat over a shop;
 - (x) bedsit or rooms or a studio flat;
 - (xi) hostel;
 - (xii) caravan, mobile home or houseboat;
 - (xiii) board and lodgings;
 - (xiv) hotel;
 - (xv) care home;
 - (xvi) independent hospital,or is some other description of dwelling, and if so what;
 - (d) whether the dwelling has central heating, a garden, a garage or a parking space;
 - (e) how many rooms suitable for living in there are—
 - (i) in the dwelling;
 - (ii) for the exclusive use of the claimant and his household;
 - (iii) for the shared use of the claimant and his household;
 - (f) how many bed-sitting rooms there are in the categories (e)(i) to (iii);
 - (g) how many bedrooms there are in the categories (e)(i) to (iii);
 - (h) how many bathrooms or toilets there are in the categories (e)(i) to (iii).
- (9) In relation to the tenancy to which the claim or award relates, the relevant authority shall provide information including—
- (a) the information referred to in paragraph (4)(d) to (g);
 - (b) if the tenancy is furnished, and if so what extent;
 - (c) the rental period, whether calendar monthly, four weekly, weekly or some other period;
 - (d) the length of the tenancy;
 - (e) when the tenancy began and, if appropriate, when it ended;
 - (h) the landlord's or letting agent's name;
 - (i) the landlord's or letting agent's business address;
 - (j) whether the landlord is a housing association or registered social landlord.
- (10) In relation to the claimant and the other occupiers of the dwelling to which the claim or award relates, the relevant authority shall provide information including—

- (a) such information regarding the relationship of the claimant to the occupiers and the occupiers to each other, as is necessary for the rent officer to make the determination;
- (b) the age and gender of each occupier under 18;
- (c) whether the claimant is or may be a young individual; and
- (d) any other information that is relevant to the rent officer in making the determination, including visits to the dwelling.

(11) Where a rent officer serves a notice under article 5 of the Rent Officers Order the relevant authority shall supply the further information required under this regulation, or confirm whether information already supplied is correct and, if it is not, supply the correct information.”

Amendments to regulations 2, 11 and 12 of the Housing Benefit Regulations 2006

3.—(1) In regulation 2(1) (interpretation)—

(a) for the definition of “eligible rent” substitute—

““eligible rent” means, as the case may require, an eligible rent determined in accordance with regulations 12B, 12C or 12D;”;

(b) at the appropriate places insert—

““amended determination” means a determination made in accordance with article 7A of the Rent Officers Order;

“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B to the Rent Officers Order;

“broad rental market area determination” means a determination made in accordance with article 4B(1A) of the Rent Officers Order;

“change of dwelling” means, for the purposes of regulations 13C and 14, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;

“local housing allowance” means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers Order;

“maximum rent (standard local rate)” means the amount determined in accordance with regulation 13D;

“reckonable rent” means payments which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for regulation 13, be eligible for housing benefit plus the amount of any deduction for fuel, deduction for meals or water charges, which that person is liable to pay;

“relevant information” means information or evidence forwarded to the relevant authority by an appropriate DWP office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate DWP office relating to that claim;”.

(2) In regulation 11 (eligible housing costs)—

(a) for paragraph (1) substitute—

“(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant’s maximum housing benefit shall be calculated under Part 8 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with—

(a) regulation 12B (eligible rent);

(b) regulations 12C (eligible rent and maximum rent) and 13 (maximum rent); or

- (c) regulations 12D (eligible rent and maximum rent (standard local rate)), 13C (when a maximum rent (standard local rate) is to be determined) and 13D (determination of a maximum rent (standard local rate)),
whichever is applicable in his case.”;
 - (b) in paragraph (3) for “ paragraphs (1) to (3) of that regulation” substitute “paragraphs (1) or (2) of that regulation or paragraph (2) of regulation 12B”.
- (3) In regulation 12 (rent)—
- (a) omit paragraphs (3) to (7);
 - (b) in paragraph (8) after “regulation” insert “, regulation 12B (eligible rent)”.

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

4. After regulation 12 (rent) 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 (standard local rate)) apply.

(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 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, the amount of a person's eligible rent shall be the maximum rent, subject to paragraphs (3), (4) and (6) of regulation 12B.

Eligible rent and maximum rent (standard local rate)

12D.—(1) Where, by virtue of paragraphs (3) or (4) of regulation 13C (when a maximum rent (standard local rate) is to be determined), a maximum rent (standard local rate) has been, or is to be, determined in accordance with regulation 13D (determination of a maximum rent (standard local rate)), then, except where paragraphs (2)(a) (protection on death) or (4)(a) (13 week protection) apply—

- (a) the amount of a person's eligible rent shall be the maximum rent (standard local rate); and
- (b) it shall apply until the earlier of—
 - (i) the determination of a maximum rent (standard local rate) by virtue of regulation 13C(3)(d) (change of category of dwelling, death or change of dwelling for an LHA case); or
 - (ii) the determination of a maximum rent (standard local rate) by virtue of regulation 13C(4) (anniversary of LHA date).

(2) Subject to paragraph (7), where the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(a), (b) (new claim on or after [insert rollout date]) 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 person to whom sub-paragraph (b) to (d) of paragraph (6) applied or, had a claim been made, would have applied, 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 (1), where it is not less than the eligible rent determined in accordance with sub-paragraph (a).

(3) For the purpose of paragraph (2), 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.

(4) Subject to paragraphs (5) and (7), where a relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(a) or (b) (new claim on or after [insert rollout date]) and the relevant authority is satisfied that a person to whom paragraph (6) applies 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 (1), where it is not less than the eligible rent referred to in sub-paragraph (a).

(5) Paragraph (4) shall not apply in the case of any claim for housing benefit where the claimant was previously entitled to housing benefit in respect of any period which ended less than 52 weeks before the commencement of the period to which the claim relates.

(6) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if a claimant ceased his occupation of it.

(7) Where a person's eligible rent has been determined in accordance with—

- (a) paragraph (2)(a) (protection on death), it shall apply until—
 - (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 (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling); or
 - (iii) the determination of an eligible rent in accordance with paragraph (2)(a) (protection on death) in relation to a subsequent death,whichever first occurs;
- (b) paragraph (4)(a) (13 week protection), it shall apply until—
 - (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 (1) which is equal to or exceeds it or is based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling); or
 - (iii) the determination of an eligible rent in accordance with paragraph (2)(a) (protection on death),whichever first occurs.

(8) Where an eligible rent ceases to apply by virtue of sub-paragraph (a)(i) (expiry of protection on death) or (b)(i) (expiry of 13 week protection) of paragraph (7), the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (2)(a) and (4)(a).".

Substitution of regulation 13 of the Housing Benefit Regulations 2006

5. For regulation 13 (maximum rent) substitute—

“**13.**—(1) Where an authority has applied to the rent officer for a determination in accordance with regulation 14 (requirement to refer to rent officers) and a rent officer has made a determination or redetermination in exercise of the Housing Act functions, the maximum rent shall be determined in accordance with paragraphs (2) to (17).

(2) In a case where the rent officer has determined a claim-related rent, but is not required to notify the authority of a local reference rent or a single room rent, the maximum rent shall be that claim-related rent.

(3) In a case where the rent officer has determined and is required to notify the authority of a local reference rent, the maximum rent shall not exceed twice that local reference rent.

(4) Subject to paragraph (5), in the case of a young individual—

(a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the authority of it, the maximum rent shall not exceed that single room rent;

(b) where—

(i) the rent officer has determined a single room rent and a claim-related rent and is required to notify the authority of them;

(ii) the claim-related rent includes payment in respect of meals; and

(iii) the single room rent is greater than the claim-related rent less an amount in respect of meals determined in accordance with paragraph 2 of Part 1 of Schedule 1 (ineligible service charges),

the maximum rent shall not exceed the claim-related rent less that amount in respect of meals.

(5) Paragraph (4) shall not apply in the case of a claimant—

(a) to whom paragraph 4 of Schedule 3 to the Consequential Provisions Regulations (saving provision) applies;

(b) to whom paragraph 14 of Schedule 3 (severe disability premium) applies; or

(c) who has a non-dependant residing with him.

(6) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the authority and a claim-related rent, and—

(a) the claim-related rent is higher than the local reference rent, the maximum rent shall be the local reference rent;

(b) the local reference rent is higher than the claim-related rent, the maximum rent shall be the claim-related rent.

(7) Subject to the limits specified in paragraphs (3) and (4), in a case where the rent officer has determined a local reference rent of which he is required to notify the authority, but has not determined a claim-related rent and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent.

(8) In a case where—

(a) the authority has determined a maximum rent in respect of a dwelling; and

(b) during the award of housing benefit the reckonable rent in respect of that dwelling is reduced to a sum which is less than the reckonable rent at the time that maximum rent was determined,

then—

(i) the maximum rent shall not be reduced, where the sum is not less than the maximum rent, during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g); and

(ii) the maximum rent shall be reduced to an amount equal to that sum, where that sum is less than the maximum rent during a period ending on the effective date of a decision adopting a determination of a rent officer where that determination was made in exercise of the Housing Act functions pursuant to an application by the authority under regulation 14(1)(c), (d), (e), (f) or (g).

(9) Subject to paragraph (10), in a case where—

(a) a rent officer has made a determination in exercise of the Housing Act functions pursuant to an application by an authority under regulation 14(1)(e); and

(b) subsequent to that determination the reckonable rent for that dwelling is changed, then in determining a maximum rent in relation to a claim for benefit of a claimant who has a liability to make payments in respect of that dwelling, the authority shall treat the claim-related rent or, as the case may be, reckonable rent to be that determined in or, as the case may be, applicable to, that determination by the rent officer.

(10) Paragraph (9) shall not apply in a case where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if that reckonable rent had not changed; and where this paragraph applies, the maximum rent shall be the reckonable rent, as so reduced.

(11) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom paragraph (16)(b) to (d) applied or, had a claim been made, would have applied, the maximum rent shall be either—

- (a) the maximum rent which applied before the death occurred; or
- (b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(12) For the purposes of paragraph (11), 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 subparagraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(13) In a case where a charge for meals is ineligible to be met by housing benefit under regulation 12B(2) and paragraph 1 of Schedule 1, there shall be deducted an amount determined in accordance with paragraph 2 of Schedule 1 in respect of meals in the calculation of a person's maximum rent, except where the maximum rent is derived from a rent officer determination under—

- (a) paragraph 3 (exceptionally high rents) of Schedule 1 to the Rent Officers Order and the notice of claim-related rent states pursuant to paragraph 9(1)(c) of that Schedule that an ineligible payment has not been included in it; or
- (b) paragraph 5 (single room rents) of that Schedule.

(14) Subject to paragraph (15), where the relevant authority is satisfied that a person to whom paragraph (16) applies was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant's award of housing benefit.

(15) Paragraph (14) shall not apply where a claimant 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 his current award of housing benefit.

(16) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) subject to paragraph (17), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(17) Paragraph (16)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

(18) In this regulation—

“claim-related rent” means the rent notified by the rent officer under paragraph 9(1) of Schedule 1 to the Rent Officers Order;

“deduction for meals” means any amount of a person’s otherwise eligible rent which is an ineligible service charge by reason of and within the meaning of paragraph 1(a)(i) of Schedule 1;

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order;

“single room rent” means the rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order.”.

Insertion of regulations 13C, 13D and 13E into the Housing Benefit Regulations 2006

6. After regulation 13 (maximum rent) insert—

“When a maximum rent (standard local rate) is to be determined

13C.—(1) Where this regulation applies, a relevant authority shall determine a maximum rent (standard local rate) in accordance with regulation 13D (determination of a maximum rent (standard local rate)).

(2) This regulation does not apply in a case where—

- (a) the landlord is a registered social landlord;
- (b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (savings provision) applies;
- (c) the tenancy is an excluded tenancy of a type falling within any of paragraphs 4 to 10 of Schedule 2;
- (d) the claim or award relates to—
 - (i) periodical payments of kind falling within regulation 12(1) (rent) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home; or
 - (ii) rent payable in relation to a hostel; or
- (e) rent under the tenancy is attributable to board and attendance, and—
 - (i) the relevant authority has made an application to the rent officer in accordance with regulation 13D(7) (board and attendance determination), regulation 15 (applications to the rent officer for determinations) or 17 (substitute determinations or redeterminations); and
 - (ii) the rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance and has notified the relevant authority of this in accordance with article 4C, 4D or 4E of the Rent Officers Order.

(3) This regulation applies where a relevant authority has received—

- (a) a claim on which a rent allowance may be awarded, where the date of claim falls on or after the [insert rollout date];
- (b) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after [insert rollout date];
- (c) in relation to an award of housing benefit where the maximum rent was determined in accordance with regulation 13, a notification of a change of dwelling where the change occurs on or after [insert rollout date]; or
- (d) in relation to an award of housing benefit where a maximum rent (standard local rate) was determined in accordance with regulation 13D—
 - (i) notification of a change of a kind which affects the category of dwelling applicable to the claim;

- (ii) notification of the death of an occupier of the dwelling to whom any of sub-paragraphs (b) to (d) of regulation 12D(6) applies, where the notification does not fall within head (i); or
 - (iii) notification of a change of dwelling.
- (4) This regulation applies where it is the anniversary of the LHA date.
- (5) Where the LHA date is 29th February, the anniversary of the LHA date shall be 28th February.
- (6) In this regulation—
- “the LHA date” means the date by reference to which the local housing allowance used to determine the maximum rent (standard local rate) was identified;
 - “registered social landlord” has the same meaning as in Part 1 of The Housing Act 1996(36) and, in Scotland, sections 57 and 59 of The Housing (Scotland) Act 2001(37).

Determination of a maximum rent (standard local rate)

13D.—(1) Subject to paragraph (3) to (8), the maximum rent (standard local rate) shall be the local housing allowance determined by the rent officer which is applicable to—

- (a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and
- (b) the category of dwelling which applies in accordance with paragraph (2).

(2) The category of dwelling which applies is the category—

- (a) specified in paragraph 1(1)(a) of Schedule 3B to the Rent Officers Order where—
 - (i) the claimant is a young individual who has no non-dependant residing with him and to whom paragraph 14 of Schedule 3 (severe disability premium) does not apply; or
 - (ii) the category of dwelling specified in paragraph 1(1)(b) of Schedule 3B to the Rent Officers Order would apply in the claimant’s case but sub-paragraph (b)(ii) is not satisfied in his case;
- (b) specified in paragraph 1(1)(b) of Schedule 3B to the Rent Officers Order where that applies in the claimant’s case at the relevant date in accordance with the size criteria in paragraph (9) and—
 - (i) he is not a person to whom sub-paragraph (a)(i) applies and;
 - (ii) the claimant (together with his partner where he has one) has the exclusive use of only one bedroom and exclusive use of a kitchen, a bathroom, a toilet and a room suitable for living in; or
- (c) in any other case, which applies in the claimant’s case at the relevant date in accordance with the size criteria.

(3) Where the applicable local housing allowance exceeds the aggregate of such payments specified in regulation 12(1) (rent) which the claimant is liable to pay, or is treated as liable to pay by virtue of regulation 8 (circumstances in which a person is to be treated as liable to make payments in respect of a dwelling), the maximum rent (standard local rate) shall be the lower of —

- (a) the applicable local housing allowance; or
- (b) the amount equal to those payments plus £15.

(4) Where paragraph (3) applies, for the purpose of determining the appropriate maximum housing benefit, the amount of the claimant’s liability must be taken to be the amount of the applicable local housing allowance.

(36) 1996 c. 52.
(37) 2001 asp 10.

(5) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (2)(c) has been determined, the relevant authority shall—

- (a) apply to the rent officer for local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market area falling within its area, in whole or in part, at the relevant date, which shall be specified in the application; and
- (b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.

(6) The relevant authority shall apply to the rent officer for local housing allowance determinations for each broad rental market area falling within its area, in whole or in part, for the category of dwelling containing the number of bedrooms specified in the application where—

- (a) it receives a request on a properly completed form, which it has approved for this purpose, from a person stating that—
 - (i) he is contemplating occupying as his home a dwelling containing a specified number of bedrooms, exceeding five, within the area of the relevant authority; and
 - (ii) that if he does so, he is likely to claim housing benefit; and
- (b) no local housing allowance determination is in effect for a broad rental market area falling within, in whole or in part, the area of the relevant authority for the category of dwelling containing the number of bedrooms specified in the form.

(7) The relevant authority shall apply to the rent officer for a board and attendance determination to be made in accordance with article 4C of the Rent Officers Order where—

- (a) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C; and
- (b) part of the rent under the tenancy appears to the relevant authority to be likely to be attributable to board and attendance.

(8) Where an application to a rent officer is required in accordance with paragraph (7) it shall be made within the same period following the day on which the relevant authority becomes obliged to determine a maximum rent (standard local rate) by virtue of regulation 13C as would be required if it were to be made under regulation 14(1).

(9) One bedroom shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category which applies to him)—

- (a) a couple (within the meaning of Part 7 of the Act);
- (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.

(10) In this regulation—

“bedroom” has the meaning specified in paragraph 1(2) of Schedule 3B to the Rent Officers Order;

“occupiers” means the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for—

- (a) any joint tenant who is not a member of the claimant’s household; and
- (b) any non-dependant who is a non-dependant in relation to more than one claimant in respect of the dwelling, where—
 - (i) another claimant (“the other claimant”) informed the relevant authority of the non-dependant before the claimant; and

- (ii) the other claimant did so at a time when he was a claimant;
- “relevant date” means, as the case may require—
- (a) the date of the claim to which the claim or relevant information relates; or
 - (b) the date of the change of dwelling, change which affects the category of dwelling, or date of death, to which a notification referred to in regulation 13C(3)(c) or (d) relates.

Publication of local housing allowances

13E.—(1) A relevant authority shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas falling in whole or in part within its area, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the authority.”.

Substitution of regulations 14 to 18 of the Housing Benefit Regulations

7. For regulations 14 (requirement to refer to rent officers) to 18 (application of provisions to substitute determinations or substitute redeterminations) substitute—

“Requirement to refer to rent officers

14.—(1) Subject to the following provisions of this regulation, a relevant authority shall apply to a rent officer for a determination to be made in pursuance of the Housing Act functions where—

- (a) it has received a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(2)(a) to (e) (rent allowance cases for which a maximum rent (standard local rent) is not to be determined) apply; or
- (b) it has received relevant information regarding a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(2)(a) to (e) apply; or
- (c) it has received a notification of a change relating to a rent allowance and a maximum rent (standard local rate) does not fall to be determined under regulation 13C (determination of a maximum rent (standard local rate)); or
- (d) it has received a notification of a change of dwelling and any of the circumstances specified in regulation 13C(2)(a) to (e) apply; or
- (e) it has received, except in the case where any liability to make payments in respect of a dwelling would be to a housing authority, a request from a person (“the prospective occupier”), on a properly completed form approved for the purpose by the relevant authority, which includes the specified matters and any of the circumstances specified in regulation 13C(2)(a) to (d) apply; or
- (f) 52 weeks have elapsed since it last made an application under sub-paragraph (a), (b), (c), (d) or (e) in relation to the claim or award in question and—
 - (i) a maximum rent (standard local rate) determined under regulation 13D does not apply; and
 - (ii) a maximum rent (standard local rent) is not to be determined under regulation 13D; or
- (g) 52 weeks have elapsed since an application was made under sub-paragraph (f) or an application was made under this sub-paragraph, whichever last occurred, and—
 - (i) a maximum rent (standard local rate) determined under regulation 13D does not apply; and
 - (ii) a maximum rent (standard local rate) is not to be determined under regulation 13D.

(2) An application shall not be required under paragraph (1) where a claim, relevant information regarding a claim, notification or request relates to either—

- (a) a dwelling in a hostel if, during the period of 12 months which ends on the day on which that claim, relevant information regarding a claim, notification or request is received by the relevant authority—
 - (i) a rent officer has already made a determination in the exercise of the Housing Act functions in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the claim, relevant information regarding a claim, notification or request relates; and
 - (ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made; or
- (b) an “excluded tenancy” within the meaning of Schedule 2 (excluded tenancies).

(3) The provision of information to the rent officer in accordance with regulation 114A(5) shall be treated as an application to the rent officer under paragraph (1).

(4) Where a relevant authority receives a request pursuant to paragraph (1)(e) (request from prospective occupier) and it is a case where, by reason of paragraph (4) (hostels or excluded tenancies), an application to a rent officer is not required, the authority shall—

- (a) return it to the prospective occupier, indicating why no such application is required; and
- (b) where it is not required by reason of either paragraph (4)(a) (hostels) of this regulation or paragraph 2 of Schedule 2 (cases where the rent officer has already made a determination), shall also send him a copy of that determination within 4 days of the receipt of that request by the authority.

(5) Where an application to a rent officer is required by paragraph (1) it shall be made within 3 days, or as soon as practicable thereafter, of—

- (a) the relevant authority receiving a claim on which rent allowance may be awarded; or
- (b) the relevant authority receiving relevant information regarding a claim on which rent allowance may be awarded; or
- (c) the relevant authority receiving a notification of a change relating to a rent allowance; or
- (d) the relevant authority receiving a notification of a change of dwelling; or
- (e) the day on which the period mentioned in paragraph (1)(f) or (g) elapsed,

except that, in the case of a request to which paragraph (1)(e) (request from prospective occupier) applies, the application shall be made within 2 days of the receipt of that request by the authority.

(6) In calculating any period of days mentioned in paragraphs (5) or (6), no regard shall be had to a day on which the offices of the relevant authority are closed for the purposes of receiving or determining claims.

(7) For the purpose of this regulation a dwelling in a hostel shall be regarded as similar to another dwelling in that hostel if each dwelling provides sleeping accommodation for the same number of persons.

(8) In this regulation—

“change relating to a rent allowance” means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 2 applies;

“prospective occupier” shall include a person currently in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new agreement to occupy that dwelling, but only where his current agreement commenced 11 months or more before such a request;

“registered housing association” means a housing association which—

- (a) is registered in a register maintained by the Corporation or the National Assembly for Wales under chapter 1 of Part 1 of the Housing Act 1996⁽³⁸⁾; or
- (b) in Scotland, is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001⁽³⁹⁾;

“specified matters” means—

- (a) the signature of the prospective occupier;
- (b) the signature of the person to whom the prospective occupier would incur liability to make such payments;
- (c) a statement that the person countersigning agrees to the application being made for that determination; and
- (d) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit;

“tenancy” includes—

- (a) in Scotland, any other right of occupancy; and
- (b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;

“the Corporation” has the same meaning as in section 56 of the Housing Act 1996.

Application to the rent officer for redeterminations

15.—(1) Subject to paragraph (2) and regulation 16 (application for redetermination by rent officer), where a relevant authority has obtained from a rent officer either or both of the following—

- (a) a determination on a reference made under regulation 13D(7) (board and attendance determination) or regulation 14 (requirement to refer to rent officers);
- (b) a redetermination on a reference made under regulation 16(2) (application for redetermination by rent officer),

the authority may apply to the rent officer for a redetermination of any determination or redetermination he has made which has effect at the date of the application.

(2) No application shall be made for a further redetermination of a redetermination made in response to an application under paragraph (1).

Application for a redetermination by a rent officer

16.—(1) This paragraph applies where—

- (a) a person affected makes written representations which are signed by him, to a relevant authority concerning a decision which it makes in relation to him;
- (b) those representations relate, in whole or in part, to a rent officer’s determination or redetermination in exercise of the Housing Act functions except for functions relating to broad rental market area determinations and local housing allowance determinations or amended determinations; and
- (c) those representations are made no later than 6 weeks after the day on which the person affected was notified of the decision by the relevant authority.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, the relevant authority shall, within 7 days of receiving the representations, apply to the rent officer for a redetermination or, as the case may be, a further redetermination in exercise of the Housing

⁽³⁸⁾ 1996 c. 52.
⁽³⁹⁾ 2001 asp 10.

Act functions and a copy of those representations shall accompany the local authority's application.

(3) Except where paragraph (4) applies, a relevant authority, in relation to any determination by a rent officer of an application under regulation 13D(7) (board and attendance determination) or 14(1) (requirement to refer to rent officers), shall not apply for a redetermination under paragraph (2) more than once in respect of an individual claimant's dwelling to which that determination relates.

(4) Paragraph (2) shall operate so as to require a relevant authority to make a second application where the following conditions are met in addition to those imposed by that paragraph—

- (a) the written representations made under paragraph (1) relate to a redetermination by a rent officer made in response to an application by the relevant authority under regulation 15 (application to the rent officer for redetermination);
- (b) by the time of that application, the rent officer has already provided a redetermination under this regulation of a determination made in response to an application under regulation 13D(7) or 14(1); and
- (c) both the application under this regulation referred to in sub-paragraph (b) and the second application for which this paragraph provides relate to the same claimant.

(5) Where a decision has been revised in consequence of a redetermination, substitute determination or substitute redetermination by a rent officer in exercise of the Housing Act functions (except for those relating to broad rental market area determinations and local housing allowance determinations or amended determinations) and that redetermination, substitute determination or substitute redetermination has led to—

- (a) a reduction in the maximum rent, the redetermination, substitute determination or substitute redetermination shall be a change of circumstances;
- (b) an increase in the maximum rent, the redetermination, substitute determination or substitute redetermination shall have effect in place of the original determination.

Substitute determinations or substitute redeterminations

17.—(1) In a case where either—

- (a) the appropriate authority discovers that an application it has made to the rent officer contained an error in respect of any of the following—
 - (i) the size of the dwelling;
 - (ii) the number of occupiers;
 - (iii) the composition of the household;
 - (iv) the terms of the tenancy; or
- (b) the rent officer has, in accordance with article 7A(1) or (2) of the Rent Officers Order, notified an appropriate authority of an error he has made (other than in the application of his professional judgement),

the authority shall apply to the rent officer for a substitute determination, substitute redetermination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination, as the case may be.

(2) In its application to the rent officer the relevant authority shall state the nature of the error and withdraw any previous application relating to the same case for a redetermination or substitute determination or substitute redetermination, which it has made but to which the rent officer has not yet responded.

Application of provisions to substitute determinations or substitute redeterminations

18. Regulations 15, 16 and 17 apply to a substitute determination or substitute redetermination as they apply to the determination or redetermination it replaces.”.

Insertion of regulation 18A into the Housing Benefit Regulations

8. After regulation 18 (application of provisions to substitute determinations or substitute redeterminations) insert—

“Amended determinations

18A. Where a decision has been revised in consequence of an amended broad rental market area determination or amended local housing allowance determination by a rent officer and that amended determination has led to—

- (a) a reduction in the maximum rent (standard local rate) applicable to a claimant, the amended determination shall be a change of circumstances in relation to that claimant; and
- (b) an increase in the maximum rent (standard local rate) applicable to a claimant, the amended determination shall have effect in place of the original determination.”

Amendment of regulation 50 of the Housing Benefit Regulations 2006

9. In regulation 50(4)(a) (diminishing notional capital rule) for “regulation 80(4)(a)” substitute “regulation 80(3)(a)”.

Substitution of regulations 70 and 74 of the Housing Benefit Regulations 2006

10.—(1) For regulation 70 (maximum housing benefit) substitute—

“70. The amount of a person’s appropriate maximum housing benefit in any week shall be 100 per cent. of his eligible rent calculated on a weekly basis in accordance with regulation 80 and 81 (calculation of weekly amount and rent free periods) less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).”

(2) For regulation 74 (non-dependant deductions) substitute—

“74.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 70 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £47.75 per week;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £7.40 per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than £101.00, the deduction to be made under this regulation shall be that specified in paragraph 1(b);
- (b) not less than £101.00 but less than £150.00, the deduction to be made under this regulation shall be £17.00;
- (c) not less than £150.00 but less than £194.00, the deduction to be made under this regulation shall be £23.35;
- (d) not less than £194.00 but less than £258.00, the deduction to be made under this regulation shall be £38.20;
- (e) not less than £258.00 but less than £322.00, the deduction to be made under this regulation shall be £43.50.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous

marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 3 (additional condition of the higher pensioner and disability premiums); or
- (b) receiving in respect of himself either—
 - (i) attendance allowance; or
 - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽⁴⁰⁾; or
- (c) he is a full-time student during a period of study within the meaning of Part 7 (Students); or
- (d) he is a full time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
- (e) he is a full-time student and the claimant or his partner has attained the age of 65; or
- (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—
 - (i) “patient” has the meaning given in paragraph (18) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home);
 - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods; and
 - (iii) “prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983⁽⁴¹⁾, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴²⁾ or the Criminal Procedure (Scotland) Act 1995⁽⁴³⁾.

⁽⁴⁰⁾ 1990 c. 35.

⁽⁴¹⁾ 1983 c. 20.

⁽⁴²⁾ 2003 asp 13.

⁽⁴³⁾ 1995 c. 46.

(8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker's allowance.

(9) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) would have been disregarded under paragraph 23 of Schedule 5 (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 35 of Schedule 5 (payments made under certain trusts and certain other payments).

(10) No deduction shall be made in respect of a non-dependant who is on state pension credit.

(11) In a case in which a relevant authority has determined a maximum rent (standard local rate) in accordance with regulations 13C and 13D, a deduction shall only be made in relation to a non-dependant who is an occupier for the purposes of regulation 13D.”.

Amendment of regulation 79 of the Housing Benefit Regulations

11. In regulation 79 (date on which change of circumstances is to take effect) for “regulation 80(6)” substitute “regulation 80(5)” in both places in which it occurs.

Substitution of regulations 80 and 81 of the Housing Benefit Regulations

12. For regulations 80 (calculation of weekly amounts) and 81 (rent free periods) substitute—

“Calculation of weekly amounts

80.—(1) A person's entitlement to housing benefit in any benefit week shall be calculated in accordance with the following provisions of this regulation.

(2) The weekly amount of a claimant's eligible rent shall be—

- (a) subject to paragraph (3), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable; or
- (b) subject to paragraph (3), where the rent is payable at intervals of a calendar month or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of calendar months in respect of which it is payable, multiplying by 12 and dividing by 52;
- (c) subject to paragraph (3), where the rent is payable at intervals of a day or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of days in respect of which it is payable and multiplying by 7.

(3) In a case—

- (a) to which regulation 76(2) (date on which entitlement is to commence) applies, his eligible rent for the benefit week in which he becomes liable to make payments in respect of a dwelling which he occupies as his home shall be calculated by multiplying his daily rent by the number equal to the number of days in that benefit week for which he is liable to make such payments;

- (b) where a change of circumstances takes effect in a benefit week under regulation 79(2A), (but is not a change described in sub-paragraph (c)(ii) of this regulation), (2B), (8) or (9) other than on the Monday of a benefit week then the claimant's eligible rent for that benefit week shall be calculated by multiplying his daily rent by the appropriate number of days in that benefit week;
- (c) where—
 - (i) the amount of eligible rent which the claimant is liable to pay in respect of a dwelling is altered and that change of circumstances takes effect under regulation 79(2), or
 - (ii) the claimant—
 - (aa) moves to a new dwelling occupied as the home,
 - (bb) he is not entitled to be treated, immediately after that move, as occupying two dwellings as his home or as occupying his former dwelling as his home, and
 - (cc) that change of circumstances takes effect under regulation 79(2A),
other than on the Monday of a benefit week, then the claimant's eligible rent for that benefit week shall be calculated by multiplying his old and new daily rent by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay.

(4) In the case of a claimant whose weekly eligible rent falls to be calculated in accordance with paragraph (3)(a) or (b) by reference to the daily rent in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent by reference to the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit).

(5) Where a change in the amount of a claimant's applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent to which paragraph (3)(c) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent.

(6) In any case where a claimant has received an extended payment or an extended payment (severe disablement allowance and incapacity benefit), his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in Part 3 of Schedule 7 or paragraph 9 of Schedule 8, as the case may be.

(8) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

(9) In this regulation "daily rent" shall mean the amount determined by dividing by 7 the amount determined under whichever sub-paragraph of paragraph (2) is appropriate in each case.

(10) Where a claimant is entitled to benefit in respect of two (but not more than two) dwellings in accordance with regulation 7(6) his eligible rent shall be calculated in respect of each dwelling in accordance with this regulation.

Rent free periods

81.—(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent free period) in, or in respect of, which he is not liable to pay rent except for any period to which regulation 8(1)(d) (waiver of rent by landlord in return for work done) applies.

(2) In the case of the beginning or ending of a claimant's rent-free period, his eligible rent for the benefit week in which the rent free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 80(3) applies.

(3) For the purpose of determining the weekly applicable amount and income of a claimant to whom this regulation applies, the weekly amount of any non-dependant deductions and the minimum amount payable in his case—

- (a) in a case to which regulation 80(2)(a) applies, the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit) shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;
- (b) subject to paragraph (4), in a case to which regulation 80(2)(b) or (c) applies, the amounts determined in his case in accordance with Parts 5 to 8 shall be multiplied by 365 or 366, whichever is appropriate and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 80(4) or (5) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3) shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent.”.

Amendment of regulations 95 and 96 of the Housing Benefit Regulations

13.—(1) In regulation 95 (circumstances in which payment is to be made to a landlord) after paragraph (2) insert—

“(2A) In a case where—

- (a) a relevant authority has determined a maximum rent (standard local rate) in accordance with regulation 13D; and
- (b) the rent allowance exceeds the amount which the claimant is liable to pay his landlord by way of rent,

any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 96 may include all or part of any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent but shall not include any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent and arrears of rent.”.

(2) In regulation 96 (circumstances in which payment may be made to a landlord)—

- (a) in paragraph (1) for “paragraph (3)” substitute “paragraphs (3) and (3A)”;
- (b) in paragraph (3) after “paragraph (1)” insert “, (3A) or (3B)”;
- (c) after paragraph (3) insert—

“(3A) In a case where a relevant authority has determined a maximum rent in accordance with regulation 13D—

- (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply; and
- (b) payment of a rent allowance to a person's landlord may be made where—
 - (i) the relevant authority considers that the claimant is likely to have difficulty in managing his affairs;
 - (ii) the relevant authority considers that it is improbable that the claimant will pay his rent; or
 - (iii) a direct payment has previously been made by the relevant authority to the landlord in accordance with regulation 95 in respect of the current award of housing benefit.

(3B) Where the relevant authority suspects that the grounds in paragraph (3A)(b)(i) or (ii) apply and is considering whether to make payments on one of those grounds, it may make a payment of a rent allowance to the person's landlord for a period not exceeding 8 weeks.”.

Substitution of Schedule 2 to the Housing Benefit Regulations

14. For Schedule 2 (excluded tenancies) substitute—

“SCHEDULE 2

Regulation 14

Excluded tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs applies.

2.—(1) Subject to the following sub-paragraphs, where a rent officer has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—

- (a) the tenancy in respect of which that determination was made; and
- (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.

(2) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer’s determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—

- (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
- (b) the earlier application was made more than 52 weeks before the later application was made.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—

- (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;
- (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
- (c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;
- (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (size and rent determinations), but since the date of the application for that determination—
 - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years; or
 - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years; or
 - (iii) there is a change in the composition of the household occupying the dwelling;
- (e) the claimant is a young individual, except in a case where the determination mentioned in sub-paragraph (1) was, or was made in conjunction with, a determination of a single room rent pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order on or after 2nd July 2001.

3.—(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority considers that—

- (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or
 - (b) the rent payable for that dwelling is unreasonably high.
- (2) Where the circumstances set out in head (a) or (b) of sub-paragraph (1) above exist, the authority shall so state in their application for a determination.
- 4.** This paragraph applies to a tenancy entered into before—
- (a) in Scotland, 2nd January 1989; and
 - (b) in any other case, 15th January 1989.
- 5.** This paragraph applies to a regulated tenancy within the meaning of—
- (a) in Scotland, the Rent (Scotland) Act 1984(**44**); and
 - (b) in any other case, the Rent Act 1977(**45**).
- 6.** This paragraph applies to a housing association tenancy which—
- (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
 - (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.
- 7.** This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976(**46**).
- 8.** This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954(**47**) or Schedule 10 to the Local Government and Housing Act 1989(**48**).
- 9.** This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000(**49**).
- 10.** This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988(**50**).
- 11.**—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—
- (a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985(**51**) or section 12 of the Housing (Scotland) Act 1987(**52**);
 - (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985(**53**) or section 12 of the Housing (Scotland) Act 1987;
 - (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996(**54**), otherwise than from a housing action trust within the meaning of Part 3 of the Housing Act 1988,

(44) 1984 c. 58.

(45) 1977 c. 42.

(46) 1976 c. 80.

(47) 1954 c. 56.

(48) 1989 c. 42.

(49) 2000 c. 43.

(50) 1988 c. 50.

(51) 1985 c. 68; section 32 was amended by section 140 of and Schedule 7 to the Housing Act 1988 (c. 50); section 227 of and Schedule 19 to the Housing Act 1996 (c. 52) and S.I. 1997/74.

(52) 1987 c. 26.

(53) 1985 c. 68; section 43 was amended by section 132 and 140 of and Schedule 17 to the Housing Act 1988 (c. 50); section 194 of and Schedule 12 to the Local Government and Housing Act 1989 (c. 42); section 78 of and Schedule 10 to the Environment Act 1995 (c. 25) and section 227 of and Schedule 9 to the Housing Act 1996.

(54) 1996 c. 52.

or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988; or

- (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990⁽⁵⁵⁾ to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968⁽⁵⁶⁾ to a housing association.

(2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—

- (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and
- (b) the local authority stated in the application for determination that—
- (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or
- (ii) the rent payable for that dwelling is unreasonably high.

(3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

12. In this Schedule, “rent” shall be construed in accordance with paragraph (8) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988⁽⁵⁷⁾, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;
- (b) in any other case, as in section 14 of the Housing Act 1988⁽⁵⁸⁾, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,

and—

- (i) other expressions have the same meanings as in regulation 14(8);
- (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), any reference to a “tenancy” shall be taken as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.”.

Substitution of Part 15 of and Schedule 10 to the Housing Benefit Regulations

15.—(1) For Part 15 substitute—

⁽⁵⁵⁾ S.I. 1990/1700; amended by S.I. 1990/2366 and 1991/1281.

⁽⁵⁶⁾ 1968 c. 16. Relevant amendments are contained in the Enterprise and New Towns (Scotland) Act 1990 (c. 35) section 33.

⁽⁵⁷⁾ 1988 c. 43; section 25 was amended by S.I. 1993/658.

⁽⁵⁸⁾ 1988 c. 50; section 14 was amended by section 104 of and Schedule 8 to the Housing Act 1996 (c. 52) and S.I. 1993/651.

“PART 15

Former pathfinder authorities

Modifications in respect of former pathfinder authorities

122.—(1) In this regulation and in Schedule 10, “former pathfinder authority” means a relevant authority specified in Part 1 of that Schedule.

(2) The provisions of Part 2 of Schedule 10 apply in relation to the area of a former pathfinder authority.”.

(2) For Schedule 10 (pathfinder authorities) substitute—

“SCHEDULE 10

Regulation 122

Former pathfinder authorities

PART 1

Former pathfinder authorities

Argyll and Bute
Blackpool
Brighton and Hove
Conwy
Coventry
East Riding of Yorkshire
Edinburgh
Guildford
Leeds
Lewisham
North East Lincolnshire
Norwich
Pembrokeshire
St Helens
Salford
South Norfolk
Teignbridge
Wandsworth

PART 2

Application of the Regulations

1. These Regulations shall apply to former pathfinder authorities subject to the provisions of this Part of this Schedule.

Amendment of regulation 2

2. In regulation 2(1) (interpretation) in the definition of “eligible rent” for “or 12D” substitute “, 12D or 12E”.

Amendment of regulation 11

3. In regulation 11(1) (eligible housing costs) after sub-paragraph (c) insert—

“;or

- (d) regulations 12E (eligible rent (transitional protection)), 12F (application of eligible rent (transitional protection)), 13C (when a maximum rent (standard local rate) is to be determined) and 13D (determination of a maximum rent (standard local rate)).”

Amendment of regulation 12B

4. In regulation 12B (eligible rent) for “or 12D (eligible rent and maximum rent (standard local rate))” substitute “, 12D (eligible rent and maximum rent (standard local rate)) or 12E (eligible rent (transitional protection))”.

Amendment of regulation 12D

5. In regulation 12D (eligible rent and maximum rent (standard local rate)) before paragraph (1) insert—

“(A1) Subject to regulation 12F(3), this regulation shall not apply where regulation 12E(1), (2), (5), (9), (11), (13) or (14) applies.”

Insertion of regulations 12E and 12F

6. After regulation 12D (eligible rent and maximum rent (standard local rate)) insert—

“Eligible rent (transitional protection)

12E.—(1) This paragraph applies where a relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(5A)(a) (local housing allowance rollout day).

(2) Where paragraph (1) applies, subject to regulation 12F,—

- (a) except where sub-paragraph (b) or (c) applies, the amount of a person’s eligible rent shall be—
 - (i) the maximum rent (standard local rate) where that is more than the eligible rent which applied on the [insert the day before the rollout date]; or
 - (ii) the eligible rent which applied on the [insert the day before the rollout date];
- (b) where the eligible rent to which the person was entitled on the [insert the day before rollout date] was determined by reference to a maximum rent determined in accordance with regulation 12A(4)(a)(ii) (pathfinder protection on death based on reckonable rent), the person’s eligible rent shall be—
 - (i) the maximum rent (standard local rate), where that is more than the eligible rent which applied on the [insert the day before the rollout date]; or
 - (ii) the eligible rent which applied on the [insert the day before the rollout date]; or
- (c) where the eligible rent to which the person was entitled on the [insert the day before the rollout date] was determined in accordance with regulation 12A (6)(a) (local housing allowance pathfinder 13 week protection), the person’s eligible rent shall be—

- (i) the maximum rent (standard local rate), where that is more than the eligible rent which applied on the [insert the day before the rollout date]; or
 - (ii) the eligible rent which applied on the [insert the day before the rollout date].
- (3) This paragraph applies where—
- (a) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(d)(i) (change of category of dwelling) where the claimant is entitled to a larger category of dwelling; or
 - (b) the date of change of category of dwelling to which the requirement to determine a maximum rent (standard local rate) relates falls before [insert the date of first anniversary of rollout];
 - (c) the eligible rent which applies was determined in accordance with paragraph (2)(a)(ii), (b)(ii) or (c)(ii) (transitional protection).
- (4) Where paragraph (3) applies, subject to regulation 12F, the amount of a person's eligible rent shall be determined in accordance with paragraph (2).
- (5) This paragraph applies where—
- (a) the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom sub-paragraphs (a) to (c) of paragraph (8) applied;
 - (b) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(d)(i) or (ii) (change of category of dwelling or death);
 - (c) the date of change or death to which the requirement to determine a maximum rent (standard local rate) relates falls before the [insert the date of first anniversary of rollout]; and
 - (d) the eligible rent which applied on the day before the death was determined in accordance with paragraph (2)(a)(ii), (b)(ii) or (c)(ii) (transitional protection) or (6)(b) (protection on death for transitionally protected case in first year after rollout).
- (6) Where paragraph (5) applies, subject to regulation 12F, the amount of a person's eligible rent shall be—
- (a) the maximum rent (standard local rate) where it is more than the eligible rent determined in accordance with sub-paragraph (b); or
 - (b) the eligible rent which applied on the day before the death occurred.
- (7) For the purpose of paragraphs (5) and (11), 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) of regulation 7 shall have effect as if sub-paragraph (b) of that paragraph were omitted.
- (8) This paragraph applies to the following persons—
- (a) any member of the claimant's family;
 - (b) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
 - (c) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it.

(9) This paragraph applies where a relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(5A)(b) (first anniversary of LHA rollout).

(10) Where paragraph (9) applies, subject to regulation 12F, the amount of a person's eligible rent shall be—

- (a) the maximum rent (standard local rate) where that is more than the eligible rent which applied on the [insert the day before first anniversary of rollout date]; or
- (b) the lower of the eligible rent which applied on the [insert the day before first anniversary of rollout date] or the amount of the rent plus £15;

(11) This paragraph applies where—

- (a) the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom sub-paragraphs (a) to (c) of paragraph (8) applied, or had a claim been made, would have applied;
- (b) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(d)(i) or (ii) (change of category of dwelling or death);
- (c) the date of change or death to which the requirement to determine a maximum rent (standard local rate) relates falls on or after [insert first anniversary of rollout date]; and
- (d) the eligible rent which applied on the day before the death was determined in accordance with paragraph (10)(b) (transitional protection second year and onwards) or (12)(b) (protection on death for transitionally protected cases second year and onwards).

(12) Where paragraph (11) applies, subject to regulation 12F, the eligible rent shall be—

- (a) the maximum rent (standard local rate), where it is more than the eligible rent determined in accordance with sub-paragraph (b); or
- (b) the eligible rent which applied on the day before the death occurred.

(13) This paragraph applies where—

- (a) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(3)(d)(i) (change of category of dwelling) where the claimant is entitled to a larger category of dwelling;
- (b) the date of change of category of dwelling or date of death to which the requirement to determine a maximum rent (standard local rate) relates falls on or after [insert first anniversary of rollout date]; and
- (c) the eligible rent which applies was determined in accordance with paragraph (10)(b) (transitional protection second year and onwards).

(14) This paragraph applies where—

- (a) the relevant authority is required to determine a maximum rent (standard local rate) by virtue of regulation 13C(4) (anniversary of LHA date) and the anniversary of the LHA date falls after [insert first anniversary of rollout date]; and
- (b) the eligible rent was determined in accordance with paragraph (10)(b) (transitional protection second year and onwards).

(15) Where paragraph (13) or (14) applies, subject to regulation 12F, the amount of a person's eligible rent shall be determined in accordance with paragraph (10).

Application of eligible rent (transitional protection)

12F.—(1) Where a person's eligible rent has been determined in accordance with—

- (a) regulation 12E(2)(a)(ii) (basic transitional protection), it shall apply until such time as the relevant authority determines an eligible rent which is—
 - (i) based on a maximum rent (standard local rate) which exceeds it;
 - (ii) based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(i) (change of category of dwelling), where the person is entitled to a smaller category of dwelling, (3)(d)(iii) (change of dwelling) or (5A)(b) (first anniversary of LHA rollout), or
 - (iii) determined in accordance with regulation 12E (6)(b) (protection on death for transitionally protected case in first year after rollout),whichever first occurs;
- (b) regulation 12E(2)(b)(ii) (transitional protection based on reckonable rent protection on death), it shall apply until—
 - (i) the date on which the eligible rent which applied on [insert the day before the rollout date] would have ceased to apply;
 - (ii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) which exceeds it;
 - (iii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling), or
 - (iv) the relevant authority determines an eligible rent in accordance with regulation 12E(6)(b) (protection on death for transitionally protected case in first year after rollout),whichever first occurs;
- (c) regulation 12E(2)(c)(ii) (transitional protection based on 13 week protection), it shall apply until—
 - (i) the date on which the eligible rent which applied on [insert the day before rollout date] would have ceased to apply; or
 - (ii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) which exceeds it;
 - (iii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling), or
 - (iv) the relevant authority determines an eligible rent in accordance with regulation 12E(6)(b) (protection on death for transitionally protected case in first year after rollout),whichever first occurs;
- (d) regulation 12E(6)(b) (protection on death for transitionally protected case in first year after rollout), it shall continue to apply until—
 - (i) the period of 12 months from the date of death has expired; or
 - (ii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) which exceeds it;
 - (iii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling); or
 - (iv) the relevant authority determines an eligible rent in accordance with regulation 12E(6)(b)(protection on death for transitionally protected

case in first year after rollout) or regulation 12E(12)(b) (protection on death for transitionally protected case second year and onwards),

whichever first occurs;

- (e) regulation 12E(10)(b) (transitional protection second year and onwards), it shall apply until the relevant authority determines an eligible rent which is—

- (i) based on a maximum rent (standard local rate) which exceeds it;
- (ii) based on a maximum rent (standard local rate) determined by virtue of 13C(3)(d)(i) (change of category of dwelling), where the person is entitled to a smaller category of dwelling, or (3)(d)(iii) (change of dwelling), or
- (iii) determined in accordance with regulation 12E(12)(b) (protection on death for transitionally protected case second year and onwards),

whichever first occurs.

- (f) regulation 12E(12)(b) (protection on death for transitionally protected case second year and onwards), it shall apply until—

- (i) the period of 12 months from the date of death has expired; or
- (ii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) which exceeds it;
- (iii) the relevant authority determines an eligible rent based on a maximum rent (standard local rate) determined by virtue of regulation 13C(3)(d)(iii) (change of dwelling), or
- (iv) the relevant authority determines an eligible rent in accordance with regulation 12E(12)(b) as a result of a subsequent death,

whichever first occurs;

(2) Where an eligible rent ceases to apply by virtue of paragraph (1)(b)(i), (c)(i), (d)(i) or (f)(i), the eligible rent that shall apply instead shall be the one which would have applied but for regulation 12E(2)(b) or (c), (6) or (12).

(3) Where an eligible rent has been determined in accordance with regulation 12E, then except where paragraph (1) applies, the eligible rent shall be treated as if it were determined in accordance with regulation 12D(1)(a) (eligible rent is maximum rent (standard local rate)) and shall apply in accordance with the provisions of regulation 12D (eligible rent and maximum rent (standard local rate)).”.

Amendment of regulation 13C

6. In regulation 13C (when a maximum rent (standard local rate) is to be determined)—

- (a) for “(3) or (4) apply” substitute “(3), (4) or (5A) apply”;
- (b) in paragraph (4) after “LHA date” insert “and paragraph (5A)(b) does not apply”;
- (c) after paragraph (5) insert—

“(5A) This regulation applies where it is—

- (a) [insert rollout date] and a maximum rent (standard local rate) was determined in accordance with regulation 12A (maximum rent (standard local rate) for pathfinder cases); or
- (b) [insert rollout date plus one year] and the eligible rent which applies on that date was determined in accordance with regulation 12E(2)(a)(ii) (basic transitional protection) or (6)(b) (protection on death for transitionally protected cases in first year after rollout).”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 relating to information sharing

16. [These Regulations will be amended in the same way as the Housing Benefit Regulations relating to information sharing subject to minor differences required to achieve the same policy due to minor differences in the two sets of regulations].

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

17. [These Regulations will be amended in the same way as the Housing Benefit Regulations subject to minor differences required to achieve the same policy due to minor differences in the two sets of regulations].

Substitution of [SPC equivalent of regulation 122 of and Schedule 10 to the Housing Benefit Regulations] the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

18. [These Regulations will be amended in the same way as the Housing Benefit Regulations subject to minor differences required to achieve the same policy due to minor differences in the two sets of regulations].

Amendment of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006

19.—(1) The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(59) shall be amended as follows.

(2) [The provisions dealing with appropriate maximum housing benefit in these Regulations will be remade together with any consequential amendments. Paragraph 4(2)(a) of Schedule 3 provides that the savings provision for certain “old regulation 11 cases” ceases to apply to certain claimants to whom the pathfinder LHA applies. This will be amended. It will provide that the savings provision ceases to apply to certain claimants to whom the rollout LHA applies. The savings provision preserved the method of calculating the eligible rent in rent allowance cases entitled to housing benefit before the changes introduced on 2nd January 1996].

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

20.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(60) shall be amended as follows.

- (2) In regulation 7 (decisions superseding earlier decisions)—
- (a) omit paragraphs (2ZA) to (2C);
 - (b) in paragraph (3) omit “regulation 88(3) of the Housing Benefit Regulations, regulation 69(3) of the Housing Benefit (State Pension Credit) Regulations”.
- (3) After regulation 7 (decisions superseding earlier decisions) insert—

“Decisions superseding earlier decisions in accordance with paragraph 4(4A) of Schedule 7 to the Act.

7A.—(1) Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision must be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are set out in paragraphs (2) to (4).

(59) S.I. 2006/217 [amendments].

(60) S.I. 2001/1002; relevant amending instruments are S.I. [2002/1703, 2002/490, 2002/217, 2003/325, 2003/1050,] 2003/1338, [2003/2275,] 2003/2399, 2004/14, [2005/2267] and 2006/217.

(2) The appropriate relevant authority must make a decision under paragraph 4 of Schedule 7 to the Act where it is required to determine a maximum rent (standard local rate) in accordance with regulation 13C of the Housing Benefit Regulations and regulation [insert equivalent SPC provisions] of the Housing Benefit (State Pension Credit) Regulations.

(3) The appropriate relevant authority must make a decision under paragraph 4 of Schedule 7 to the Act in any case to which regulation 14(1)(f) or (g) or the Housing Benefit Regulations or regulation 14(1)(f) or (g) of the Housing Benefit (State Pension Credit) Regulations (requirement to refer to rent officers) applies.

(4) The appropriate relevant authority must make a decision under paragraph 4 of Schedule 7 to the Act where a change of circumstances specified in regulation 88(3) of the Housing Benefit Regulations or regulation 69(3) of the Housing Benefit (State Pension Credit) Regulations (changes of circumstances which do not need to be notified) occurs.”.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect)—

(a) in paragraph (6A) for “regulation 7(2ZA)” substitute “regulation 7A(3)”;

(b) for paragraph (15) substitute—

“(15) A decision to which regulation 7A(2) applies shall take effect from the first day of the benefit week in which the determination in accordance with regulation 13C of the Housing Benefit Regulations and regulation [insert equivalent SPC provisions] of the Housing Benefit (State Pension Credit) Regulations was made.”.

Amendment of the Social Security (Claims and Payments) Regulations 1987

21.—(1) In the Social Security (Claims and Payments) Regulation 1987(**61**) in Schedule 9—

(a) in paragraph 4A(4) for “regulation 12(6)” substitute “regulation 12B(5)”;

(b) in paragraph 5(3)(a) and (7) for “regulation 12(3)” substitute “regulation 12B(2)”.

Amendment of the Housing Renewal Grants Regulations 1996

22.—(1) The Housing Renewal Grants Regulations 1996(**62**) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 31(14)(b) (notional income) for “regulation 12(3)” in both places in which it occurs substitute “regulation 12B or 12C”.

(3) In regulation 38(7)(b) (notional capital) for “regulation 12(3)” in both places in which it occurs substitute “regulation 12B or 12C”.

(4) In Schedule 3 in paragraph—

(a) 12(5)(b) for “regulation 12(3)” in both places in which it occurs substitute “regulation 12B or 12C”;

(b) 67(3) in the definition of “rent” for “regulation 12(3)” in both places in which it occurs substitute “regulation 12B or 12C”.

(5) In Schedule 4 in paragraph 58(3) the definition of “rent” for “regulation 12(3)” in both places in which it occurs substitute “regulation 12B or 12C”.

Amendment of the Income-related Benefits (Subsidy to Authorities) Order 1998

23.—(1) The Income-related Benefits (Subsidy to Authorities) Order 1998(**63**) in Schedule 4—

(a) in paragraph 4 for “regulation 14(4)” in both places in which it occurs substitute “regulation 14(2)”;

(61) S.I. 1987/1968; relevant amending instruments are S.I. 1991/2284, 1992/2595, 1996/1460, 1999/3178, 2002/3019 and 2006/217.

(62) S.I. 1996/2890; relevant amending instruments are S.I. 2000/531, 2000/973 and 2006/217.

(63) S.I. 1998/562; relevant amending instruments are S.I. 2001/2350 and 2006/217.

- (b) in paragraph 12(c)(i) for “regulation 14(10)” in both places in which it occurs substitute “regulation 14(8)”.
- (c) in paragraph 16 for “regulation 12(5)” in both places in which it occurs substitute “regulation 12(4)”.

Amendment of the Discretionary Financial Assistance Regulations 2001

24. In the Discretionary Financial Assistance Regulations 2001(**64**) in regulation 4(a) (limit on the amount of the discretionary housing payment that may be made) for “regulations 12(3)(b)(i) to (iii)” in both places in which it occurs substitute “regulation 12B(2)(a) to (d)”.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001. They also make consequential amendments to the Social Security (Claims and Payments) Regulations 1987, the Housing Renewal Grants Regulations 1996, the Income-related Benefits (Subsidy to Authorities) Order 1998 and the Discretionary Financial Assistance Regulations 2001.

Regulations 2 to 15 amend the Housing Benefit Regulations 2006.

Regulation 2 omits paragraphs (2), (3) and (9) of regulation 14, and regulation 113 which relates to the provision of information to rent officers. It inserts a new regulation 114A which requires local authorities to provide information to rent officers to enable them to carry out their functions in relation to housing benefit. This includes the provisions formerly contained in regulation 14(2), (3) and (9). It also inserts a new paragraph (4A) in regulation 14 which provides that the provision of certain information to the rent officers under regulation 114A shall be treated as an application to a rent officer under regulation 14(1). These amendments come into force on rollout day.

Regulations 3 to 14 make amendments which will come into force on rollout day immediately following the information sharing amendments in regulation 2, except for those cases to which regulation 1(5) applies. These cases will continue to be dealt with under the regulations as in force immediately before rollout day, subject to the information sharing amendments in regulation 2, until the relevant authority is required to take one of the steps referred to in regulation 1(6).

Regulation 3 remakes regulation 11(1) with minor and consequential amendments. It omits paragraphs (3) to (7) of regulation 12 and makes a minor consequential amendment to paragraph (8).

Regulation 4 remakes paragraphs (3) to (7) of regulation 12 with minor and consequential amendments as regulations 12B and 12C. It inserts regulation 12B which makes provision for eligible rent in actual rent cases and regulation 12C which makes provision for eligible rent where a maximum rent is calculated in accordance with regulation 13. Regulation 4 also inserts regulation 12D which makes provision for eligible rent where a maximum rent (standard local rate) is calculated in accordance with regulation 13D.

Regulation 5 remakes regulation 13 with minor and consequential amendments.

(64) S.I. 2001/1167; the relevant amending instrument is S.I. 2006/217.

Regulation 6 inserts regulation 13C which provides when a maximum rent (standard local rate) is to be determined, regulation 13D which makes provision for the calculation of a maximum rent (standard local rate) and regulation 13E which provides for the publication of local housing allowances.

Regulation 7 remakes regulation 14, as amended by regulation 2, and regulations 15 to 18, with minor and consequential amendments and ensures that the provisions which formerly applied to pathfinder authorities now apply to all local authorities.

Regulation 8 inserts regulation 18A which formerly applied to pathfinder authorities and which will now apply to all local authorities.

Regulations 9 to 12 remake regulations 70, 74, 80 and 81 and make minor and consequential amendments to those regulations and regulations 50 and 79. Regulation 74(11) is new and relates to the definition of occupier to be used to determine the maximum rent (standard local rate) for local housing allowance cases at national rollout under regulation 13D.

Regulation 13 amends regulations 95 and 96 to apply the direct payment to landlord provisions for LHA cases, which formerly applied to pathfinder authorities, to all local authorities. Regulation 96 also includes a new provision allowing local authorities to make direct payments to landlords for up to 8 weeks while determining whether the claimant falls within one of the categories that allows direct payment.

Regulation 14 remakes Schedule 2 using the new powers with minor and consequential amendments.

Regulation 15 substitutes a new Part 15 and a new Schedule 10. This regulation comes into force on rollout day immediately following the coming into force of regulations 3 to 14, except for cases to which regulation 1(5) applies. For such a case it will come into force immediately after regulations 3 to 14 come into force for that case. Schedule 10 applies to former pathfinder authorities. It makes amendments to regulations 2, 11, 12B, 12D and 13C. It contains regulations 12E and 12F, which provide transitional protection for local housing allowance cases in pathfinder authorities. Regulation 12E provides for transitional protection eligible rent and regulation 12F provides for the duration of such transitional protection eligible rents.

[Regulations 16 to 18 make amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.]

[Regulation 19 amends the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.]

Regulation 20 amends the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 to provide that the local authority must make a decision whether to supersede a housing benefit decision where it is required to determine a new maximum rent (standard local rate), where there is a referral to a rent officer under regulation 14(1)(f) or (g) or where a change of circumstances that does not require notification occurs, and to provide for the date from which that decision takes effect.

Regulations 21 to 24 make consequential amendments to the Social Security (Claims and Payments) Regulations 1987, the Housing Renewal Grants Regulations 1996, the Income-related Benefits (Subsidy to Authorities) Order 1998 and the Discretionary Financial Assistance Regulations 2001.

DRAFT STATUTORY INSTRUMENTS

2007 No.

HOUSING

**Rent Officers (Housing Benefit Functions) Amendment Order
2007**

<i>Made</i> - - - -	[] 2007
<i>Laid before Parliament</i>	[] 2007
<i>Coming into force</i> - -	[] 2007

The Secretary of State for Work and Pensions, makes the following Order in exercise of the powers conferred by section 122(1) and (6) of the Housing Act 1996(65).

Citation and commencement

1.—(1) This Order may be cited as the Rent Officers (Housing Benefit Functions) Amendment Order 2007.

(2) Subject to the provisions of this article, this Order shall come into force on [date X (rollout day minus 10 working days)].

(3) Articles 4 and [equivalent Scottish provisions] shall come into force on [date R (rollout day)].

(4) Articles 5, 6 and [equivalent Scottish provisions] shall come into force on [date R] immediately following the coming into force of article 4.

Amendment of the Rent Officers (Housing Benefit Functions) Order 1997

2.—(1) The Rent Officers (Housing Benefit Functions) Order 1997(66) shall apply in relation to the area of a local authority in England and Wales listed in Schedule 1 subject to the amendments in articles 3 to 6.

(2) The Rent Officers (Housing Benefit Functions) Order 1997 shall apply in relation to the area of every other local authority in England and Wales as it applied in relation to the areas of a local authority listed in Schedule 1 on [the day before date X] subject to the amendments in articles 3 to 6.

Amendments coming into force on date X (10 working days before rollout day)

3.—(1) In article 2 (interpretation)—

- (a) in the definition of “broad rental market area” after “paragraph 4 of Part I of Schedule 3A” insert “or paragraph 6 of Schedule 3B, as the case may be,”;
- (b) in the definition for “broad rental market area determination” after “article 4B(1)” insert “or 4B(1A), as the case may be”;

(65) 1996 c. 52 [amendment to s. 122 by the Welfare Reform Act 2007].

(66) S.I. 1997/1984; the relevant amending instruments are S.I. 2000/1, 2003/2398, 2004/2101, 2005/236 and 2006/217.

- (c) in the definition of “local housing allowance determination” after “article 4B(2)” insert “or article 4B(2A), as the case may be”.

(2) In article 4B (broad rental market area determinations and local housing allowance determinations)—

- (a) in paragraph (1) for “local authority” in the first place in which it occurs substitute “pathfinder authority”;

- (b) after paragraph (1) insert—

“(1A) On [date X] and so often thereafter as a rent officer considers appropriate, a rent officer shall, in relation to each local authority,—

- (a) determine one or more broad rental market areas which will (during the month which next begins after the determination is made) fall, in whole or in part, within the area of the local authority so that every part of the area of that local authority falls within a broad rental market area and no part of the area of that authority falls within more than one broad rental market area; and

- (b) give to that local authority a notice which—

(i) specifies the area contained within each broad rental market area as falls, in whole or in part, within the area of that authority, by reference to the postcodes for each such broad rental market area; and

(ii) identifies such of those postcodes as fall within the area of that authority.”;

- (c) after paragraph (2) insert—

“(2A) No more than 10 and not less than 8 working days before the end of each month a rent officer shall—

- (a) determine, in accordance with the provisions of Schedule 3B—

(i) a local housing allowance for each of the categories of dwelling set out in paragraph 1 of Schedule 3B; and

(ii) local housing allowances for such other categories of dwelling of more than five bedrooms as a rent officer believes are likely to be required for the purpose of calculating housing benefit,

for each broad rental market area; and

- (b) give to each local authority notice of the local housing allowance determination made in accordance with paragraph (a) for each broad rental market area falling within, in whole or in part, the area of that authority.”;

- (d) after paragraph (3) insert—

“(3A) Any broad rental market area determination made in accordance with paragraph (1A), or local housing allowance determination made in accordance with paragraph (2A) before [date R], shall take effect on [date R] and any subsequent determination shall take effect on the first working day of the month which begins after the day on which the determination is made.”.

(3) In article 7A (errors)—

- (a) in paragraph (3)—

(i) after “broad rental market area determination” insert “determined in accordance with article 4B(1)”;

(ii) after “local housing allowance determination” insert “determined in accordance with article 4B(2)”;

- (b) after paragraph (3) insert—

“(4) If a rent officer is of the opinion that he has made an error (other than in the application of his professional judgement) in relation to a broad rental market area determination determined in accordance with article 4B(1A) or a local housing allowance determination determined in accordance with article 4B(2A), he shall notify any local

authority to which notification of that determination was sent of the error, and the amended determination, as soon as practicable after he becomes aware of it.”.

(4) After Schedule 3A (redeterminations) insert—

“SCHEDULE 3B

Article 4B

Categories of dwelling

1.—(1) The categories of dwelling for which a rent officer is required to determine a local housing allowance in accordance with article 4B(2A)(a)(i) are—

- (a) a dwelling where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him to share the use of one or more of—
 - (i) a kitchen;
 - (ii) a bathroom;
 - (iii) a toilet; or
 - (iv) a room suitable for living in;
- (b) a dwelling where the tenant (together with his partner where he has one) has the exclusive use of only one bedroom and exclusive use of a kitchen, a bathroom, a toilet and a room suitable for living in;
- (c) a dwelling where the tenant has the use of only two bedrooms;
- (d) a dwelling where the tenant has the use of only three bedrooms;
- (e) a dwelling where the tenant has the use of only four bedrooms;
- (f) a dwelling where the tenant has the use of only five bedrooms.

(2) In—

- (a) sub-paragraph (1)(b) of this paragraph “partner” has the same meaning as in regulation 2 of the Housing Benefit Regulations or, as the case may be, regulation 2 of the Housing Benefit (State Pension Credit) Regulations;
- (b) sub-paragraph (1) (c) to (f) of this paragraph and in paragraph 4 “bedroom” means a bedroom, except for a bedroom which the tenant shares with any person other than—
 - (i) a member of his household;
 - (ii) a non-dependant of the tenant (within the meaning of regulation 3 of the Housing Benefit Regulations or, as the case may be, regulation 3 of the Housing Benefit (State Pension Credit) Regulations); or
 - (iii) a person who pays rent to the tenant.

Local housing allowance for category of dwelling in paragraph 1

2.—(1) The rent officer must determine a local housing allowance for each category of dwelling in paragraph 1 in accordance with the following sub-paragraphs.

(2) The rent officer must compile a list of rents.

(3) A list of rents means a list in ascending order of the rents which, in the rent officer’s opinion, are payable at the date of the determination for a dwelling let under an assured tenancy which meets the criteria specified in paragraph (5).

(4) The list must include any rents which are of the same amount.

(5) The criteria for including an assured tenancy on the list of rents in relation to each category of dwelling specified in paragraph 1 are—

- (a) that the dwelling let under the assured tenancy is in the broad rental market area for which the local housing allowance for that category of dwelling is being determined;
 - (b) that the dwelling is in a reasonable state of repair; and
 - (c) that the assured tenancy permits the tenant to use exclusively or share the use of, as the case may be, the same number and type of rooms as the category of dwelling in relation to which the list of rents is being compiled.
- (6) Where rent is payable other than weekly the rent officer must use the figure which would be payable if the rent were to be payable weekly.
- (7) When compiling the list of rents for each category of dwelling, the rent officer must—
- (a) assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy; and
 - (b) exclude the amount of any rent which, in the rent officer's opinion, is fairly attributable to the provision of services performed for, or facilities (including the use of furniture) provided for, or rights made available to, the tenant which are ineligible to be met by housing benefit.
- (8) When compiling the list of rents, the rent officer may include rents in other similar areas in which he believes a comparable market exists where he is not satisfied that—
- (a) the broad rental market area contains a sufficient number of dwellings that accord with the relevant category of dwelling set out in paragraph 1 to enable him to make a local housing allowance determination; or
 - (b) he has sufficient other information about the market in the broad rental market area to enable him to make a local housing allowance determination.
- (9) The local housing allowance for each category of dwelling specified in paragraph (1) is the amount of the median rent in the list of rents for that category of dwelling.
- (10) The median rent is determined as follows—
- (a) where there is an even number of rents on the list, the formula is—
- $$\frac{\text{the amount of the rent at } P \text{ and the amount of the rent at } P + 1}{2} = \text{the local housing allowance}$$

where P is the position on the list defined by dividing the number of rents on the list by 2.

- (b) where there is an odd number of rents on the list, the formula is—

$$\frac{\text{the number of rents on the list} + 1}{2} = L$$

where L is the position on the list in which the rent used to identify the local housing allowance lies.

Anomalous local housing allowances

3.—(1) Where—

- (a) the rent officer has determined the local housing allowance for each of the categories of dwelling in paragraph 1(1) in accordance with the preceding paragraphs of this Schedule; and
- (b) the local housing allowance for a category of dwelling in paragraph 1(1)(b) to (f) is lower than the local housing allowance for any of the categories of dwelling which precede it,

that local housing allowance shall be the same as the highest local housing allowance which precedes it.

(2) Where—

- (a) the rent officer has determined a local housing allowance following an application made under article 4B(4)(a); and
 - (b) that local housing allowance is lower than the local housing allowance for the category of dwelling in paragraph 1(1)(f),
- that local housing allowance shall be the same as the local housing allowance for the category of dwelling in paragraph 1(1)(f).

Broad rental market area

4. In this Schedule “broad rental market area” means an area—

- (a) comprising two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area;
- (b) within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
- (c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies.”.

Amendments coming into force on date R

4.—(1) In Article 4C(4) (board and attendance determinations and notifications) for “determination referred to in paragraph (2) is made” substitute “further information provided in accordance with regulation 114A(5) of the Housing Benefit Regulations or regulation [] of the Housing Benefit (State Pension Credit) Regulations is received”.

(2) In article 5 (insufficient information) for “, he shall serve notice on the local authority requesting that information” substitute “as the information supplied under regulation 114A of the Housing Benefit Regulations or regulation [] of the Housing Benefit (State Pension Credit) Regulations was incomplete or incorrect, he shall serve notice on the local authority requesting it to supply the further information required under regulation 114A, or to confirm whether the information already supplied is correct and, if it is not, to supply the correct information”.

(3) In paragraph 7(3) of Schedule 1—

- (a) in paragraph (a)—
 - (i) for “regulation 14(9)(b)” substitute “regulation 114A(4)(g)(ii)”;
 - (ii) for “regulation 14(8)(b)” substitute [SPC equivalent];
- (b) in paragraph (b) for “regulation 14(2)”—
 - (i) in the first place in which it occurs substitute “regulation 114A(4)(d)”;
 - (ii) in the second place in which it occurs substitute [SPC equivalent].

Amendments coming into force on date R immediately after article 4

5.—(1) In article 2 (interpretation)—

- (a) in the definition of “relevant date”—
 - (i) for “pathfinder authority” substitute “local authority”;
 - (ii) for “regulation 13A(4)(a)” in both places in which it occurs substitute “13D(5)(a)”.

(2) In article 3(2)(a) (determinations) omit “, except for a local authority which is a pathfinder authority,”.

(3) In article 4B (broad rental market area determinations and local housing allowance determinations)—

- (a) in paragraph (4)—

- (i) for “pathfinder authority” in each place in which it occurs substitute “local authority”;
- (ii) for “Part I of Schedule 3A” in each place in which it occurs substitute “Schedule 3B”;
- (iii) for “regulation 13A(4)(a)” in both places in which it occurs substitute “13D(5)(a)”;
- (iv) for “regulation 13A(5)” in both places in which it occurs substitute “13D(6)”;
- (b) in paragraph (5)—
 - (i) in sub-paragraph (a) for “pathfinder authority” substitute “local authority”;
 - (ii) in sub-paragraph (b) after “relevant date falls” insert “, except that no such determination can have effect before [date R]”;
 - (iii) in sub-paragraph (c) after “sub-paragraph (a)” insert “, except that no such determination can have effect before [date R]”.
- (4) In article 4C (board and attendance determinations and notifications)—
 - (a) in paragraph (1)—
 - (i) for “pathfinder authority” substitute “local authority”;
 - (ii) for “regulation 17(6)” substitute “13D(7)”;
 - (iii) for “regulation 13A(6)” substitute “13D(7)”;
 - (b) in paragraphs (2) and (3) for “pathfinder authority” in both places in which it occurs substitute “local authority”.
- (5) In paragraph 7(1) of Schedule 1 for “regulation 12(3)” substitute “regulation 12B(2)”.

Amendments coming into force on date R immediately after article 4 save for certain purposes

6.—(1) The amendments specified in paragraphs (3) to (7) shall come into force in accordance with article 1(4) save where—

- (a) an error in relation to a broad rental market area determination, local housing allowance determination, board and attendance determination or a board and attendance redetermination is to be corrected and the original determination was made in accordance with this Order as in force on [day before date R]; or
- (b) a board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination is to be made and the original determination was made in accordance with this Order as in force on [day before date R].

(2) For the purpose of paragraph (1) “original determination” means the broad rental market area determination, local housing allowance determination or board and attendance determination to which the correction of an error relates, the board and attendance determination to which the correction of a board and attendance redetermination relates or the board and attendance determination to which a board and attendance redetermination, a substitute board and attendance determination or substitute board and attendance redetermination relates.

(3) In article 2—

- (a) for the definition of “broad rental market area” substitute—

““broad rental market area” has the meaning specified in paragraph 6 of Schedule 3B;”;
- (b) for the definition of “broad rental market area determination” substitute—

““broad rental market area determination” means a determination made in accordance with article 4B(1A);”;
- (c) for the definition of “local housing allowance determination” substitute—

““local housing allowance determination” means a determination made in accordance with article 4B(2A);”;
- (d) omit the definition of “pathfinder authority”.

(4) In article 4B (broad rental market area determinations and local housing allowance determinations) omit paragraphs (1), (2) and (3).

(5) In articles 4D (board and attendance redeterminations) and 4E (substitute board and attendance determinations and substitute board and attendance redeterminations) for “pathfinder authority” in both places in which it occurs substitute “local authority”.

(6) In article 7A (errors)—

(a) in paragraph (2) for “pathfinder authority” substitute “local authority”;

(b) omit paragraph (3).

(7) Omit Schedule 3A.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

SCHEDULE 1	Article 2
Listed authorities	

Blackpool
Brighton and Hove
Conwy
Coventry
East Riding of Yorkshire
Guildford
Leeds
Lewisham
North East Lincolnshire
Norwich
Pembrokeshire
St Helens
Salford
South Norfolk
Teignbridge
Wandsworth

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rent Officers (Housing Benefit Functions) Order 1997 (“the Rent Officers Order”) [and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997] which confer functions on rent officers in connection with housing benefit and rent allowance subsidy.

Article 2 applies the Rent Officers Order to the authorities listed in Schedule 1 (“the pathfinder authorities”) subject to the amendments contained in this Order. It also applies the pathfinder provisions relating to the local housing allowance to all other local authorities, subject to the amendments contained in this Order.

Article 3 amends article 4B by inserting paragraphs (1A), which requires rent officers to make broad rental market determinations for the rollout of the local housing allowance, (2A) which requires rent officers to make local housing allowance determinations for the rollout of the local housing allowance and (3A) which sets the date on which the determinations take effect. These provisions will come into force in advance of the national rollout of the provisions relating to the local housing allowance in the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“the

Regulations”) and will exist alongside the provisions relating to the pathfinder authorities. This is so that the determinations needed for the rollout of the local housing allowance are made in advance of rollout day.

It also inserts Schedule 3B which makes provision in relation to the determination of broad rental market determinations and local housing allowance determinations for the national rollout of the provisions relating to the local housing allowance. This will exist alongside Schedule 3A which makes provision in relation to those determinations for pathfinder authorities.

It also amends the definitions of “broad rental market area”, “broad rental market area determinations” and “local housing allowance determinations” to refer to both the new and existing provisions relating to broad rental market area determinations and local housing allowance determinations and makes consequential amendments to article 7A, which provides for the correction of errors in determinations. Article 3(2)(a) amends paragraph (1) of article 4B to ensure that rent officers will not be required to make pathfinder broad rental market area determinations in relation to non-pathfinder authorities.

Article 4 makes amendments which are consequential upon the amendment of the Regulations relating to the provision of information to rent officers. It also amends the date on which an application for a rent officer determination under regulation 14(1) of the Regulations is treated as made where a rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance. It also makes express provision in relation to incorrect information. This article comes into force on the day of national rollout of the local housing allowance, at the same time as the amendments to the Regulations relating to information sharing.

Article 5 makes consequential amendments to articles 2, 3, 4B and 4C and Schedule 1 to reflect amendments to the Regulations. The amendments update cross-references to the Regulations and take out references to pathfinder authorities.

Article 6 makes the amendments required to remove the remaining elements of the pathfinder regime, except where those elements are required for the correction of errors in relation to broad rental market area determinations, local housing allowance determinations, board and attendance determinations and board and attendance redeterminations where the original determination was made under the pathfinder regime. There is a further exception which relates to board and attendance redeterminations, substitute board and attendance determinations and substitute board and attendance redeterminations where the original determination was made under the pathfinder regime.

Articles 5 and 6 will come into force immediately following the amendments relating to information sharing, at the same time as the amendments to the Regulations relating to the national rollout of the local housing allowance.

Articles 7 to 10 make equivalent amendments in the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

Clause 30
**Loss of Housing Benefit following eviction for anti-social
behaviour etc.**

These draft regulations provide the extra detail of the proposal to sanction the Housing Benefit of those people who are evicted for anti-social behaviour and then do not take up rehabilitation, that has not been captured in the primary legislation.

The affirmative regulations deal with the details of the commencement of the pilots; they prescribe the rate at which benefit will be reduced if a sanction is activated and the different rates for people who qualify for hardship provision; they specify who is to be regarded as qualifying for hardship; and they specify how the sanction would work if it was active at the same time as another sanction of Housing Benefit.

The negative regulations deal with the warning notice; they set out those things that should be taken into account in deciding whether or not someone has good cause not to comply with a warning notice; they set out information sharing powers that are necessary for proposal to function; they deal with decision making details; they give appeal rights where a sanction has been imposed; and they amend the Discretionary Housing Payment regulations such that a Discretionary Housing Payment is not payable where a sanction is operation.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Housing Benefit (Loss of Benefit) (Pilot Scheme)
Regulations 2007**

Made - - - - - *[]*

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 130B(4), 130G, 137(1), 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992⁽⁶⁷⁾ and section 7(5) of the Social Security Fraud Act 2001⁽⁶⁸⁾.

In accordance with section 176(1)⁽⁶⁹⁾ of the Social Security Contributions and Benefits Act 1992, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

In accordance with section 176(1) of that Act, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

This instrument contains only regulations made by virtue of, or consequential upon, sections 130B(4) and 130G of the Social Security Contributions and Benefits Act 1992 and is made before the end of the period of 6 months beginning with the coming into force date of those sections⁽⁷⁰⁾.

Citation, commencement and duration

1.—(1) These Regulations may be cited as the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007 and shall come into force on [date first pilot starts].

(2) These Regulations shall cease to have effect on [pilot end date] [unless revoked with effect from an earlier date].

Interpretation

2. In these Regulations—

⁽⁶⁷⁾ 1992 c. 4; sections 130B and 130G were inserted by [section 30(1) of the Welfare Reform Act 2007]; section 137(1) is cited for the definition of “prescribed”.

⁽⁶⁸⁾ 2001 c. 11

⁽⁶⁹⁾ Section 176(1) was amended by section 30(2) of the Welfare Reform Act 2007.

⁽⁷⁰⁾ See section 173(5) of the Social Security Administration Act 1992. The requirement to refer regulation to the Social Security Advisory Committee does not apply where Regulations are made.....

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Fraud Act” means the Social Security Fraud Act 2001;

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(71);

“relevant authority” has the same meaning as in paragraph 1 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(72);

“relevant local authority” has the same meaning as in section 130B(10) of the Act.

Application of pilot scheme

3. These Regulations apply in relation to a former occupier(73) only where the following conditions are satisfied in his case—

- (a) the relevant order for possession(74) relates to a dwelling which is within the area of a relevant authority specified in Schedule 1 and was made on or after the date specified in that Schedule in relation to that authority in which the dwelling is situated;
- (b) the warning notice(75) was served on him by a relevant local authority listed in Schedule 1 on or after the date specified in that Schedule in relation to that authority;
- (c) the dwelling to which the claim for, or payment of, housing benefit relates is within the area of a relevant authority specified in Schedule 1.

Reduction of benefit

4.—(1) — Any payment of housing benefit which is to be made to a former occupier in respect of any week in the restriction period(76) shall be reduced in accordance with this regulation.

(2) In any case where the former occupier’s payment of housing benefit in respect of any week in the restriction period is also subject to a reduction due to the application of section 7 (loss of benefit for commission of benefit offences) of the Fraud Act, this regulation shall be applied subject to regulation 7.

(3) The amount of housing benefit payable in respect of any week in phase A of the restriction period shall be reduced by a sum equivalent to 10% of the amount of housing benefit to which the former occupier is entitled in that week.

(4) Phase A of the restriction period is that part of the period which begins on the first Monday of the period and continues for 4 weeks.

(5) The amount of housing benefit payable in respect of any week in phase B of the restriction period shall be reduced by a sum equivalent to 20% of the amount of housing benefit to which the former occupier is entitled in that week.

(6) Phase B of the restriction period is that part of the period which begins on the Monday of the period immediately following the last day of phase A and continues for 4 weeks.

(7) The amount of housing benefit payable in respect of any week in phase C of the restriction period shall be reduced by a sum equivalent to 100% of the whole amount of housing benefit to which the former occupier is entitled in that week, unless the former occupier satisfies the conditions for payment of the reduced rate under regulation 6 (reduction of benefit where person in hardship).

(8) Phase C of the restriction period is the part of that period which begins on the Monday of the period immediately following the last day of phase B and continues until the period comes to an end.

(9) A reduction under this regulation shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

(71) S.I. 2006/213.

(72) c.19 2000.

(73) See section 130(1)

(74) See section 130B(1)(a)

(75) See section 130(2)

(76) See section 130B(5) and (6)

(10) Where the rate of housing benefit payable to a former occupier changes, the rules set out above for a reduction in the benefit payable shall be applied to the new rates and any adjustment to the reduction shall take effect from the beginning of the first benefit week to commence for him following the change.

(11) In paragraph (10) “benefit week” has the same meaning as in regulation 2(1) of the Housing Benefit Regulations.

Meaning of “person in hardship”

5.—(1) A former occupier is a “person in hardship” if he falls within paragraph (2), (3) or (4).

(2) A former occupier falls within this paragraph if—

- (a) she, or a member of her family, is pregnant;
- (b) he is a member of a couple where the woman, or another member of his family, is pregnant;
- (c) he is a single person under the age of 18;
- (d) he is a member of a couple and both he and his partner are under the age of 18.

(3) A former occupier falls within this paragraph if he, or his partner—

- (a) is responsible for a child or young person who is a member of the former occupier’s household;
- (b) is in receipt of an attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Act;
- (c) has claimed either attendance allowance or disability living allowance, but only for so long as the claim has not been determined, or for 26 weeks from the date of claiming, whichever is earlier;
- (d) has claimed either attendance allowance or disability living allowance and has an award of either attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Act for a period commencing after the date on which that claim was made;
- (e) devotes a considerable portion of each week to caring for another person who
 - (i) is in receipt of an attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Act;
 - (ii) has claimed either attendance allowance or disability living allowance, but only for so long as the claim has not been determined, or for 26 weeks from the date of claiming, whichever is earlier;
 - (iii) has claimed either attendance allowance or disability living allowance and has an award of either attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Act for a period commencing after the date on which that claim was made;
- (f) is aged 60 or over.

(4) A former occupier falls within this paragraph where, after taking account of all the circumstances of the case including those set out in paragraph (5), the relevant authority is satisfied that he, or a member of his family, will suffer hardship.

(5) Circumstances which the relevant authority is to take into account in determining whether the former occupier, or a member of his family, will suffer hardship are—

- (a) the resources which are likely to be available to his family and the length of time for which they might be so;
- (b) the amount of any resources which may be available to members of his family from any person in the household who is not a member of his family and the length of time for which they might be so;

- (c) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to him or a member of his family, or will be available at considerably reduced levels and the length of time for which this might be so.

(6) For the purposes of this regulation a “young person” is a person who falls within the definition of qualifying young person in section 142 of the Act⁽⁷⁷⁾.

Reduction of benefit where person in hardship

6.—(1) Where in respect of any week in phase C of the restriction period, a former occupier satisfies the conditions in paragraphs (3) and (4), the amount of housing benefit payable in respect of that week shall be reduced by a sum equivalent to 30% of the amount of housing benefit to which the former occupier is entitled in that week.

(2) In any case where the former occupier’s payment of housing benefit in respect of any week in the restriction period is also subject to a reduction due to the application of section 7 (loss of benefit for commission of benefit offences) of the Fraud Act, this regulation shall be applied subject to regulation 7.

(3) The former occupier is a person in hardship within the meaning of regulation 5.

(4) The former occupier has—

- (a) provided a written statement, on a form approved for the purpose by the Secretary of State, of the circumstances on which he relies to establish that he is a person in hardship within the meaning of regulation 5;
- (b) signed that statement;
- (c) delivered that statement to the office of the relevant authority administering his housing benefit

(5) For the purposes of this regulation, “phase C” has the same meaning as in regulation 4.

Reduction of benefit in cases where section 7 of the Social Security Fraud Act 2001 applies

7.—(1) In any case where the former occupier’s housing benefit is subject to both a reduction under these Regulations and a reduction due to the application of section 7 of the Social Security Fraud Act 2001 (loss of benefit for commission of benefit offences), any payment of housing benefit which is to be made to a former occupier in respect of any week in the restriction period shall be reduced in the following manner.

(2) The amount of housing benefit payable in respect of any week in the restriction period shall be reduced by the greater of either—

- (a) the amount by which it would be reduced under regulation 4 or 6], whichever is applicable, during that week; or
- (b) the amount by which it would be reduced under regulation 17 of the Social Security (Loss of Benefit) Regulations 2001⁽⁷⁸⁾, during that week.

Amendment of the Social Security (Loss of Benefit) Regulations 2001

8.—(1) Regulation 17 of the Social Security (Loss of Benefit) Regulations 2001 (circumstances where a reduced amount of housing benefit and council tax benefit is payable) is amended as follows.

(2) In paragraph (1), after the words “Subject to” insert “paragraph (4) and”.

(3) After paragraph (3) insert—

“(4) In any case where the housing benefit of an offender or an offender’s family member is subject to both a reduction under this regulation and a reduction under section 130B of

⁽⁷⁷⁾Section 142 was substituted by section 1(2) of the Child Benefit Act 2005 (c. 6).

⁽⁷⁸⁾S.I. 2001/4022

the Social Security Contributions and Benefits Act 1992 (loss of benefit following eviction on certain grounds), any payment of housing benefit which is to be made to the offender in respect of any week in the disqualification period, or to an offender's family member in respect of any week in the relevant period, shall be reduced in accordance with paragraph (5).

(5) The amount of housing benefit payable in respect of any week in the disqualification period, or relevant period (in the case of an offender's family member) shall be reduced by the greater of either—

- (a) the amount by which it would be reduced under this regulation; or
- (b) the amount by which it would be reduced under regulation 4 or 6 of the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007, whichever is applicable, during that week.

Signatory text

Address

Date

Name

Parliamentary Under Secretary of State,

Department for Work and Pensions

THE SCHEDULE

Loss of housing benefit following eviction for anti-social behaviour – Pilot areas

[List of local authorities where scheme will be piloted]

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Housing Benefit (Loss of Benefit) (Pilot Scheme)
(Supplementary) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 130B(11), 130D(3), 130F(1), (3) to (5) and (7), 130G, 137(1) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992.

In accordance with section 176(1) of the Social Security Administration Act 1992 the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

This instrument contains only regulations made by virtue of, or consequential upon, section 30 of the [Welfare Reform Act 2007] and is made before the end of the period of 6 months beginning with the coming into force date of those sections.(79)

Citation, commencement and duration

1.—(1) These Regulations may be cited as the Housing Benefit (Loss of Benefit) (Pilot Scheme) (Supplementary) Regulations 2007(80) and shall come into force on [date first pilot starts].

(2) These Regulations shall cease to have effect on [pilot end date] unless revoked with effect from an earlier date.

Interpretation

2. In these Regulations-

“the Act” means the Social Security Contributions and Benefits Act 1992;

“authority” means a local authority within the meaning of section 20 of the Local Government Act

(79) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where Regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

80 [...]

2000(**81**);

“pilot scheme area” means an area to which the Pilot Scheme Regulations apply;

“the Pilot Scheme Regulations” means the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007(**82**);

“rehabilitation services” means the services referred to in section 130B(10) of the Act, namely services provided by a relevant local authority to a former occupier with the aim of ending, or preventing repetition of, the conduct which may lead or has led to the making of a relevant possession order;

“relevant local authority” has the same meaning as in section 130B(10) of the Act.

“relevant authority” and “relevant decision” have the same meaning as in paragraph 1 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.

Application of pilot scheme

3. These Regulations apply in relation to a former occupier(**83**) only where the following conditions are satisfied in his case—

- (a) the relevant order for possession(**84**) relates to a dwelling which is in a pilot scheme area;
- (b) the warning notice(**85**) was served on him by a relevant local authority which is in a pilot scheme area; and
- (c) housing benefit is awarded in respect of a dwelling which is in a pilot scheme area.

Warning notice

4. The warning notice served under section 130B(2) of the Act must be in writing.

Matters which are or are not to be taken into account in determining good cause

5.—(1) In determining whether a person has, or does not have, good cause for failing to take action specified in a warning notice, the matters and circumstances which are to be taken into account include the following—

- (a) any condition or personal circumstance of that person which indicates that taking the action specified in the warning notice would be likely to or did—
 - (i) cause significant harm to his health; or
 - (ii) subject him to excessive physical or mental stress;
- (b) the person was suffering from some disease or bodily or mental disablement on account of which—
 - (i) he could not take the action specified in the warning notice;
 - (ii) taking the action specified in the warning notice would have put his health at risk; or
 - (iii) taking the action specified in the warning notice would have put at risk the health of other persons;
- (c) whether the person misunderstood the requirement on him because of that person’s learning, language or literacy difficulties or because of any misleading information contained in the warning notice;
- (d) the fact that the failure to take the action in question resulted from a sincerely held religious or conscientious objection;

(**81**) 2000 c.22.

(**82**) S.I. 2007/---

(**83**) See section 130B(1)

(**84**) See section 130B(1)(a)

(**85**) See section 130B(2)

- (e) any caring responsibilities which would, or did, make it unreasonable for the person to take the action in question;
- (f) the fact that the person was attending court as a party to any proceedings, or as a witness or a juror;
- (g) the fact that the person was arranging or attending the funeral of a close friend or of a close relative such as a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or, if one member of the preceding is a member of a couple, the other member of that couple;
- (h) the fact that the person was engaged in-
 - (i) the manning or launching of a lifeboat; or
 - (ii) the performance of duty as a part-time member of a fire brigade;
- (i) the fact that the person was required to deal with some domestic emergency;
- (j) the fact that the person was engaged during an emergency in duties for the benefit of others;
- (k) subject to paragraph (2), the time it took, or would normally take, for the person to travel to and from the place mentioned in the warning notice where the action in question was to have been taken by a route and means appropriate to his circumstances and to the action which was to have been taken;
- (l) the expenses which were, or would be, necessarily incurred by the person for the purposes of taking the action in question, together with any expenses of traveling to and from the place mentioned in the warning notice where the action in question was to have been taken by a route and means appropriate to his circumstances and to the action which was to have been taken;
- (m) any difficulty with the person's normal mode of transport and whether there was any reasonable available alternative;
- (n) whether the person was attending a medical or dental appointment, or accompanying a person for whom the person has caring responsibilities to such an appointment, and whether it would have been unreasonable, in the circumstances, to rearrange the appointment;
- (o) whether the person was unable to take the action in question because of his employment responsibilities, as defined by paragraph (3); and
- (p) whether the person was searching for or moving to a suitable dwelling to occupy as his home.

(2) The time it took, or would normally take, for the person to travel to and from the place mentioned in the warning notice where the action in question was to have been taken may only be taken into account if the time is more than one hour and thirty minutes each way unless, in view of the health of the person or any caring responsibilities of his, that time was or is unreasonable.

(3) In paragraph (1)(o), "employment responsibilities" means-

- (a) attending an interview for employment;
- (b) carrying out employed earner's employment; or
- (c) carrying out self-employed earner's employment.

Circumstances in which a person is to be regarded as having good cause

6. A person is to be regarded as having good cause for failing to take any action specified in a warning notice if the time specified in the warning notice for taking the action is less than one week after the date the warning notice was issued.

Notification by relevant local authority where sanction for anti-social behaviour applies

7.—(1) Regulation 90 of the Housing Benefit Regulations 2006⁽⁸⁶⁾ and regulation 71 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽⁸⁷⁾ apply to a decision made in accordance with section 130B of the Act as if that decision had been made under those Regulations.

Modification of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

8. In relation to a person to whom these regulations apply, in the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001⁽⁸⁸⁾—

- (a) in regulation 1 (citation, commencement and interpretation) at the appropriate place insert—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“the Pilot Scheme Regulations” means the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007;”

- (b) in regulation 4 (revision of decisions) after paragraph (7F)⁽⁸⁹⁾ insert—

“(7G) Where the court makes a relevant order for possession, as defined in section 130C of the Contributions and Benefits Act, of the claimant’s dwelling and the order is set aside, a decision in accordance with regulation 7(2)(k) may be revised at any time.”;

- (c) in regulation 7(2) (decisions superseding earlier decisions) after sub-paragraph (j) add—

“(k) that housing benefit is payable to a claimant where that allowance is reduced under sub-section 130B(4)(a) of the Contributions and Benefits Act;

(l) that housing benefit is reduced under sub-section 130B(4)(a) of that Act and housing benefit is only payable under sub-section 130B(4)(b) thereof;

(m) that housing benefit is payable to a claimant or is one made under sub-paragraphs (k) or (l) above where section 130B(6) of that Act applies so that the restriction period⁽⁹⁰⁾ stops running;

(n) made under sub-paragraph (m) above where sub-section 130B(6) applies so that the restriction period starts running again.”

- (d) in regulation 8 (date from which a decision superseding an earlier decision takes effect) after paragraph (14A)⁽⁹¹⁾ insert—

“(14B) A decision to which regulation 7(2)(k) applies shall take effect in accordance with regulation 4 of the Pilot Scheme Regulations;

(14C) A decision to which regulation 7(2)(l) applies shall take effect on the day the claimant first represented himself to be a person in hardship in accordance with regulation 5 of the Pilot Scheme Regulations.”.

Discretionary Housing Payments

9.—(1) At the end of regulation 3 of the Discretionary Financial Assistance Regulations 2001⁽⁹²⁾ (circumstances in which discretionary housing payments may be made), there shall be added the following paragraph—

⁽⁸⁶⁾ S.I. 2006/213.

⁽⁸⁷⁾ S.I. 2006/214.

⁽⁸⁸⁾ S.I. 2001/1002.

⁽⁸⁹⁾ Paragraph (7F) was inserted by S.I. 2006/644.

⁽⁹⁰⁾ *see* section 13B(5).

⁽⁹¹⁾ Paragraph (14A) was inserted by S.I. 2005/2677.

⁽⁹²⁾ SI 2001/1167. Regulation 3 was amended by S.I. 2006/217, S.I. 2001/1711 and SI 2002/490.

“(m) a restriction in relation to the payment of housing benefit imposed pursuant to section 130B of the Social Security Contributions and Benefits Act 1992.”.

Provision of information by court to Secretary of State

10.—(1) Where, in respect of a dwelling situated in a pilot scheme area, a court-

- (a) makes a relevant order for possession;
- (b) suspends or stays the execution of a relevant order for possession or postpones the date for possession; or
- (c) varies the terms of a relevant order for possession,

the court must notify the Secretary of State.

(2) When the court notifies the Secretary of State under paragraph (1), it must also provide—

- (a) the name of the court which made the order which is the subject of the notification;
- (b) the date when the order for possession was made;
- (c) the date when any stay, suspension, postponement or variation was ordered;
- (d) the case or claim number of the order for possession and any subsequent orders to stay, suspend or vary it;
- (e) the name of the person against whom the order was made and, if known, the name of any members of that person’s household;
- (f) the grounds on which the order was made;
- (g) the full postal address, including postcode, of the person against whom the order was made; and
- (h) details of any conditions attached to the order.

(3) The court must provide information under paragraphs (1) and (2) within the period of 4 weeks beginning on the date when the order to which the notification relates was made.

(4) The Secretary of State may request a court to provide, in relation to a relevant possession order, any of the information listed paragraphs (1) and (2).

(5) Where the Secretary of State requires information under paragraph (4), the court must send the information to the Secretary of State within the period of 4 weeks beginning on the date when the request for information was issued.

(6) Information provided by a court under this rule must be provided in writing.

(7) In this regulation, “court” means a county court, the High Court, the Court of Appeal and the Judicial Committee of the House of Lords.

Supply of relevant information to Secretary of State for housing benefit purposes

11.—(1) This regulation applies where a relevant local authority becomes aware that, in relation to a former occupier to whom the authority provides or may provide rehabilitation services, one or more of the conditions listed in section 130B(1) to (3) is satisfied.

(2) Where this regulation applies, the relevant local authority must inform the Secretary of State, or any person providing services to him, that one or more of the conditions listed in section 130B(1) to (3) is satisfied.

(3) The information must be supplied within the period of 4 weeks beginning on the date when the local authority becomes aware that one or more of the conditions listed in section 130B(1) to (3) is satisfied.

(4) The information must be supplied in writing.

Provision of relevant information for purposes relating to housing benefit administration

12.—(1) The following authorities and persons, namely-

- (a) a relevant authority; and
- (b) a relevant local authority,

must provide any information specified in paragraph (2) which is held by that authority to a relevant authority.

(2) The information that must be provided is information which relates to a person on whom a warning notice has been served; and

- (a) is information about the relevant possession order made against that person; or
- (b) relates to any action in relation to that person that may need to be taken by the authority or person to whom the information is provided in order to comply with the requirements of sections 130B (loss of housing benefit following eviction on certain grounds), 130D (loss of housing benefit: supplementary) and 130E (couples) of the Act or with any other requirements connected with the requirements of those sections.

(3) Information received under paragraph (1) may be used only for any purpose relating to the administration of housing benefit.

(4) The information must be provided within the period of 4 weeks beginning with the date when the authority first obtained it.

(5) This regulation does not limit any other enactment which permits such information to be supplied to a relevant authority.

Provision of relevant information for use in the provision of rehabilitation services

13.—(1) The following authorities and persons, namely-

- (a) a relevant authority; and
- (b) a relevant local authority,

must provide any information specified in paragraph (2) held by that authority to a relevant local authority.

(2) The information which must be provided is information which-

- (a) relates to a person on whom a warning notice has been served; and
- (b) is relevant to the provision of rehabilitation services to that person by the authority to whom the information is provided.

(3) Information received under paragraph (1) may be used only in the provision of rehabilitation services.

(4) The information must be provided within the period of 4 weeks beginning with the date when the authority first obtained it.

Signed by authority of the Secretary of State for Work and Pensions

Address
Date

Name
Parliamentary Under Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions which supplement the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007 (“the 2007 Regulations”). These additional provisions apply where a housing benefit sanction is to be imposed for anti-social behaviour.

Regulation 1 deals with commencement and provides that the Regulations will cease to apply at the end of the pilot period.

Regulation 2 contains definitions.

Regulation 3 provides that these Regulations apply only in the pilot scheme areas listed in the Schedule to the 2007 Regulations.

Regulation 4 specifies that the warning notice which must be served before a housing benefit sanction for anti-social behaviour can be imposed must be in writing.

Regulation 5 sets out matters which are to be taken into account in determining whether a person has good cause for not taking the action specified in a warning notice.

Regulation 6 specifies that a person will have good cause for not taking the action specified in a warning notice if the notice was issued less than one week before the date specified for taking the action.

Regulation 7 provides that the provisions relating to notification of decisions in the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) apply to decisions made under these Regulations.

Regulation 8 modifies the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 in respect of persons to whom these Regulations apply.

Regulation 9 provides that a discretionary housing payment may not be made where the reason for the financial hardship is because a sanction for anti-social behaviour has been imposed.

Regulation 10 imposes duties on a court which makes a relevant possession order in respect of a dwelling situated in a pilot scheme area. The court is required to disclose information about relevant possession orders to the Secretary of State and specifies the time and manner in which such information must be provided. It also requires a court to provide such information when requested to do so by the Secretary of State.

Regulation 11 requires relevant local authorities to inform the Secretary of State or any person providing services to him if one or more of the conditions listed in section 130B(1) to (3) of the Social Security Contributions and Benefits Act 1992 are met.

Regulation 12 requires relevant authorities and relevant local authorities to provide information to a relevant authority.

Regulation 13 requires relevant authorities and relevant local authorities to provide information to a relevant local authority.

A full regulatory impact assessment has not been carried out in respect of these Regulations as they do not impose a cost on business.

Clauses 31-33

Housing Benefit/Council Tax Benefit for persons taking up employment

The Housing Benefit and Council Tax Benefit (Extended Payment) Amendment Regulations 2007 and The Housing Benefit and Council Tax Benefit (Extended Payment)(Modification) Regulations 2007

These draft regulations provide the detailed entitlement conditions and principles for calculation of Extended Payments of Housing Benefit for people who have started work. Most of the conditions are similar to the current Extended Payment Scheme, but the regulations build on the provisions in the Bill which are designed principally to ensure continuity of the Housing Benefit claim where there is entitlement to an Extended Payment (rather than terminating the current claim as at present). This will ensure that unless a person moves to a new Local Authority, no new claim for in-work Housing Benefit will be needed after an Extended Payment.

These regulations only refer to Housing Benefit and to Income Support and income-based Jobseeker's Allowance as qualifying benefits for an Extended Payment. The final, full set of regulations will also cover Council Tax Benefit and will include Incapacity Benefit/Severe Disablement Allowance (Employment and Support Allowance in the future) as qualifying benefits.

The draft regulations detail:

- the qualifying conditions for an Extended Payment of Housing Benefit;
- the rate and duration of the Extended Payment;
- how entitlement to an Extended Payment interacts with any in-work entitlement to Housing Benefit;
- the arrangements for entitlement to and payment of an Extended Payment where the claimant moves from one Local Authority to another (including information exchange requirements between Local Authorities to facilitate such payments).

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit (Extended
Payment) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by [sections 31 and 32] of the [Welfare Reform Act 2007](**93**), section 134(2) of the Social Security Contributions and Benefits Act 1992(**94**) and sections (5)(1) and 128A of the Social Security Administration Act 1992(**95**).

In accordance with section 176(1) of the Social Security Administration Act 1992 the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

This instrument contains only regulations made by virtue of, or consequential upon, sections 31 and 32 of the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force date of those sections(**96**).

Citation and Commencement

1. These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Extended Payment) Regulations 2007 and shall come into force on [XXX].

Amendments to the Housing Benefit Regulations relating to extended payments

2.—(1) The Housing Benefit Regulations 2006(**97**) shall be amended as follows.
(2) For regulation 72 (extended payments) substitute the following—

(93) 2007 c.[].

(94) 1992 c.4.

(95) 1992 c.5.

(96) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where Regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

(97)

“Extended Payments (income support/income-based jobseeker’s allowance)

72—(1) For the purpose of section 31(1) of the Welfare Reform Act 2007 a person who is entitled to housing benefit or council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment where—

- (a) he or his partner was entitled to income support or an income-based jobseeker’s allowance;
- (b) that entitlement to income support or an income-based jobseeker’s allowance ceased because he or his partner—
 - (i) commenced employment as an employed or self-employed earner;
 - (ii) increased their earnings from such employment; or
 - (iii) increased the number of hours worked in such employment; and
- (c) he or, where his partner was entitled to income support or income-based jobseeker’s allowance, his partner, had been entitled to and in receipt of income support or a jobseeker’s allowance for a continuous period of at least 26 weeks until the day on which his entitlement to income support or income-based jobseeker’s allowance ceased.

(2) The condition in paragraph (1)(c) is satisfied if a person or his partner has been entitled to and in receipt of a combination of income support and a jobseeker’s allowance for at least 26 weeks until the day on which his entitlement to income support or income-based jobseeker’s allowance ceased.

(3) For the purpose of paragraph (1)(c), a person or his partner is to be treated as having been entitled to and in receipt of income support or a jobseeker’s allowance during any period of less than five weeks in respect of which he was not entitled to either of those benefits because, as a consequence of his participation in an employment zone programme, he was engaged in remunerative work.

(4) For the purpose of this regulation where a person or his partner is entitled to and in receipt of joint-claim jobseeker’s allowance they shall be treated as entitled to and in receipt of a jobseeker’s allowance.

(5) A person shall be entitled to an extended payment where—

- (a) paragraphs (1)(a) to (c) have been satisfied; and
- (b) the person ceases to be entitled to housing benefit because he vacated the dwelling he occupied as his home and the day on which he did so was either in the week in which his entitlement to income support or income-based jobseeker’s allowance ceased, or in the preceding week.

(6) This regulation shall not apply where, on the day before a person’s entitlement to income support ceased, regulation 6(5) of the Income Support (General) Regulations 1987⁽⁹⁸⁾(remunerative work: housing costs) applied to him.

Duration of Extended Payment

72A —(1) The extended payment period shall commence with the benefit week immediately following the benefit week in which the person, or his partner’s, entitlement to income support or income-based jobseeker’s allowance ceased.

(2) The extended payment period shall end-

- (a) at the end of a period of four weeks; or
- (b) on the date on which the person to whom the extended payment is payable has no liability for rent if that occurs first.

(98)

Amount of Extended Payment

72B—(1) Subject to the paragraphs (2) to (6), and except in the case of a mover, for any week during the extended payment period the amount of the extended payment payable to a person shall be the higher of—

- (a) the amount of housing benefit which was payable to him for the last benefit week before he or his partner ceased to be entitled to income support or income-based jobseeker's allowance;
- (b) the amount of housing benefit which would be payable to him for any benefit week during the extended payment period if he had not been entitled to an extended payment; or
- (c) where his partner makes a claim for housing benefit the amount of housing benefit which his partner would be entitled to, if paragraph (7) did not apply.

(2) Where the last benefit week referred to in paragraph (1)(a) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that sub-paragraph shall be the last benefit week that did not fall within the rent free period.

(3) Where—

- (a) a person is entitled to an extended payment by virtue of regulation 72(5); and
- (b) the last benefit week before he ceased to be entitled to income support or income-based jobseeker's allowance was a week in which the claimant's eligible rent was calculated in accordance with regulation 80(4)(c) (claimant ceases to occupy dwelling as his home),

paragraph (1)(a) has effect as if the reference to the last benefit week before he ceased to be entitled to income support or income-based jobseeker's allowance was a reference to the week before that week.

(4) Entitlement to an extended payment does not affect any entitlement a person may have pursuant to regulation 7(6) for a second dwelling that he is occupying as his home (liability to make payments in respect of two homes).

(5) Where—

- (a) a person was treated as occupying two dwellings as his home under regulation 7(6) at the time when his entitlement to income support or income-based jobseeker's allowance ceased; and
- (b) his liability to pay rent for either of those dwellings ceases during the extended payment period,

the amount of the extended payment for any week shall be reduced by a sum equivalent to the housing benefit which was payable in respect of that dwelling.

(6) Where a person's housing benefit award would have ended when he ceased to be entitled to income support or income-based jobseeker's allowance in the circumstances listed in regulation 72(1)(b) that award will not cease until the end of the extended payment period.

(7) Where a partner makes a claim for housing benefit no amount of housing benefit shall be payable by the appropriate authority during the extended payment period.

(8) Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any extended payment payable in accordance with paragraph (1)(a) or regulation 72C(3) (amount of extended payment – movers).

(9) No extended payment is payable for any rent free period as defined in regulation 81(1) (rent free periods).

(10) In this regulation “mover” has the meaning set out in regulation 72C(6).

Movers

72C—(1) This regulation applies to a mover who changes the dwelling which he occupies as his home from a dwelling in the area of the appropriate authority to a dwelling in the area of the second authority

(2) This regulation applies from—

- (a) the day the move takes place where that day is a Monday; or
- (b) from the Monday following the day the move takes place where that day is not a Monday.

(3) Subject to paragraphs (5) and (6), where this regulation applies, the amount of the extended payment payable during the extended payment period shall be the amount of housing benefit which was payable to the person for the last benefit week before he, or his partner, ceased to be entitled to income support or income-based jobseeker's allowance.

(4) Where a mover's liability to make payments for the new dwelling is to a housing authority, the extended payment shall take the form of a payment from the appropriate authority to the second authority.

(5) Where—

- (a) a mover, or his partner, makes a claim for housing benefit to the second authority after he has ceased to be entitled to income support or income-based jobseeker's allowance; and

(b) a mover is also in receipt of an extended payment from the appropriate authority, the second authority shall reduce the weekly amount of housing benefit that the mover or his partner may be entitled to by a sum equal to the amount of the extended payment until the end of the extended payment period.

(6) The reduction of housing benefit made by the second authority under paragraph (5) is subject to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

(7) In this regulation and in regulation 72B—

“appropriate details” have the meaning set out in regulation 119(6) (relevant information);

“mover” means a person who changes the dwelling which he occupies as his home in respect of which he is liable or treated as liable to make payments from a dwelling in the area of the appropriate authority to a dwelling in the area of the second authority;

“second authority” means the authority to which the mover is liable to make payments for the new dwelling;

“new dwelling” means the dwelling to which a person has moved, or is about to move, which he is or will be occupying as his new home.”.

Amendments relating to the disclosure of information

3. Regulation 115 (information to be supplied by an authority to another authority) of the Housing Benefit Regulations 2006 shall be amended as follows—

(a) in paragraph (1) for the words after “paragraph (2)” to the end substitute the words “and the prescribed information and the authority by whom it must be disclosed is described in paragraphs (3A) and (3B)”;

(b) for paragraph (2)(c) and the full out words which follow substitute—

“(c) he is entitled to an extended payment in accordance with regulation 72”;

(c) for paragraph (3) substitute—

“(3A) Authority A shall disclose to Authority B—

- (a) the amount of the extended payment calculated in accordance with regulation 72C(3) (amount of extended payment – movers);
 - (b) the date that entitlement to the extended payment will commence or has commenced;
 - (c) the date that entitlement to the extended payment ceased;
 - (d) the date of the move from Authority A to Authority B;
 - (e) if regulation 72C(4) (payment from appropriate authority to second authority) applies—
 - (i) the amount that Authority A will pay to Authority B in accordance with that paragraph;
 - (ii) any other information required by Authority B in order to allow for the payment required by that regulation; and
 - (g) if any deduction was being made in respect of a recoverable overpayment; and
- (3B) Authority B shall disclose to Authority A—
- (a) that regulation 72C(4) applies; and
 - (b) where regulation 72C(4) applies—
 - (i) any information required by Authority A in order to allow for the payment required by that regulation; and
 - (ii) the date on which Authority B receives any such payment.”.

Consequential amendments

4. The Housing Benefit Regulations 2006 shall be amended as follows—

- (a) in regulation 2 (interpretation) for the definition of “extended payment”, substitute—
 - “extended payment” means a payment of housing benefit payable in accordance with regulation 72;
 - “extended payment period” means the period for which an extended payment is payable as set out in regulation 72A;”;
- (b) omit regulation 77 (date on which housing benefit is to end);
- (c) omit regulation 80(7) (adjustment where in receipt of an extended payment);
- (d) omit regulation 89(3) (priority to extended payment claims);
- (e) omit Schedule 7 (extended payments of housing benefit); and
- (f) in Part 2 of Schedule 9 (awards where income support or an income-based jobseeker’s allowance is payable)—
 - (i) in the heading to paragraph 9 after “jobseeker’s allowance” insert, “or an extended payment”; and
 - (ii) in paragraph 9 after the words “is awarded housing benefit”, insert “or a person is entitled to an extended payment in accordance with regulation 72”.

[Insert equivalent Council Tax Benefit and ESA provisions]

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 so as to include new provisions about extended payments. (Extended payments are payments of housing benefit which are payable for a limited period in certain circumstances where a person or his partner have ceased to be entitled to income support or income-based jobseeker's allowance.)

Regulation 2 substitutes new Regulations 72 to 72C into the Housing Benefit Regulations. New regulation 72 sets out when an extended payment of housing benefit is payable.

Regulation 72A provides the period during which the claimant will be entitled to the extended payment, known as the extended payment period.

Regulation 72B provides how the extended payment will be calculated.

Regulation 72C provides how an extended payment will be calculated if the claimant moves to another local authority area during the course of the extended payment period.

Regulation 3 makes amendments to the provisions which require local authorities to share information relating to extended payments in certain circumstances.

Regulation 4 makes amendments to the Housing Benefit Regulations 2006 which are consequential to the other amendments made by these Regulations.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit (Extended
Payment) (Modification) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by section 32 of the [Welfare Reform Act 2007](**99**).

In accordance with section 176(1) of the Social Security Administration Act 1992 the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

This instrument contains only regulations made by virtue of section 32 of the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force date of that section(**100**).

Citation and Commencement

1. These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Extended Payment) (Modification) Regulations 2007 and shall come into force on [XXX].

Modification of the Social Security Administration Act 1992

2. Section 5(1) of the Social Security Administration Act 1992(**101**) (regulations about claims for and payments of benefit) shall be amended as follows-

(a) for sub-paragraph (i) substitute-

“(i) for the person to whom or local authority or housing authority to which a benefit to which this section applies is to be paid;” and

(b) after sub-paragraph (i) insert-

(**99**) 2007 c.[].

(**100**) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where Regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

(**101**)

“(ia) for the time when and manner in which a benefit to which this section applies is to be paid and for the information and evidence to be furnished in connection with the payment of such a benefit”.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify section 5(1) of the Social Security Administration Act 1992 to provide for payments of housing benefit to be made a local authority or housing authority as well as a person. This modification is expedient in connection with the making of new regulations relating to extended payments of housing benefit.

Schedule 5, Paragraphs 3 and 4

The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007

When assessing entitlement to Housing Benefit and Council Tax Benefit, local authorities have the discretion to disregard some or all of any war disablement or war widow's pension remaining after a mandatory disregard of £10 has been applied. The pensions to which the discretionary power applies are set out in primary legislation.

Rather than remaining in the primary legislation, the war disablement pensions and the war widow's pensions to which the discretionary power applies are now stipulated in these draft regulations. This means that, should the Secretary of State need to add further pensions, he could do so by way of amending regulations. There would be no need for further primary legislation.

The remainder of the regulations make consequential amendments to Housing Benefit and Council Tax Benefit Regulations.

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

2007 No. XXX

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit (War Pension
Disregards) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by sections 134(8)(a) and 139(6)(a) of the Social Security Administration Act 1992(**102**).

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

This instrument contains only regulations made by virtue of, or consequential upon, paragraphs 3 and 4 of Schedule 5 to the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force date of those paragraphs(**103**).

Citation and commencement

1. These Regulations may be cited as The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 and shall come into force on [XXX].

War disablement pensions

2. The war disablement pensions that are prescribed for the purpose of sections 134(8)(a) and 139(6)(a) of the Social Security Administration Act 1992, are specified in Part 1 of the Schedule.

War widow's pensions

3. The war widow's pensions that are prescribed for the purpose of sections 134(8)(a) and 139(6)(a) of the Social Security Administration Act, are specified in Part 2 of the Schedule.

(102) 1992 c.5; sections 134(8)(a) and 139(6)(a) were amended by the [Welfare Reform Act 2007], Schedule 5, paragraphs 3 and 4.

(103) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where Regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

Amendment of the Housing Benefit Regulations 2006

4. The Housing Benefit Regulations 2006(**104**) shall be amended as follows—
- (a) in regulation 2(1) (interpretation), omit the definition of “war widower’s pension”; and
 - (b) in regulation 40 (calculation of income other than earnings), omit paragraphs (3), (4) and (4A).

Amendment of the Council Tax Benefit Regulations 2006

5. The Council Tax Benefit Regulations 2006(**105**) shall be amended as follows—
- (a) in regulation 2(1) (interpretation), omit the definition of “war widower’s pension”; and
 - (b) in regulation 30 (calculation of income other than earnings), omit paragraphs (3), (4) and (4A).

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

6. The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**106**) shall be amended as follows—
- (a) in regulation 2(1) (interpretation), omit the definition of “war widower’s pension”; and
 - (b) in regulation 33 (calculation of income other than earnings), omit paragraphs (10), (13) and (14).

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

7. The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**107**) shall be amended as follows—
- (a) in regulation 2(1) (interpretation), omit the definition of “war widower’s pension”; and
 - (b) in regulation 23 (calculation of income other than earnings), omit paragraphs (10), (13) and (14).

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

(104) S.I. 2006/213; Regulation 40(4A) was inserted by S.I. 2006/[].
(105) S.I. 2006/215; Regulation 30(4A) was inserted by S.I. 2006/[].
(106) S.I. 2006/214; Regulation 33(14) was inserted by S.I. 2006/[].
(107) S.I. 2006/216; Regulation 23(14) was inserted by S.I. 2006/[].

THE SCHEDULE

Regulations 2 and 3

War disablement and war widow's pensions

PART 3

War disablement Pensions

8. The war disablement pensions prescribed are—
- (a) any retirement pay, pension or allowance granted in respect of disablement under powers conferred by or under—
 - (i) the Air Force (Constitution) Act 1917(**108**);
 - (ii) the Personal Injuries (Emergency Provisions) Act 1939(**109**);
 - (iii) the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**110**);
 - (iv) the Polish Resettlement Act 1947(**111**);
 - (v) Part VII or section 151 of the Reserve Forces Act 1980(**112**);
 - (b) the following pay, pension or allowances, but only the part attributable to disablement or disability—
 - (i) a wounds pension granted to a member of the armed forces of the Crown;
 - (ii) retired pay of a disabled officer granted on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
 - (iii) A disablement or disability pension granted to a member of the armed forces of the Crown, other than a commissioned officer, on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
 - (iv) A disablement pension granted to a person who has been employed in the nursing services of any of the armed forces of the Crown on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown; and
 - (c) a payment made under article 14(1)(b) or article 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(**113**).

PART 4

War widow's pensions

9. The war widow's pensions prescribed are—
- (a) pensions or allowances granted in respect of death due to service or war injury and payable to widows, widowers or surviving civil partners by virtue of—
 - (i) the Air Force (Constitution) Act 1917;
 - (ii) the Personal Injuries (Emergency Provisions) Act 1939;
 - (iii) the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939;
 - (iv) the Polish Resettlement Act 1947;

(108)

(109)

(110)

(111)

(112)

(113)S.I. 2005/439

- (v) Part VII or section 151 of the Reserve Forces Act 1980;
- (b) the whole or any part of a pension payable to a widow, widower or surviving civil partner—
 - (i) under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006(**114**) insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865; or
 - (ii) only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977; and 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.

EXPLANATORY NOTE

(This note is not part of the Order)

Regulation 2 and Part 1 of the Schedule prescribes the war disablement pensions for the purpose of section 134(8)(a) and section 139(6)(a) of the Social Security Administration Act 1992 (c.5). Those sections give local authorities a power to modify the housing benefit and council tax benefit schemes to disregard some or all of any prescribed war disablement pension or war widow's pension. Regulation 3 and Part 2 of the Schedule prescribes the war widow's pensions for the purpose of section 134(8)(a) or section 139(6)(a).

Regulations 5 to 7 make consequential amendments to the Housing Benefit Regulations 2006, the Council Tax Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Part 3 of the Bill

Social Security administration: general

Clause 40

Social Security information

Social Security (Claims and Information) Regulations 2007

This clause aims to widen and clarify the extent to which benefit claims functions and information may be shared between and used by local authorities who administer housing benefit, county councils in England, persons providing services to the aforementioned or authorised to exercise their functions, the Department for Work and Pensions (or in the case of war pensions, the Ministry of Defence) – collectively known as “relevant authorities”.

The clause amends section 7A of the Social Security Administration Act 1992 and inserts a new section 7B. The provisions would allow a relevant authority (including, for the first time, an English county council) to use information relating to social security which it holds in connection with a claim for one benefit, for a different “relevant purpose”. And they would enable one relevant authority to verify evidence and information on behalf of another. Delegated powers will give detailed effect to the provisions.

Under the new section 7B the Secretary of State may make regulations governing the procedures to be followed by a relevant authority when it acquires and uses social security information that has been used or verified by another relevant authority. This should ensure that information already verified will normally be accepted by the importing authority within certain safeguards, to avoid asking the claimant to provide the same information again.

Clause 40 would also enable the Secretary of State to prescribe what counts as a “relevant purpose”, which must be related to either a claim or potential claim for a “specified benefit”. A relevant purpose is intended to be the greater take up of social security benefits. Regulations would allow, for example, a local authority that receives a claim for Housing Benefit from a pensioner, to use that information in encouraging the pensioner to take up any unclaimed entitlement to Pension Credit.

It is intended that the “specified” benefits in relation to this clause will be prescribed as most social security benefits, enabling the interchange of information in relation to a range benefits and a timely response to future changes in the nature or the names of particular benefits.

Regulations under the amended section 7A will enable a relevant authority to verify claims information and evidence on behalf of another. For example the Secretary of State would prescribe that the Department may verify claims information it collects on behalf of the local authority to which the claim would be forwarded. It is intended that regulations under the amended Section 7A will enable county councils in England to arrange to accept claims and information for specified social security benefits, to verify such information and to forward it to whoever administers the benefit.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY

The Social Security (Claims and Information) Regulations 2007

<i>Made</i>	- - - -	[2007]
<i>Laid before Parliament</i>		[2007]
<i>Coming into force</i>		
<i>Regulations 1 and 4 to 11</i>		[2007]
<i>Regulations 2 and 3</i>		[2008]

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 7A(1), (2) and (6)(d), 7B(2), (3) and (5), 189(1) and (4) to (6) and 191 of the Social Security Administration Act 1992(**115**).

In accordance with section 176(1)(a) of that Act, as regards provisions in the Regulations relating to housing benefit and council tax benefit, he has consulted organisations appearing to him to be representative of the authorities concerned.

[The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it./The proposals in respect of these Regulations have been referred to the Social Security Advisory Committee(**116**).]

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Claims and Information) Regulations 2007 and shall come into force on [] [2007], except for regulations 2 and 3 which shall come into force on [] [2008].

(2) In regulations 4, 5 and 6—

“the Administration Act” means the Social Security Administration Act 1992;

“county council” means a county council in England.

(3) In regulations 2, 3, 4 and 5 “specified benefit” means—

- (a) attendance allowance;
- (b) bereavement payment;
- (c) carer’s allowance;

(115) 1992 c. 5; section 7A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 71, [and was amended by the Welfare Reform Act 2007, section 40 which inserted section 7B]; section 191 is cited because of the meaning it gives to “prescribe”.

(116) [See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992/See section 173(1) of the Social Security Administration Act 1992.

- (d) disability living allowance;
- (e) [employment and support allowance];
- (f) incapacity benefit;
- (g) income support;
- (h) jobseeker's allowance;
- (i) retirement pension;
- (j) state pension credit;
- (k) winter fuel payment.

Use of social security information: local authorities [power: section 7B(2) SSAA 1992 (see clause 40(1) WR Bill)]

2.—(1) This regulation applies to social security information(117) held by a local authority(118) which—

- (a) was received from and used by the Secretary of State in connection with a person's claim for, or award of, a specified benefit; and
- (b) is relevant to that person's claim for, or award of, council tax benefit or housing benefit.

(2) A local authority must, for the purposes of the person's claim for, or award of, council tax benefit or housing benefit, use that information without verifying its accuracy.

(3) But paragraph (2) does not apply where—

- (a) the social security information received from the Secretary of State is inconsistent with information already held by the local authority; or
- (b) the local authority has reasonable grounds for believing the social security information received from the Secretary of State is inaccurate; or
- (c) the local authority receives the information more than four weeks after it was used by the Secretary of State in connection with a claim for, or an award of, a specified benefit.

Use of social security information: Secretary of State [power: s7B(2) SSAA]

3.—(1) This regulation applies to social security information held by the Secretary of State which—

- (a) was received from and used by a local authority in connection with a person's claim for, or award of, council tax benefit or housing benefit; and
- (b) is relevant to that person's claim for, or award of, a specified benefit.

(2) The Secretary of State must, for the purposes of the person's claim for, or award of, a specified benefit, use that information without verifying its accuracy.

(3) But paragraph (2) does not apply where—

- (a) the social security information received from the local authority is inconsistent with information already held by the Secretary of State; or
- (b) the Secretary of State has reasonable grounds for believing the social security information received from the local authority is inaccurate; or
- (c) the Secretary of State receives the information more than four weeks after it was used by a local authority in connection with a claim for, or an award of, council tax benefit or housing benefit.

(117) "Social security information" is defined by section 7B(4) of the Social Security Administration Act 1992.

(118) See sections 7B(6) and 7A(6) of the Social Security Administration Act 1992 for the definition of "local authority".

Social security information verified by county councils [power: section 7B(2) SSAA 1992]

4.—(1) This regulation applies to social security information which was verified by a county council by virtue of regulations made under section 7A(2)(e) of the Administration Act and which was forwarded by that county council to a local authority or to the Secretary of State.

(2) A local authority must, for the purposes of a person's claim for, or award of, council tax benefit or housing benefit, use this information without verifying its accuracy.

(3) The Secretary of State must, for the purposes of a person's claim for, or award of, a specified benefit, use this information without verifying its accuracy.

(4) But paragraphs (2) and (3) do not apply where—

- (a) the social security information received from the county council is inconsistent with information already held by the local authority or by the Secretary of State; or
- (b) the local authority or the Secretary of State has reasonable grounds for believing the social security information received from the county council is inaccurate; or
- (c) the local authority or the Secretary of State receives the information more than four weeks after it was verified by the county council.

Social security information verified by local authorities [power: section 7B SSAA 1992]

5.—(1) This regulation applies to social security information which was verified by a local authority by virtue of regulations made under section 7A(2)(e) of the Administration Act and which was forwarded by that local authority to the Secretary of State.

(2) The Secretary of State must, for the purposes of a person's claim for, or award of, a specified benefit, use this information without verifying its accuracy.

(3) But paragraph (2) does not apply where—

- (a) the social security information received from the local authority is inconsistent with information already held by the Secretary of State; or
- (b) the Secretary of State has reasonable grounds for believing the social security information received from the local authority is inaccurate; or
- (c) the Secretary of State receives the information more than four weeks after it was verified by the local authority.

Relevant Purpose for the purpose of section 7B(3) of the Administration Act [powers: s7B(3) and (5) SSAA]

6.—(1) This regulation prescribes the meaning of “relevant purpose” for the purpose of section 7B(3) of the Administration Act.

(2) A “relevant purpose” means encouraging, advising or assisting a person to make a claim for one or more of the benefits listed in paragraph (3).

(3) The benefits are—

- (a) attendance allowance;
- (b) bereavement payment;
- (c) carer's allowance;
- (d) council tax benefit;
- (e) disability living allowance;
- (f) [employment and support allowance];
- (g) housing benefit;
- (h) incapacity benefit;
- (i) income support;
- (j) jobseeker's allowance;

- (k) retirement pension;
- (l) state pension credit;
- (m) winter fuel payment.

Amendment of the Social Security (Claims and Payments) Regulations 1987 [powers: section 7A(1), (2) SSAA as amended by clause 40(2) of the Bill and section 7A6(d)]

7.—(1) The Social Security (Claims and Payments) Regulations 1987(**119**) are amended as follows.

(2) In regulation 4 (making a claim for benefit)—

(a) in paragraph (6A)(**120**), for sub-paragraphs (c) and (d) substitute—

“(c) who makes a claim for income support; or

(d) who has not attained the qualifying age and who makes a claim for a carer’s allowance, disability living allowance or incapacity benefit,

and paragraph (6C) applies in relation to a person who makes a claim for jobseeker’s allowance.”; and

(b) in paragraph (6B) for sub-paragraph (b) substitute—

“(b) the offices of—

(i) a local authority administering housing benefit or council tax benefit;

(ii) a county council in England;

(iii) a person providing services to a person mentioned in head (i) or (ii);

(iv) a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit; or

(v) a person authorised to exercise any function a county council has under section 7A of the Social Security Administration Act 1992(**121**),

if the Secretary of State has arranged with the local authority or other person (“the relevant authority”) for them to receive claims in accordance with this sub-paragraph.”;

(c) in paragraph (6C)(**122**), after sub-paragraph (c), insert—

“(cc) may verify any non-medical information or evidence supplied or obtained in accordance with sub-paragraph (b) or (c) and shall forward it to the Secretary of State as soon as reasonably practicable.”; and

(d) for paragraph (6CC)(**123**) substitute—

“(6CC) The Secretary of State and a relevant authority within the meaning of paragraph (6B)(b) may arrange for the authority to exercise functions in relation to claims in accordance with paragraph (6C)(b) to (e) whether the claim is made to the authority in accordance with paragraph (6B)(b) or made in a different way.”.

(3) In regulation 4D(**124**) (making a claim for state pension credit)—

(119) S.I. 1987/1968.

(120) Paragraphs (6A) to (6C) were inserted by S.I. 2003/1632.

(121) Section 7A was inserted by the Welfare Reform and Pensions Act 1999, section 71, and was amended by the Welfare Reform Act [], section [40].

(122) Paragraph (6C) was inserted by S.I. 2003/1632.

(123) Paragraph (6CC) was inserted by S. I. 2005/337.

(124) Regulation 4D was inserted by S.I. 2002/3019.

(a) for paragraph (4)(**125**) substitute—

“(4) A claim made in writing may be made to the offices of —

- (a) a local authority administering housing benefit or council tax benefit;
- (b) a county council in England;
- (c) a person providing services to a person mentioned in sub-paragraph (a) or (b);
- (d) a person authorised to exercise any functions of a local authority relating to housing benefit or council tax benefit; or
- (e) a person authorised to exercise any function a county council in England has under section 7A of the Social Security Administration Act 1992,

if the Secretary of State has arranged with the local authority or person (“the relevant authority”) for them to receive claims in accordance with this paragraph.”;

(b) in paragraph (5)(**126**), after sub-paragraph (c) insert—

“(cc) may verify information or evidence supplied or obtained in accordance with sub-paragraph (b) or (c) and shall forward it to the Secretary of State as soon as reasonably practicable;”; and

(c) for paragraph (5A)(**127**) substitute—

“(5A) The Secretary of State and a relevant authority within the meaning of paragraph (4) may arrange for the authority to exercise functions in relation to claims in accordance with paragraph (5)(b) to (e) whether the claim is made to the authority in accordance with paragraph (4) or made in a different way.”.

(4) In regulation 6 (date of claim), in paragraph (1E)(**128**) (claims for incapacity benefit), omit “who has attained the qualifying age”.

(5) In regulation 32 (information to be given and changes to be notified), after paragraph (6)(**129**) add—

“(7) Where a specified authority has arranged with the Secretary of State for the authority to receive claims for a specified benefit or obtain information or evidence relating to claims for a specified benefit in accordance with regulation 4 or 4D, the authority—

- (a) may receive information or evidence which relates to an award of that benefit and which is supplied by—
 - (i) the person to whom the award has been made; or
 - (ii) other persons in connection with the award,and shall forward it to the Secretary of State as soon as reasonably practicable;
- (b) may verify any information or evidence supplied; and
- (c) may record the information or evidence supplied and hold it (whether as supplied or recorded) for the purpose of forwarding it to the Secretary of State.

(8) In paragraph (7)—

“specified authority” means—

- (a) a local authority administering housing benefit or council tax benefit;
- (b) a county council in England;
- (c) a person providing services to a person mentioned in sub-paragraphs (a) or (b);
- (d) a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit;

(125) Paragraph (4) was amended by S.I. 2003/1632.
(126) Paragraph (5) was substituted by S.I. 2003/337.
(127) Paragraph (5A) was inserted by S. I. 2005/337.
(128) Paragraph (1D) was inserted by S.I. 2006/832.
(129) Paragraph (6) was inserted by S.I. 2002/3019.

(e) a person authorised to exercise any function a county council in England has under section 7A of the Social Security Administration Act 1992;

“specified benefit” means one or more of the following benefits—

- (a) attendance allowance;
- (b) bereavement payment;
- (c) carer’s allowance;
- (d) disability living allowance;
- (e) incapacity benefit;
- (f) income support;
- (g) jobseeker’s allowance;
- (h) retirement pension;
- (i) state pension credit;
- (j) winter fuel payment.”.

Amendment of the Housing Benefit Regulations 2006 [power section 7A(1) and (2) SSAA]

8.—(1) The Housing Benefit Regulations 2006(**130**) are amended as follows.

(2) In regulation 83 (time and manner in which claims are to be made)—

(a) after paragraph (4)(f) add—

“(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).”; and

(b) in paragraphs (5)(d) and (e), after “authorised office” in each place where the term occurs insert “, county offices”.

(3) In Part 14 (information), in Section 1 (claims and information)—

(a) in regulation 108 (interpretation)—

(i) before the definition of “local authority” insert—

““county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 83(4)(g) or 109(3);”; and

(ii) in the definition of “relevant authority” after head (b) add—

“(c) a county council;”

(b) for regulation 109 (collection of information) substitute—

“109.—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—

- (a) persons making, or who have made, claims for housing benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) references to persons who have made claims to housing benefit include persons to whom awards of benefit have been made on those claims.

(3) Where a county council has made an arrangement with the relevant local authority to receive and obtain information or evidence relating to claims for housing benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for housing benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information or evidence relating to an award of housing benefit which is supplied by—

- (a) the person to whom the award has been made; or
- (b) other persons in connection with the award.”;
- (c) after regulation 109 insert—

“Verifying information

109A. A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 109.”;

- (d) for regulation 110 (recording and holding information) substitute—

“110. A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
- (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering housing benefit.”; and
- (e) in regulation 111 (forwarding of information) for sub-paragraph (b) substitute—

“(b) may, if the relevant authority is the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 [power section 7A(1) and (2) SSAA]

9.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**131**) are amended as follows.

- (2) In regulation 64 (time and manner in which claims are to be made)—

- (a) after paragraph (5)(f) add—

“(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).”; and

- (b) in paragraphs (6)(d) and (e), after “authorised office” in each place where the term occurs insert “, county offices”.

- (3) In Part 13 (information), in Section 1 (claims and information)—

- (a) in regulation 89 (interpretation)—

- (i) before the definition of “local authority” insert—

““county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 64(5)(g) or 90(3);”; and

- (ii) in the definition of “relevant authority”, after head (b) add—

“(c) a county council;”;

- (b) for regulation 90 (collection of information) substitute—

“90.—(1) The Secretary of State, or person providing services to him, may receive or obtain relevant information from—

- (a) persons making, or who have made, claims for housing benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) references to persons who have made claims for housing benefit include persons to whom awards of benefit have been made on those claims.

(3) Where a county council has made an arrangement with the relevant local authority to receive and obtain information and evidence relating to claims for housing benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for housing benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information or evidence relating to an award of housing benefit which is supplied by—

- (a) the person to whom the award has been made; or
 - (b) other persons in connection with the award.”;
- (c) after regulation 90 insert—

“Verifying information

90A. A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 90.”;

(d) for regulation 91 (recording and holding information) substitute—

“91. A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
 - (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering housing benefit.”; and
- (e) in regulation 92 (forwarding of information) for sub-paragraph (b) substitute—
- “(b) may, if the relevant authority is the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.”.

Amendment of the Council Tax Benefit Regulations 2006 [power section 7A(1) and (2) SSAA]

10.—(1) The Council Tax Benefit Regulations 2006(**132**) are amended as follows.

(2) In regulation 69 (time and manner in which claims are to be made)—

(a) after paragraph (4)(f) add—

“(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).”; and

(b) in paragraphs (5)(d) and (e), after “authorised office” in each place where the term occurs insert “, county offices”.

(3) In Part 12 (information), in Section 1 (claims and information)—

(a) in regulation 91 (interpretation)—

(i) before the definition of “local authority” insert—

““county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 69(4)(g) or 92(3);”; and

(ii) in the definition of “relevant authority” after head (b) add—

“(c) a county council;”;

(b) for regulation 92 (collection of information) substitute—

“92.—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—

- (a) persons making, or who have made, claims for council tax benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) references to persons who have made claims for council tax benefit include persons to whom awards of benefit have been made on those claims.

(3) Where a county council has made an arrangement with the relevant local authority to receive and obtain information and evidence relating to claims for council tax benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for council tax benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information relating to an award of council tax benefit which is supplied by—

- (a) the person to whom an award has been made; or
 - (b) other persons in connection with the award.”;
- (c) after regulation 92 insert—

“Verification of information

92A. A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 92.”;

(d) for regulation 93 (recording and holding information) substitute—

“93. A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
 - (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering council tax benefit.”; and
- (e) in regulation 94 (forwarding of information) for sub-paragraph (b) substitute—
- “(b) may, if the relevant authority is the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.”.

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 [power section 7A(1) and (2) SSAA]

11.—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**133**) are amended as follows.

(2) In regulation 53 (time and manner in which claims are to be made)—

- (a) after paragraph (4)(f) add—

“(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).”;
- (b) in paragraph (5)(d), after “authorised office” in both places where the term occurs insert “, county offices”; and
- (c) in paragraph (5)(e) after “designated office” insert “or county offices”.

(3) In Part 11 (information), in section 1 (claims and information)—

- (a) in regulation 76 (interpretation)—

- (i) before the definition of “local authority” insert—
 - ““county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 53(4)(g) or 77(3);”;
 - (ii) in the definition of “relevant authority” after head (b) add—
 - “(c) a county council;”;
- (b) for regulation 77 (collection of information) substitute—
 - “77.—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—
 - (a) persons making, or who have made, claims for council tax benefit; or
 - (b) other persons in connection with such claims.
 - (2) In paragraph (1) references to persons who have made claims for council tax benefit include persons to whom awards of benefit have been made on those claims.
 - (3) Where a county council has made an arrangement with the relevant local authority to receive and obtain information and evidence relating to a claim for council tax benefit, the council may receive or obtain the information or evidence from—
 - (a) persons making claims for council tax benefit; or
 - (b) other persons in connection with such claims.
 - (4) A county council may receive information relating to an award of council tax benefit which is supplied by—
 - (a) the person to whom the award has been made; or
 - (b) other persons in connection with the award.”;
- (c) after regulation 77 insert—

“Verifying information

- 77A. A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 77.”;
- (d) for regulation 78 (recording and holding information) substitute—
 - “78. A relevant authority which obtains relevant information or to whom such information is supplied—
 - (a) shall make a record of such information; and
 - (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering council tax benefit.”; and
 - (e) in regulation 79 (forwarding of information) for sub-paragraph (b) substitute—
 - “(b) may, if the relevant authority is the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.”.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Parliamentary Under Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 7A and 7B of the Social Security Administration Act 1992 which relate to social security information.

Regulation 2 provides that where a local authority that administers council tax benefit and housing benefit (“local authority”) receives social security information from the Secretary of State that has been used by the Secretary of State in connection with a person’s claim for, or award of, certain benefits, then the local authority must accept this information as correct and use it in connection with that person’s claim for, or award of, council tax benefit or housing benefit without carrying out further checks as to its accuracy. This obligation will not arise where the local authority already holds social security information which contradicts that supplied by the Secretary of State, where the local authority has reasonable grounds for believing that the information is inaccurate or where the information is received more than four weeks after it was used.

Regulation 3 makes similar provision in respect of information received by the Secretary of State from a local authority which was used by the local authority in connection with a person’s claim for, or award of, council tax benefit or housing benefit.

Regulation 4 provides that the Secretary of State and local authorities must use social security information that has been verified by a county council in England by virtue of regulations made under section 7A(2) of the Social Security Administration Act in connection with a claim for, or an award of, certain benefits, without further verification. This obligation will not arise where the Secretary of State or the local authority already hold information which contradicts that supplied by the county council, where there is reasonable grounds for believing the information is inaccurate or where the information is received more than four weeks after it was verified.

Regulation 5 makes similar provision in respect of information that has been verified by a local authority and which has been forwarded to the Secretary of State.

Regulation 6 prescribes the meaning of “relevant purpose” for the purpose of section 7B(3) of the Social Security Administration Act 1992.

Regulation 7 amends the Social Security (Claims and Payments) Regulations 1987 to enable county councils in England to arrange to receive claims and connected information for specified benefits administered by the Department for Work and Pensions. It enables county councils and other local authorities who receive or obtain information connected with such claims to verify the information before forwarding it to the Department. It also enables them to receive and verify information relating to awards of specified benefits.

Regulation 8 amends the Housing Benefit Regulations 2006 to enable county councils in England to arrange to receive housing benefit claims and connected information. It enables the Secretary of State and county councils in England, who receive or obtain information connected with housing benefit claims, to verify the information before forwarding it to the relevant local authority. It also allows county councils to receive and verify information relating to housing benefit awards.

Regulations 9 to 11 amend the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 to make equivalent provision to that made by regulation 8.

A full regulatory impact assessment has not been produced for this Instrument as it has no effect on the costs of business, charities or the voluntary sector.

Clause 41

Information relating to certain benefits

Welfare Reform Act (Relevant Enactment) Order 2007 and the Social Security (Use of Information for Purposes relating to Housing Benefit and Welfare Services) Regulations 2007

There are two draft statutory instruments as a consequence of powers proposed in clause 41.

The first is an Order which specifies the grant making enactment in relation to which the information sharing in clause 41(1) can take place. This draft Order specifies section 93 of the Local Government Act 2000 which is the current funding source for the “Supporting People” programme in England and Wales.

This aligns the clause 41(1) information gateway with the current information sharing provisions in section 94 of the Local Government Act 2000 which clause 41 replaces. Further grant making enactments may be specified by Order in the future, as Government policy on the funding of welfare services develops.

The second statutory instrument is the information sharing regulations for the new information sharing proposed in this clause – clause 41(2). Subsection (2) will allow welfare services information held by local authority Supporting People teams to be used by local authority Housing Benefit (“HB”) teams when making certain decisions.

These HB decisions (as set out in regulations 4 & 5) will be those relating to:

- whether a person’s type of accommodation and/or tenancy excludes them from Local Housing Allowance, requiring their benefit to be paid under existing HB rules; and
- in circumstances where the HB claimant is unable to chose to have his HB paid to the landlord, whether HB should be paid to the claimant or the landlord

This information sharing is needed to ensure that:

- people in certain types of accommodation are excluded from LHA, as their accommodation type is of a specialist nature which is not reflected in the rates of general private sector rental levels; and
- vulnerable claimants who would difficulty managing their own affairs (or would be likely to misuse their benefit) can have their benefit paid directly to the landlord, so long as that landlord is a ‘fit and proper’ person to receive that payment.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY, ENGLAND AND WALES

The Welfare Reform Act (Relevant Enactment) Order 2007

Made - - - - *****

Laid before Parliament *****

Coming into force - - *[] October 2007*

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 41(1) and (7) of the Welfare Reform Act 2007(a):

Citation, commencement and extent

1.—(1) This Order may be cited as the Welfare Reform Act (Relevant Enactment) Order 2007 and shall come into force on [] October 2007.

(2) This Order extends to England and Wales only.

Relevant enactment

2. A relevant enactment for the purposes of section 41(1) of the Welfare Reform Act 2007 is section 93 of the Local Government Act 2000(b).

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

(a) 2007 c.**.

(b) 2000 c.22.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 41(1) of the Welfare Reform Act 2007 provides that information relating to certain benefits may be supplied to certain persons for purposes connected with the application of grant paid under a relevant enactment towards certain expenditure related to welfare services. This Order provides that a relevant enactment is section 93 of the Local Government Act 2000 (c.22). Section 93 of that Act provides that the Secretary of State or the National Assembly for Wales may pay grants to local authorities in, respectively, England and Wales towards expenditure incurred in relation to welfare services.

DRAFT STATUTORY INSTRUMENTS

2007 No.

SOCIAL SECURITY, ENGLAND AND WALES

**The Social Security (Use of Information for Purposes relating to
Housing Benefit and Welfare Services) Regulations 2007**

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 41(2), (8) and (9) of the Welfare Reform Act 2007(**134**).

[He has consulted with such organisations which appear to him to be representative of the authorities concerned with these Regulations in so far as they relate to housing benefit(**135**).]

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Social Security (Use of Information for Purposes relating to Housing Benefit and Welfare Services) Regulations 2007.

(2) Subject to paragraph (3), these Regulations shall come into force on [] October 2007.

(3) Regulation 5 shall come into force on [insert rollout date] immediately following the coming into force of regulations 6 and 13 of the Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007(**136**).

(4) These Regulations extend to England and Wales only.

(5) They apply for the purposes of section 41(2) of the 2007 Act.

Interpretation

2. In these Regulations—

“the 2007 Act” means the Welfare Reform Act 2007;

“claimant” means a person claiming housing benefit;

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(**137**);

“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**138**);

“landlord” includes a person to whom rent is payable by the person entitled to a rent allowance for the purposes of—

(134)

(135) See section 176(1) of the Social Security Administration Act 1992 (c.5).

(136) S.I. 2007/xx.

(137) S.I. 2006/213.

(138) S.I. 2006/214.

- (a) regulation 95 of the Housing Benefit Regulations (circumstances in which payment is to be made to a landlord); or
- (b) regulation 76 of the Housing Benefit (State Pension Credit) Regulations (circumstances in which payment is to be made to a landlord);

“relevant person” means a person falling within any of paragraphs (c) to (h) of section 41(4) of the 2007 Act; and

“rent” has the same meaning as in the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations.

Prescribed purposes relating to welfare services

3.—(1) This regulation prescribes meanings of “prescribed purpose” in section 41(2) of the 2007 Act.

(2) It applies in relation to a relevant person who holds information falling within subsection (3) of that section.

(3) The purposes prescribed are any purposes relating to welfare services connected with—

- (a) considering whether a claimant is likely to have difficulty in managing his affairs;
- (b) considering the probability that a claimant will pay his rent;
- (c) considering whether a landlord—
 - (i) is to provide a claimant with qualifying welfare services within the meaning of section 41(6) of the 2007 Act, but
 - (ii) has not provided those services or is unlikely to provide those services;
- (d) considering anything which would result in the following provisions applying in relation to a claimant—
 - (i) regulation 13A(2) of the Housing Benefit Regulations(**139**) (maximum rent (standard local rate)), or
 - (ii) regulation 13A(2) of the Housing Benefit (State Pension Credit) Regulations(**140**) (maximum rent (standard local rate)).

Prescribed purposes relating to housing benefit

4.—(1) This regulation prescribes purposes in addition to those prescribed in regulation 3 for which information may be used by—

- (a) the relevant person in relation to whom regulation 3 applies; or
- (b) another relevant person to whom the information has been provided.

(2) The additional purposes prescribed are any purposes relating to housing benefit connected with the application of—

- (a) regulation 13A(2) of the Housing Benefit Regulations(**141**) (maximum rent (standard local rate));
- (b) regulation 96(3) of the Housing Benefit Regulations(**142**) (circumstances in which payment may be made to a landlord) (but only where a pathfinder authority is considering making direct payments to the landlord in accordance with paragraph (3A)(b)(ii) or (iii) of that regulation);
- (c) regulation 96(3A)(b)(ii) or (iii) of the Housing Benefit Regulations(**143**);
- (d) regulation 13A(2) of the Housing Benefit (State Pension Credit) Regulations(**144**) (maximum rent (standard local rate));

(**139**) As amended by Schedule 10 to those Regulations.
(**140**) As amended by Schedule 9 to those Regulations.
(**141**) As amended by Schedule 10 to those Regulations.
(**142**) As amended by Schedule 10 to those Regulations.
(**143**) As amended by Schedule 10 to those Regulations.

- (e) regulation 77(3) of the Housing Benefit (State Pension Credit) Regulations(**145**) (circumstances in which payment may be made to a landlord) (but only where a pathfinder authority is considering making direct payments to the landlord in accordance with paragraph (3A)(b)(ii) or (iii) of that regulation); or
- (f) regulation 77(3A)(b)(ii) or (iii) of the Housing Benefit (State Pension Credit) Regulations(**146**).

Additional prescribed purposes relating to welfare services and housing benefit

5.—(1) The purposes prescribed in regulation 3 are also to include any purposes relating to welfare services connected with considering anything which would result in the following provisions applying in relation to a claimant—

- (a) regulation 13C(2) of the Housing Benefit Regulations(**147**) (when a maximum rent (standard local rate) is to be determined); or
- (b) [equivalent provisions in the Housing Benefit (State Pension Credit) Regulations].

(2) The additional purposes prescribed in regulation 4 are also to include any purposes relating to housing benefit connected with the application of—

- (a) regulation 13C(2) of the Housing Benefit Regulations(**148**) (when a maximum rent (standard local rate) is to be determined);
- (b) regulation 96(3) of the Housing Benefit Regulations(**149**) (circumstances in which payment may be made to a landlord) (but only where a relevant authority is considering making direct payments to the landlord in accordance with paragraph (3A)(b)(i) or (ii) of that regulation);
- (c) regulation 96(3A)(b)(i) or (ii) of the Housing Benefit Regulations(**150**); or
- (d) [equivalent provisions in the Housing Benefit (State Pension Credit) Regulations].

Prescribed purposes for determining whether a relevant person holds information for a prescribed purpose in regulation 3

6.—(1) This regulation prescribes further meanings of “prescribed purpose” in section 41(2) of the 2007 Act.

(2) This regulation applies for the purpose of determining whether a relevant person holds any information relevant for a prescribed purpose within the meaning of regulation 3.

(3) The purposes prescribed are any purposes relating to housing benefit connected with identifying the claimant.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

(**144**) As amended by Schedule 9 to those Regulations.
(**145**) As amended by Schedule 9 to those Regulations.
(**146**) As amended by Schedule 9 to those Regulations.
(**147**) As amended by S.I. 2007/XX.
(**148**) As amended by S.I. 2007/XX.
(**149**) As amended by S.I. 2007/XX.
(**150**) As amended by S.I. 2007/XX.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 41(2) of the Welfare Reform Act 2007 (c.xx) provides that certain persons (“relevant persons”) who hold information for a prescribed purpose may use that information for another prescribed purpose. Section 41(2) also allows such persons to provide that information to other relevant persons for use in relation to the same or another prescribed purpose. These Regulations prescribe those purposes.

Regulation 3 sets out the prescribed purposes for which information relevant to section 41(2) may be held. These purposes are purposes relating to welfare services. In particular, these are any purposes connected with considering whether a claimant is likely to have difficulty in managing his affairs; considering the probability that a claimant will pay his rent; or considering whether a landlord has provided or is likely to provide qualifying welfare services he has undertaken to provide. Also prescribed are purposes connected with identifying whether certain accommodation is excluded from the provisions relating to local housing allowances in the Housing Benefit Regulations 2006 (S.I. 2006/213) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) (“the Housing Benefit Regulations”).

Regulation 4 sets out the prescribed purposes for which information may be used for the purposes of section 41(2). These purposes are housing benefit purposes. These purposes relate to the application of provisions in the Housing Benefit Regulations. In particular, these provisions relate to whether pathfinder authorities should pay housing benefit to a claimant or to a claimant’s landlord. They also relate to whether certain accommodation is excluded from the provisions relating to local housing allowances.

Regulation 5 prescribes additional purposes to those purposes relating to welfare services and housing benefit in regulations 3 and 4, respectively, in consequence of the Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/XXX).

Regulation 6 sets out further prescribed purposes relating to housing benefit. This regulation enables information held for the purposes of housing benefit to be used by relevant persons for the purpose of determining whether a relevant person holds information relevant for a prescribed purpose within the meaning of regulation 3.

Clauses 45 and 46

Local authority powers to investigate and prosecute benefit fraud

The Social Security (Local Authority Investigations and Prosecutions) Regulations 2007

The measures in clauses 45 and 46 of the Bill give local authorities powers to investigate and prosecute offences against DWP administered benefits. The Bill provides powers for restrictions and conditions to be put in place to provide safeguards against the misuse of these new powers. Some of these safeguards are provided for in these draft Regulations.

These draft Regulations do not impose conditions or restrictions on existing statutory functions in relation to Housing Benefit or Council Tax Benefit offences.

Regulation 2 has the effect that authorisations for enquiries that relate to the entitlement to social security benefits; whether benefit legislation has been contravened; and the prevention or detection of benefit offences are to be restricted to income support, jobseeker's allowance, incapacity benefit, state pension credit and employment and support allowance matters.

The final version of these regulations will include a provision that, subject to certain exceptions, the investigatory power may be exercised only where there is a link between an investigation relating to Housing Benefit or Council Tax Benefit and an investigation relating to a benefit described in paragraph 4 above.

Regulation 3 has the effect that the power to bring proceedings is limited to offences in relation to certain benefits. These benefits will be income support, jobseeker's allowance, incapacity benefit, state pension credit and employment and support allowance.

The final version of these regulations will also include a provision that, subject to certain exceptions, the prosecution power may be exercised only where there is a link between a prosecution relating to Housing Benefit or Council Tax Benefit and one relating to a benefit described in the third paragraph above above.

DRAFT STATUTORY INSTRUMENTS

2007 No. []

SOCIAL SECURITY

**The Social Security (Local Authority Investigations and
Prosecutions) Regulations 2007**

<i>Made</i> - - - -	[]
<i>Laid before Parliament</i>	[]
<i>Coming into force</i> - -	[]

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 110A(1C)(a), 116A(2)(a) and 189(4) and (5) of the Social Security Administration Act 1992(151).

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Social Security (Local Authority Investigations and Prosecutions) Regulations [].
- (2) These Regulations shall come into force on [].
- (3) In these Regulations, “the Act” means the Social Security Administration Act 1992.

Exercise of investigatory powers by local authorities

- 2.—(1) A local authority authorisation must—
- (a) where it is made for a purpose mentioned in section 109A(2)(a), apply only in relation to one or more of the benefits listed in paragraph (3);
 - (b) where it is made for a purpose mentioned in section 109A(2)(c), apply only in relation to relevant social security legislation relating to one or more of those benefits; and
 - (c) where it is made for a purpose mentioned in section 109(2)(d), apply only in relation to benefit offences relating to one or more of those benefits.
- (2) [condition about there being a linked HB/CTB investigation].
- (3) The benefits are—
- (a) income support;
 - (b) a jobseeker’s allowance;
 - (c) incapacity benefit;
 - (d) state pension credit;
 - (e) an employment and support allowance.

(151) 1992 c. 5. Section 110A was amended by section 45 of the Welfare Reform Act 2007. Section 116A was inserted by section 46 of the Welfare Reform Act 2007.

(4) In this regulation “a local authority authorisation” has the meaning given in section 110A(1) of the Act.

Exercise of powers to prosecute benefit fraud by local authorities

3.—(1) For the purposes of section 116A(2)(a) of the Act (local authority powers to prosecute benefit fraud), the benefits in relation to which a local authority may not bring proceedings are all relevant social security benefits except for—

- (a) income support;
 - (b) a jobseeker’s allowance;
 - (c) incapacity benefit;
 - (d) state pension credit;
 - (e) an employment and support allowance.
- (2) [condition about there being a linked HB/CTB prosecution].

Signed by the authority of the Secretary of State for Work and Pensions

Date

Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations restrict the powers of local authorities to investigate and prosecute social security benefit offences other than housing benefit and council tax benefit offences.

Section 110A of the Social Security Administration Act 1992 (c.5) (“the Act”) (as amended by section 45 of the Welfare Reform Act 2007) permits local authorities to authorise individual officers to exercise certain investigatory powers. These powers can be exercised for various purposes including investigations into the payment of social security benefits (other than housing benefit or council tax benefit). Regulation 2 provides that an authorisation for investigations for social security benefit purposes is to be restricted to income support, jobseeker’s allowance, incapacity benefit, state pension credit and employment and support allowance matters.

Section 116A(2) of the Act (inserted by section 46 of the Welfare Reform Act 2007) provides for local authorities to be entitled to bring proceedings in respect of certain national social security benefit offences. Regulation 3 provides that the power given to local authorities under section 116A(2) does not apply to offences in relation to benefits other than income support, a jobseeker’s allowance, incapacity benefit, state pension credit and an employment and support allowance. (Section 116A(2) does not give local authorities power to bring proceedings in respect of housing benefit and council tax benefit offences, this is provided for by virtue of other legislation.)

[It is intended that the final version of these Regulations will provide that where a local authority authorises individual officers to exercise certain investigatory powers in relation to the payment of social security benefits (other than housing benefit or council tax benefit) then these powers can only be exercised if there is a linked housing benefit or council tax benefit matter. In addition the power for local authorities to bring proceedings in relation to those benefits will be conditional on there being a linked housing benefit or council tax benefit matter. There may be some exceptions to these conditions.]

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities and voluntary bodies.