

2012 No. 2994

SOCIAL SECURITY

The Benefit Cap (Housing Benefit) Regulations 2012

Made - - - - 29th November 2012

Coming into force - 15th April 2013

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 96(1), (3), (4)(a), (b), (c) and (g), (5) and (10) and 97(1) of the Welfare Reform Act 2012(a).

A draft of these Regulations was laid before Parliament in accordance with section 97(3) of the Welfare Reform Act 2012 and approved by a resolution of each House.

This instrument contains only regulations made by virtue of, or consequential upon, sections 96 and 97 of the Welfare Reform Act 2012 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(b), the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Benefit Cap (Housing Benefit) Regulations 2012 and come into force on 15th April 2013.

[Regulation 2 makes various amends to S.I. 2006/213.]

[Regulation 2(5) is amended by reg. 2(2) & (3) of S.I. 2013/546.]

[Regulation 2(5) is amended by para. 48(2) of the Sch. to S.I. 2013/591]

[Regulation 3 makes various amends to S.I. 2001/1002.]

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

29th November 2012

Freud
Parliamentary Under-Secretary of State,
Department for Work and Pensions

(a) 2012 c. 5. Section 96(10) is cited also for the meaning of “prescribed” and “regulations”.

(b) 1992 c. 5. Section 176(1) was amended by Schedule 9, paragraph 23 to the Local Government Finance Act 1992 (c. 14), Schedule 13, paragraph 3(4) to the Housing Act 1996 (c. 52) and s. 69(6) of the Child Support, Pensions and Social Security Act 2000.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”) to make provision for a cap on the total amount of welfare benefits to which a person is entitled. It also makes consequential amendments to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”).

Regulation 2 amends the Housing Benefit Regulations. Regulation 2(5) inserts a new Part 8A with new regulations 75A to 75G which make provision for the benefit cap. Regulation 75A provides that a benefit cap applies when the amount of welfare benefits to which a claimant or a claimant and claimant’s partner are entitled in a week exceeds the relevant amount. The relevant amount is defined in regulation 75G as £350 for a single claimant who is not responsible for a child or young person and £500 in any other case. Regulation 75G also prescribes the welfare benefits to be taken into account.

Regulation 75B makes provision relating to when the local authority determines whether a benefit cap applies. Although the local authority may continue to act on any information or evidence it receives, it need not make a determination relating to the benefit cap (including whether any reduction should be increased or decreased) unless it receives a notification from the Secretary of State.

Regulation 75C makes provision as to the manner in which entitlement to welfare benefits is to be calculated where the amount of the welfare benefit paid to the claimant is not the same as the amount to which the claimant is entitled.

Regulation 75D provides that where the benefit cap applies, the local authority must reduce a claimant’s housing benefit by the amount by which welfare benefits exceed the relevant amount. Where such a reduction would reduce the claimant’s housing benefit below the minimum amount payable (in most cases 50p), the local authority must reduce housing benefit by such amount as would leave entitlement of that minimum amount.

Regulation 75E provides for two exceptions to the benefit cap, where the claimant or the claimant’s partner is entitled to working tax credit, and where the claimant or the claimant’s partner was in work for 50 out of the 52 weeks before that work ended and was not entitled to income support, jobseeker’s allowance or an employment and support allowance. This applies for 39 weeks from the day after the last day in respect of which that person received payment for that work.

Regulation 75F also provides for an exception to the benefit cap where the claimant or the claimant’s partner is in receipt of an employment and support allowance with a support component, attendance allowance, industrial injuries benefit or a war pension. They also include cases where the claimant or the claimant’s partner, or a child or young person one of them is responsible for, is in receipt of disability living allowance. Where a person is not receiving disability living allowance, attendance allowance or a war disablement pension because they are in hospital or a care home, the exceptions will continue to apply.

Regulation 75G prescribes various definitions for the purposes of new Part 8A.

Regulation 2(2) makes consequential amendments and regulation 2(3) and (4) make amendments relating to extended payments of housing benefit so that the amount of the extended payment is not reduced to apply the benefit cap.

Regulation 3 amends the Decisions and Appeals Regulations to allow the local authority to revise decisions relating to the cap and to supersede decisions to apply the cap and any change in the amount of a reduction. It also makes provision for the effective date of superseding decisions.

An assessment of the impact of these Regulations has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

