

## 1994 No. 781

### SOCIAL SECURITY

#### The Housing Benefit and Council Tax Benefit (Subsidy) Regulations 1994

<i>Made</i> - - - -	<i>15th March 1994</i>
<i>Laid before Parliament</i>	<i>21st March 1994</i>
<i>Coming into force</i>	<i>11th April 1994</i>

The Secretary of State for Social Security in exercise of powers conferred upon him by sections 137(2) and (3), 140(7), 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992<sup>(a)</sup> and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of authorities concerned<sup>(b)</sup> and after agreement by the Social Security Advisory Committee that these Regulations should not be referred to <sup>(c)</sup>, hereby makes the following Regulations;

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Subsidy) Regulations 1994 and shall come into force on 11th April 1994.

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

“the Act” means the Social Security Administration Act 1992<sup>(d)</sup>;

“the 1987 Regulations” means the Housing Benefit (General) Regulations 1987<sup>(e)</sup>;

“the 1989 Regulations” means the Community Charge Benefits (General) Regulations 1989<sup>(f)</sup>;

“the 1992 Regulations” means the Council Tax Benefit (General) Regulations 1992<sup>(g)</sup>;

“authority”—

(a) with respect to claims for council tax benefit subsidy, means a

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(a) 1992 c.5; section 140(7) was amended by the Local Government Finance Act 1992 (c.14), section 103, Schedule 9, paragraph 21(7), but the section as originally enacted continues in force by virtue of the Local Government Finance Act 1992 (Community Charge Benefits) Savings and Transitional Order 1993 (S.I. 1993/232). Section 191 is cited because of the meaning assigned to the word “prescribe”.

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

(c) See section 173(1)(b) and (7) of the Social Security Administration Act 1992; section 173(7) defines “regulations”.

(d) 1992 c.5.

(e) S.I. 1987/1971 amended by S.I. 1988/661, 909, 1444, 1843, 1971, 1989/43, 416, 566, 1017, 1322, 1990/546, 61, 1549, 1657, 1775, 2564, 1991/235, 1599, 2910, 1992/50, 201, 432, 1026, 1101, 1326, 1585, 2148, 3147, 1993/317, 518, 963, 1150, 1249, 1540, 2118, 1994/470 and 527.

(f) S.I. 1989/1321; amended by S.I. 1990/834, 835, 1549, 1647, 1773, 1991/234, 849, 1599, 2742, 2910, 1992/432, 1026, 1101, 1326, 1585 and 2148.

(g) S.I. 1992/1814; amended by S.I. 1993/349, 689, 963, 1150, 1249, 1540, 2118, 1994/470 and 527.

billing authority or, as the case may be, a levying authority to which section 140(2) of the Act(a) refers;

(b) with respect to claims for housing benefit subsidy, means a housing or local authority, as the case may be;

“community charge benefits” and “excess community charge benefits” shall have the same meanings as in the 1989 Regulations;

“excess awards” means overpayments of housing benefit, excess community charge benefits and excess council tax benefit, as the case may be;

“Subsidy Order” means an Order in respect of the relevant year made under section 135(2) (subsidy order with respect to council tax benefit) of the Act;

▶”the Subsidy Order 1995” means the Housing Benefit and Council Tax Benefit (Subsidy) Order 1995(c);◀

▶”the Subsidy Order 1996” means the Housing Benefit and Council Tax Benefit (Subsidy) Order 1996(c);◀

“the relevant year” means the year in respect of which a claim for housing benefit subsidy or council tax benefit subsidy is made;

“rent rebate” and “rent allowance” shall be construed in accordance with section 134 of the Act but shall exclude, in the case of a local authority in England and Wales, any Housing Revenue Account rebates granted by them,

and other expressions used in these Regulations and in the 1987 Regulations, the 1992 Regulations or the Housing Benefit and Council Tax Benefit (Subsidy) Order 1994(d), as the case may be, shall have the same meanings in these Regulations as they have in those Regulations or in that Order.

**Particulars to be supplied by an authority to the Secretary of State in relation to a claim for housing benefit subsidy or council tax benefit subsidy**

2. For the purposes of sections 137(2) and 140(7) of the Act (power for the Secretary of State to withhold payments of housing benefit subsidy or council tax benefit subsidy)(e) the prescribed particulars which are to be supplied to the Secretary of State by an authority in connection with its claim for housing benefit subsidy or council tax benefit subsidy for the relevant year are those specified in the Schedule to these Regulations.

**Conditions to be complied with on making a claim for housing benefit subsidy or council tax benefit subsidy**

3. A claim for housing benefit subsidy or for council tax benefit subsidy shall be certified by the authority’s auditor; and the authority making the claim shall in addition provide such information and produce such records as are required to satisfy the Secretary of State that the claim is properly calculated and shall keep all records with a bearing on its claim in such a way as to enable them to show and the auditor to check that entitlement to subsidy has been correctly calculated.

**Time within which claims for housing benefit subsidy and council tax benefit subsidy are to be made and prescribed particulars provided to the Secretary of State**

4.—(1) An authority making a claim for housing benefit subsidy or council tax benefit subsidy shall submit it to the Secretary of State by the 30th September in the year immediately following the relevant year.

(2) Any particulars relating to a claim for subsidy to which regulation 2 of and the Schedule to these Regulations refer shall be supplied to the Secretary of State on the date the claim is made together with any certificates, records or other

(a) Section 140(2) was amended by the Local Government Finance Act 1992, section 103, Schedule 9, paragraph 21(2).

(b) S.I. 1995/872.

(c) S.I. 1996/1217.

(d) S.I. 1994/523.

(e) Section 140(7) was amended by the Local Government Finance Act 1992, section 103, Schedule 9, paragraph 21(7).

Defn. of “the Subsidy Order 1995” inserted into reg. 1(2) by reg. 2 of S.I. 1995/874 as from 20.4.95.

Defn. of “the Subsidy Order 1996” inserted in reg. 1(2) by reg. 2 of S.I. 1996/1314 as from 11.6.96.

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information required by the Secretary of State under regulation 3 above (conditions to be complied with on making a claim for subsidy).

**Revocation and savings**

5. The Housing Benefit and Community Charge Benefit (Subsidy) Regulations 1991(a), the Housing Benefit and Community Charge Benefit (Subsidy) Amendment Regulations 1992(b) and the Housing Benefit and Community Charge Benefit (Subsidy) Amendment (No. 2) Regulations 1993(c) are hereby revoked, except that they shall continue to apply to any claims for subsidy, particulars to be supplied therewith and conditions and questions relating to the payment of subsidy under the Act for any relevant year before 1st April 1993, as if these Regulations had not been made.

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

15th March 1994

*Alistair Burt*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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(a) S.I. 1991/441; amended by S.I. 1992/701 and 1993/945.

(b) S.I. 1992/701.

(c) S.I. 1993/945.

**Prescribed particulars relating to claims for housing benefit subsidy and council tax benefit subsidy for the relevant year**

1. The total rent rebate and total rent allowance expenditure in the relevant year.

2. The total rent rebate expenditure in the relevant year in cases to which paragraph 20 below refers, which is attributable to that part of the eligible rent which exceeds the relevant threshold specified in a Subsidy Order for the purpose of calculating subsidy on such rents.

3. The total rent rebate expenditure in the relevant year in respect of rents payable to an authority—

- (a) under section 69(2)(b) of the Housing Act 1985<sup>(a)</sup> or section 35(2)(b) of the Housing (Scotland) Act 1987<sup>(b)</sup> for board and lodging accommodation or accommodation which the authority holds on a licence agreement, or
- (b) for accommodation outside the Housing Revenue Account under Part VI of the Local Government and Housing Act 1989<sup>(c)</sup>, which an authority in England or Wales holds on a lease granted for a term not exceeding 3 years, or
- (c) for accommodation which an authority in Scotland holds on a lease granted for a term not exceeding 3 years.

4. The total rent rebate expenditure in the relevant year in cases to which paragraph 3 above refers which is attributable to that part of the eligible rent which exceeds the relevant threshold specified in a Subsidy Order for the purpose of calculating subsidy on such rents.

5. The total number of awards of each of rent rebates, rent allowances, community charge benefits and council tax benefit in the relevant year made in respect of periods before the date of a person's claim where there is a good cause for the claim not having been made at an earlier date and the total amount awarded for those periods of each of such rebates, allowances and benefits.

6.—(1) Where any excess awards to which sub-paragraph (2) below applies have been made in the circumstances specified in sub-paragraph (3) below, the total number and the amounts of those awards and the circumstances in which they were made.

(2) This paragraph applies to awards of—

- (a) housing benefit by way of rent rebates;
- (b) housing benefit by way of rent allowances;
- (c) housing benefit by way of community charge rebates;
- (d) community charge benefits; and
- (e) council tax benefit,

which are identified in the relevant year.

(3) The circumstances specified in this sub-paragraph are—

- (a) departmental error;
- (b) error of the authority making the payment and claiming subsidy;

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(a) 1985 c.68.

(b) 1987 c.26.

(c) 1989 c.42.

- (c) technical overpayments and technical excess benefits;
- (d) errors of claimants;
- (e) fraudulent overpayments and fraudulent excess benefits;
- (f) *(There is no head (f).)*
- (g) duplicate payments following non-receipt, loss or theft of benefit where the original instrument of payment has been encashed; and
- (h) any other excess awards.

(4) In this paragraph “departmental error”, “error of the authority making the payment and claiming subsidy”, “technical overpayments”, “technical excess benefits”, “fraudulent overpayments” and “fraudulent excess benefits” have the meanings assigned to them by article 10 or article 18, as the case may be, of the Housing Benefit and Council Tax Benefit (Subsidy) Order 1994.

7. ▶◀

*Para. 7, as continuing to apply for years before 1.4.94, is reproduced below:—*

7. The total amount of overpayments of housing benefit made under the Housing Benefit Regulations 1985(a) which are recovered in the relevant year from claimants to whom regulation 24 of those Regulations (persons in receipt of supplementary benefit) applied.

Para. 7 deleted by reg. 3(2) of S.I. 1995/874 as from 20.4.95, subj. to saving in reg. 4 *ibid.*

8. The total amount of excess awards in the relevant year in consequence of departmental error which are recovered in the relevant year.

9. The total number and total amount of awards of benefit backdated in the relevant year under each of regulation 72(15) of the 1987 Regulations, regulation 60(18) of the 1989 Regulations and regulation 62(16) of the 1992 Regulations (backdated awards of benefit), as the case may be, which are excess awards.

10. The total rent allowance expenditure in the relevant year attributable to each of—

- (a) that part of any weekly eligible rents which exceeds any relevant threshold specified in a Subsidy Order for the purpose of calculating subsidy on such rents;
- (b) that part of any weekly eligible rents which were at or below any such threshold; and
- (c) that part of any weekly eligible rents to which any such threshold did not apply excluding cases which have been referred to a rent officer for a determination under section 121 of the Housing Act 1988~~(b)~~.

11. The total rent allowance expenditure in the relevant year not attributable to any excess of eligible rent over the threshold in cases to which paragraph 10(a) above refers.

▶12. The total rent allowance expenditure in the relevant year attributable to tenancies liable to determinations by the rent officer—

- (a) under the Rent Officers (Additional Functions) Order 1995~~(c)~~ or as the case may be the Rent Officers (Additional Functions) (Scotland) Order 1995~~(d)~~; and
- (b) where the application for determination by the Rent Officer was made

Para. 12 substituted by reg. 3(2) of S.I. 1996/1314 as from 11.6.96 subj. to saving in reg. 4 *ibid.*

(a) S.I. 1985/677; the powers under which these Regulations were made were repealed by the Social Security Act 1986 (c.50), section 86(2) and Schedule 11, but were continued in force (in part) by the Housing Benefit (Transitional) Regulations (S.I. 1987/1972).

(b) 1988 c.50.

(c) S.I. 1995/1642, amended by S.I. 1995/2365 and 3148 and 1996/959.

(d) S.I. 1995/1643, amended by S.I. 1995/2361 and 3185 and 1996/975.

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before 2nd January 1996, under the Rent Officer (Additional Functions) Order 1990(a) or as the case may be the Rent Officers (Additional Functions) (Scotland) Order 1990(b).◀

*Para. 12, as it stood before it was amended (11.6.96) by S.I. 1996/1314 and as continuing to apply for years before 1.4.96 by virtue of reg. 4 ibid., is reproduced below:—*

12. The total rent allowance expenditure in the relevant year attributable to tenancies which are liable to determinations of the rent officer of the rent which a landlord might reasonably expect to obtain made under Schedule 1 of the Rent Officers (Additional Functions) Order 1990(c) or the Rent Officers (Additional Functions) (Scotland) Order 1990(d), as the case may be.

Para. 13 substituted by reg. 3(3) of S.I. 1996/1314 as from 11.6.96, subj. to saving in reg. 4 ibid.

►13. The total rent allowance expenditure in the relevant year as specified in each of the following paragraphs—

- (a) expenditure on eligible rents in respect of deregulated housing association tenancies not referred to a rent officer;
- (b) expenditure in cases subject to referral to a rent officer for determination, but where no such referral was made;
- (c) expenditure in cases referred to a rent officer before 2nd January 1996 and in cases to which regulation 10 of the Housing Benefit (General) Amendment Regulations 1995(e) applies, which falls under each of the following sub-paragraphs—
  - (i) weekly eligible rents which do not exceed any determination made under the Orders to which paragraph 12 above refers;
  - (ii) expenditure representing the difference between the property-specific rent for the accommodation and the size-related rent in cases where a rent officer has determined that accommodation is unreasonably large but has not determined a high rent under—
    - (aa) paragraph 2A (high rent determinations)(f) of Schedule 1 to the Rent Officers (Additional Functions) Order 1995 or as the case may be the Rent Officers (Additional Functions) (Scotland) Order 1995,
    - (bb) in a case where the application for a determination by the rent officer is made on or after 2nd January 1996, paragraph 3 of the Rent Officers (Additional Functions) Order 1995 or as the case may be the Rent Officers (Additional Functions) (Scotland) Order 1995,
- incurred over a period of up to 13 calendar weeks;
- (iii) that part of the weekly eligible rents which exceeded the relevant rent, in respect of a case to which paragraph 5 of Schedule 6 to the Subsidy Order 1996 (no restriction on unreasonable rents or on rent increases) applies other than expenditure to which sub-paragraph (ii) of this paragraph refers;
- (iv) expenditure to which paragraph 7 of Schedule 6 to the Subsidy Order 1996 (deductions in respect of allowances) applies;
- (d) expenditure in cases referred to a rent officer and determined in accordance with regulations 10 and 11 of the 1987 Regulations as in force on 2nd January 1996;
  - (e) expenditure incurred by an authority resulting from the authority placing on the ineligible amounts a value less than that placed by the rent officer.◀

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- (a) S.I. 1990/428, amended by S.I. 1991/426, 1993/652, 1994/568 and 3040 and revoked (with savings) by S.I. 1995/1642 as from 2.1.96.
  - (b) S.I. 1990/396, amended by S.I. 1991/533, 1993/646, 1994/582 and 3108 and revoked (with savings) by S.I. 1995/1643 as from 2.1.96.
  - (c) S.I. 1990/528; Schedule 1 was amended by S.I. 1991/426 and 1993/652.
  - (d) S.I. 1990/396; Schedule 1 was amended by S.I. 1991/533 and 193/646.
  - (e) S.I. 1995/1644.
  - (f) Paragraph 2A was added by S.I. 1994/568 and amended by S.I. 1994/3040 in the case of England and Wales and by S.I. 1994/582 and 3108 in the case of Scotland.

*Para. 13, as it stood before it was amended (11.6.96) by S.I. 1996/1314 and as continuing to apply for years before 1.4.96 (BUT not for years before 1.4.94 – see earlier version further below) by virtue of reg. 4 ibid., is reproduced as follows:–*

13.—(1) The total rent allowance expenditure in the relevant year, which is attributable to each of the following categories–

- (a) weekly eligible rents which do not exceed any determination made under the Orders to which paragraph 12 above refers;
- (b) the difference between the property-specific rent for the accommodation and the size-related rent in cases where a rent officer has determined that accommodation is unreasonably large but has not determined a high rent–under paragraph 2A (high rent determinations)(a) of Schedule 1 to those Orders and is paid for a period of up to 13 calendar weeks;
- (c) that part of the weekly eligible rents which exceeded the relevant rent, in respect of a case to which paragraph 5 of Schedule 6 to the Subsidy Order 1995 (no restriction on unreasonable rents or on rent increases) applies other than expenditure to which sub-paragraph (b) of this paragraph refers;
- (d) any expenditure to which paragraph 6 of Schedule 6 to the Subsidy Order 1995 (deductions in respect of allowances) applies;
- (e) the eligible rents in respect of deregulated housing association tenancies not referred to a rent officer;
- (f) cases subject to referral to a rent officer for a determination, but where no such referral was made.

(2) In this paragraph “property-specific rent”, “size-related rent” and “relevant rent” have the meanings assigned to them by paragraph 10 of Schedule 6 to the Subsidy Order 1995.

*Para. 13 as it stood before it was amended (20.4.95) by S.I. 1995/874 and as continuing to apply for years before 1.4.94 by virtue of reg. 4 ibid., is reproduced below:–*

13. The total rent allowance expenditure in the relevant year, which is attributable to each of–

- (a) weekly eligible rents which do not exceed any determination of a rent officer of a reasonable market rent or notional rent, under the Orders to which paragraph 12 above refers;
- (b) the difference between the reasonable market rent for the accommodation and the comparable rent for suitably sized properties in cases where the rent officer has determined that accommodation is unreasonably large and is paid for a period of up to 13 calendar weeks;
- (c) that part of the weekly eligible rents which exceeded the rent officer’s determination of a reasonable market rent or notional rent, in respect of which no restriction under regulation 11 (restrictions on unreasonable payments) or regulation 12 (restrictions on rent increases) of the 1987 Regulations would be made other than expenditure to which sub-paragraph (b) of this paragraph refers;
- (d) that part of the weekly eligible rents which exceeded a rent officer’s determination of a reasonable market rent or notional rent, but excluding amounts to which sub-paragraphs (b) or (c) of this paragraph refer;
- (e) the eligible rents in respect of deregulated housing association tenancies not referred to the rent officer; and
- (f) cases subject to referral to the rent officer for a determination but where no such determination has been obtained.

**14.** The total council tax benefit expenditure in the relevant year.

**15.** The total expenditure in the relevant year in respect of discretionary increases of benefit where modifications of the 1987 Regulations have been made in accordance with section 134(8) of the Act or modifications of the 1989 or 1992 Regulations have been made in accordance with section 139(6) of the Act.

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(a) Paragraph 2A was added by S.I. 1994/568 and amended by S.I. 1994/3040 in the case of England and Wales and by S.I. 1994/582 and 3108 in the Case of Scotland.

(b) Section 139(6) was amended by the Local Government Finance Act 1992, section 103, Schedule 9, paragraph 20(5).

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Para. 16 substituted by reg. 3(4) of S.I. 1996/1314 as from 11.6.96, subj. to saving in reg. 4 *ibid.*

►16. The total expenditure in the relevant year in respect of increases of benefit under each of regulation 61(2) or (3) of the 1987 Regulations(a) and regulation 51(5) or 54(4) of the 1992 Regulations(b) (increases of weekly benefit for exceptional circumstances), as the case may be.◄

*Para. 16, as it stood before it was amended (11.6.96) by S.I. 1996/1314 and as continuing to apply for years before 1.4.96 by virtue of reg. 4 *ibid.*, is reproduced below:—*

16. The total expenditure in the relevant year in respect of increases of benefit under each of regulation 61(2) or 69(8) of the 1987 Regulations(c) and ►regulation 51(5), 54(4) or ◄regulation 60 of the 1992 Regulations(d) (increases of weekly benefit for exceptional circumstances), as the case may be.

Words inserted into para. 16 by reg. 3(4) of S.I. 1995/874 as from 20.4.95, subj. to saving reg. 4 *ibid.*

17. The total amount of any instruments of payment in relation to housing benefit, community charge benefit or council tax benefit issued during the relevant year returned to the authority without having been presented for payment or found by the authority to have passed their date of validity without having been so presented.

18. The total amount of any housing benefit subsidy or community charge benefit subsidy paid for any year before the relevant year in respect of any instrument of payment either returned to the authority during the relevant year without having been presented for payment or found by the authority during the relevant year to have passed their date of validity without having been so presented.

19. The total number of benefit weeks and of overrun weeks, if any, in the relevant year, in the case of each of—

- (a) the rent rebates;
- (b) rent allowances; and
- (c) council tax benefit.

Para. 20 substituted by reg. 3(5) of S.I. 1995/874 as from 20.4.95, subj. to saving in reg. 4 *ibid.*

►20.—(1) In respect of dwellings of an authority in Scotland or the Development Board for Rural Wales, the average rent payable in respect of Category 1 dwellings and Category 2 dwellings respectively on the specified date and the final date.

(2) In this paragraph “Category 1 dwellings”, “Category 2 dwellings”, “specified date” and “final date” have the meanings assigned to them by article 6(7) of the Subsidy Order 1995.◄

*Para. 20, as it stood before it was amended (20.4.95) by S.I. 1995/874 and as continuing to apply for years before 1.4.94 by virtue of reg. 4 *ibid.*, is reproduced below:—*

20. In respect of tenants or dwellings, as the case may be, of a local authority in Scotland, of a New Town Corporation established under the New Towns Act 1981(e) or the New Towns (Scotland) Act 1968(f) and of the Development Board for Rural Wales—

- (a) the average rent payable in respect of Category 1 dwellings and Category 2 dwellings respectively on the second relevant date and the third relevant date; and
- (b) the average rent payable by Category A tenants and Category B tenants respectively on the first relevant date and the second relevant date.

(a) Paragraph (2) of regulation 61 was inserted by S.I. 1994/578 and paragraph (3) by S.I. 1995/1644.  
 (b) Regulation 51(5) and 54(4) were added by S.I. 1994/2137.  
 (c) Regulation 61(2) replaces regulation 69(8) with the coming into force of the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527).  
 (d) Regulation 60 was deleted and regulations 51(5) and 54(4) added by regulation 19(3) of S.I. 1994/2137 as from 3/10/94.  
 (e) 1981 c.64.  
 (f) 1968 c.16.

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►21.—(1) The total amount obtained in the relevant year of each of the following categories—

- (a) housing benefit savings;
- (b) council tax benefit savings;
- (c) housing benefit related savings;
- (d) council tax benefit related savings.

Para. 21 substituted by reg. 3(6) of S.I. 1995/874 as from 20.4.95, subj. to saving in reg. 4 *ibid.*

(2) In this paragraph “council tax benefit savings”, “council tax benefit related savings”, “housing benefit savings”, and “housing benefit related savings” have the meanings assigned to them by paragraph 1(2) of Schedule 8 to the Subsidy Order 1995.◀

*Para. 21, as it stood before it was amended (20.4.95) by S.I. 1995/874 and as continuing to apply for years before 1.4.94 by virtue of reg. 4 *ibid.*, is reproduced below:—*

21. The total amount obtained in the relevant year of each of—
- (a) housing benefit savings;
  - (b) council tax benefit savings; and
  - (c) related income support savings.

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations specify the particulars which are required to be provided by an authority to the Secretary of State on the making of claims for housing benefit subsidy and council tax benefit subsidy, the time within which claims for subsidy are to be made, the conditions as to audit of claims and information and records to be produced to the Secretary of State and the authority’s auditor in support of such claims. The Housing Benefit and Community Charge Benefit (Subsidy) Regulations 1991, as amended, are revoked, but saved in respect of any year prior to 1st April 1993.

These Regulations do not impose a charge on businesses.

