

# HOUSING BENEFIT

## LEGISLATION

Housing Benefit is governed by **Sections 122, 129 and 130 to 133 of the Social Security Contributions and Benefits (NI) Act 1992, Sections 73 and 126 to 128 of the Social Security Administration (NI) Act 1992 and the Housing Benefit (Payment to Third Parties) (NI) Order 1996.**

Regulations are contained in the **Housing Benefit Regulations (NI) 2006, SR No. 2006, No. 405 as amended** and the **Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006, SR 2006, No. 406.**

Decision Making and Appeals is governed by the **Housing Benefit (Decisions and Appeals) Regulations (NI) 2001.**

Rates are covered by the **Rates (NI) Order 1977 as amended by the (Amendment) (Northern Ireland) Order 2006 SI No. 2954 (NI 18)**, and by regulations including the **Rate Relief (Education, Training and Leaving Care) Regulations (Northern Ireland) 2007 SR No. 148**, the **Rate Relief (General) Regulations (NI) 2007 SR No. 204** and the **Rate Relief (Qualifying Age) Regulations (Northern Ireland) 2007 SR No. 203** as amended.



## **GLOSSARY**

**AA – Attendance Allowance**

**BRMA – Broad Rental Market Areas**

**CPAG – Child Poverty Action Group**

**CA – Carer’s Allowance**

**CTC – Child Tax Credit**

**DfC – Department for Communities**

**DfE – Department for the Economy**

**DLA – Disability Living Allowance**

**ESA – Employment and Support Allowance**

**ESA(C) – Contribution-based Employment and Support Allowance**

**ESA (IR) – Income-related Employment and Support Allowance**

**EEA – European Economic Area**

**HMRC – Her Majesty’s Revenue and Customs**

**JSA(IB) – Income-based Jobseeker’s Allowance**

**LHA – Local Housing Allowance**

**LPS – Land and Property Service**

**NIHE – Northern Ireland Housing Executive**

**PC – Pension Credit**

**PC(GC) – Pension Credit Guarantee Credit**

**PIP – Personal Independence Payment**

**SDA – Severe Disablement Allowance**

**UC – Universal Credit**

**WTC – Working Tax Credit**



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## INTRODUCTION

Housing Benefit is a means tested benefit. It can be claimed by people who have a low income and either rent their homes or pay rates as owner occupiers. It is paid whether or not a person is in full-time work.

Housing Benefit for tenants is paid by the Northern Ireland Housing Executive (NIHE). Owner occupiers receiving rate rebates by way of Housing Benefit are paid by the Land and Property Services (Rating Services) which is referred to in the notes as the LPS.

Different rules apply to people claiming Housing Benefit who are at least the qualifying age for Pension Credit (PC) (see *Encyclopedia of Social Welfare Rights, A8. Pension Credit*), are not claiming Income-based Jobseeker's Allowance (JSA(IB)) or Income-related Employment and Support Allowance (ESA(IR)) and do not have a partner claiming Income Support, JSA(IB) or ESA(IR). Section 6 deals with the rules for this group and refers to them as people of at least the qualifying age for PC.

The rating system for domestic properties has been reformed and a new scheme providing additional help with rates, the Rate Relief Scheme, was introduced (see 14.7 for further details). **This scheme operates alongside and is additional to the Housing Benefit scheme.**

## 1. WHO CAN CLAIM?

To qualify for Housing Benefit, a person must satisfy all of the conditions set out below.

### 1.1 Must satisfy capital rules

If a person is under the qualifying age for PC, Housing Benefit will not be paid where s/he and/or partner have over £16,000 capital. Some capital may be ignored in certain circumstances, but a person may also be treated as having capital which s/he does not actually possess in other circumstances.

The first £6,000 in capital is ignored altogether.

Tariff income is applied to capital between £6,000 (£10,000 if living permanently in a care home) and £16,000. A person is assumed to have an income of £1 for every £250 or part of £250 above £6,000.

The capital of a child/qualifying young person is ignored.

Different capital rules apply to a person of at least the qualifying age for PC (see sections 6.1.1 and 6.5.3.3).



## 1.2 Must be liable for rent

A person or her/his partner must be liable to pay rent on the home.

Where the person claiming is not liable but in practice is paying the rent, has to do so in order to stay in the home and:

- the person claiming is a former partner of the person who is liable; or
- the person claiming is not the former partner of the person who is liable and it is reasonable in the circumstances to treat her/him as liable to pay the rent;

then s/he will be treated as liable for rent for Housing Benefit purposes.

A person liable to make payments in respect of a dwelling will be treated as if s/he was not liable where:

- the tenancy or other agreement to pay rent is not on a commercial basis. In determining this, regard should be had as to whether some of the terms are legally unenforceable. The relationship to the landlord should also be considered, although just because the landlord is a relative or close friend, or provides the person with care and support, does not automatically mean the rent is non commercial;
- s/he pays rent to her/his (or partner's) close relative whom s/he lives with in the dwelling;
- s/he is renting a former joint home from her/his ex-partner or her/his partner's ex-partner;
- s/he (or partner) is responsible for a child of the landlord;
- s/he rents the dwelling from a company or trust and:
  - s/he or partner; or
  - her/his (or partner's) close relative who lives with her/him; or
  - her/his (or partner's) ex-partner

is a director or employee of the company or beneficiary or trustee of the trust. This does not apply where the liability was not created to take advantage of the Housing Benefit scheme. The onus rests with the person claiming to prove this;

- s/he rents the dwelling from a trustee of a trust of which her/his (or partner's) child is a beneficiary;
- s/he (or partner) previously owned the dwelling. This does not apply where either:
  - the person concerned could not have continued to live there without giving up ownership; or
  - five years or more has elapsed between the date on which the person claiming or her/his partner relinquished the ownership of the property and the date on which Housing Benefit is claimed;



- s/he (or partner) is employed by the landlord and s/he occupies the dwelling as a condition of employment;
- s/he was previously a non-dependant of someone who resided, and continues to reside, in the dwelling. This does not apply where the liability was not created to take advantage of the Housing Benefit scheme. Again, the onus rests with the person claiming to prove this;
- s/he is a member of, and is wholly maintained (disregarding any liability s/he may have to make payments in respect of the dwelling s/he occupies and her/his home), by a religious order;
- s/he is a full time student;
- s/he does not satisfy the habitual residence test;
- s/he lives in a care home, nursing home or independent hospital (although there are exceptions);
- the liability was created to take advantage of the Housing Benefit scheme.

### **1.3 Accommodation as the person's home**

Housing Benefit will only be paid for accommodation which is normally occupied as the home. In most cases, benefit will only be paid on one home and will not be paid until the person has actually moved into the accommodation.

In specific circumstances, however, once a person has moved in, it is possible to get Housing Benefit for a new home up to four weeks before strictly moving in. These circumstances are where the delay in moving in is reasonable and:

- the move was delayed while waiting for a Social Fund payment for a need connected with the move; and
  - a member of the family is aged five or under; or
  - the applicable amount includes a disability, severe disability, disabled child or pensioner premium or a support component or work-related activity component; or
  - the person is at least the qualifying age for PC and s/he or her/his partner is not in receipt of Income Support, ESA(IR) or JSA(IB); or
- the delay was necessary to adapt the home to the disability needs of the person or a member of the family; or
- liability for payment started while in hospital or residential accommodation.

To qualify on the basis of the above circumstances, a person must have moved in, been liable to make payments and claimed benefit before moving in (or in some cases, notified the move as a change of circumstances). If a claim was made and it has not been decided or it was refused, a second claim must be made within four weeks of moving into the new accommodation.





Housing Benefit can also be paid on two homes, but only in particular circumstances. These include:

- where a person has left the previous home because of fear of violence, either in that home or from a former member of the family (the latter could be outside the home), the person intends to return home and it is reasonable for her/him to receive Housing Benefit for two homes. In this case, two rents can be paid up to a maximum of 52 weeks;
- where a member of the couple is a student or a trainee on a government training course entitled to Housing Benefit and unavoidably living away from home during term time. It must be reasonable for her/him to receive Housing Benefit for two homes; or
- the family is so large that NIHE has provided accommodation in two separate dwellings.

Where a person has moved into a new home and could not reasonably avoid liability to make payments in respect of two homes or has a liability for two rents because it was necessary to adapt the new home to the disability needs of the person or a member of the family, payment can be made on two homes for up to four weeks from the day of the move.

In addition, rent can be paid for up to four weeks on a former home where there is unavoidable liability for rent and the person:

- has left home because of the threat of or actual violence, does not intend to return and Housing Benefit cannot be paid for two homes (see above); or
- has left home and moved into a new home for which s/he is not liable for rent.

Special rules apply where a person is temporarily absent from home (see section 11).

## **1.4 Must satisfy right to reside test and habitual residence test**

### **1.4.1 Right to reside test**

As a condition of entitlement to Housing Benefit, a person must have a 'right to reside' in the United Kingdom, Republic of Ireland, the Channel Islands or the Isle of Man and must be treated as habitually resident in the UK. This is a complex matter and will depend on immigration law. A person should seek advice from Law Centre (NI) if refused Housing Benefit due to not having a right to reside.

Under UK law, the following groups of people have a right to reside for Housing Benefit purposes:

- UK and Irish nationals;
- there has been a recent change in the Housing Benefit Rules meaning that European Economic Area nationals are no longer automatically entitled to Housing Benefit if they are receiving Jobseeker's Allowance



- people who are treated as workers or self-employed persons within specific pieces of European legislation and who are also citizens of the European Economic Area (ie Austria, Belgium, Bulgaria, Cyprus, Croatia (restrictions currently apply to the rights of Croatian nationals), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Iceland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK) and their dependants;
- refugees; and
- people who have been granted new forms of leave outside of the immigration rules, known as humanitarian protection and discretionary leave.
- former 'workers' under European Union law who are temporarily incapable of work or who have recently worked in the UK and are signing on for Jobseeker's Allowance (JSA);
- self sufficient EEA nationals;
- EEA students who are self sufficient at the start of the relevant course;
- people in receipt of Income Support or Income-related ESA;
- family members of an EEA national in any of the above groups\*\*;
- people with exceptional leave to enter or remain;
- any person who has acquired a permanent right to reside;

The test has caused problems for EEA nationals who are not working or job seeking eg those with caring responsibilities. Anyone affected should contact Law Centre (NI) for further advice.

#### 1.4.2 Croatian nationals

On 1 July 2013, Croatia joined the European Union. Special rules will limit the access of Croatian nationals to the UK labour market until at least 1 July 2018.

Most Croatian nationals will need permission to work in the UK and will only have full EU rights after twelve months of authorized work. Contact Law Centre (NI) for further advice in relation to the rights of Croatian nationals.

#### 1.4.3 The habitual residence test

A person must be habitually resident or treated as habitually resident in the 'Common Travel Area' which is the United Kingdom, Republic of Ireland, Channel Islands or Isle of Man. The test applies to all people (but not partners or dependants) including British or Irish citizens returning to Northern Ireland.

In deciding whether a person is habitually resident, NIHE looks at all the facts of the case. Relevant facts may include whether the person:

- brought all her/his family members and possessions;



- had arranged employment, accommodation and services such as school places before arrival;
- has registered with a GP or utility companies;
- has opened a bank account;
- has retained property, employment, capital in her/his state of origin;
- travelled on a return or a one way ticket.

Most people will have to show actual residence for an appreciable period of time before satisfying the test. This is not defined but decisions have been made that suggest it is normally for a period of between one month and three months. However in some cases a person could be found as habitual resident in a shorter time.

Anyone refused Housing Benefit on habitual residence grounds should make a fresh claim and contact Law Centre (NI) for further advice.

### **1.5 Must not be subject to immigration control**

A person is subject to immigration control if s/he is not an EEA national and:

- requires leave to enter or remain but does not have it;
- has leave to enter or remain but on the condition that s/he does not have recourse to public funds which will include Housing Benefit;
- has leave to enter or remain and is subject to a formal undertaking (meaning that a 'sponsor' has given a legal undertaking to support her/him);
- is appealing a decision about her/his immigration status.

If a person is defined as a person subject to immigration control, s/he will be excluded from entitlement to many benefits including Housing Benefit unless s/he falls with certain exemptions.

## **2. CLAIMING HOUSING BENEFIT**

A person claiming ESA(IR), Income Support or JSA(IB) will be issued with a separate form for claiming Housing Benefit. This must be returned to the local social security office within one month of the date when the claim for ESA(IR), Income Support or JSA(IB) was made. Housing Benefit will start from the first day of entitlement to ESA(IR), Income Support or JSA(IB).

The process for claiming Housing Benefit is different for a person who is at least the qualifying age for PC and in receipt of PC. See section 6.

A person not on ESA(IR), Income Support or JSA(IB) must apply directly to the local NIHE district office or the local LPS office (if owner occupier). The date of claim will be treated as the date of first contact, providing a written claim is received within one month, and payment will usually begin on the Monday following the date of claim.



Where a person starts a tenancy (or becomes liable for the first time to make payments for accommodation being occupied as the home), entitlement starts in the benefit week in which the claim is made. Where a person lives in a hostel or certain board and lodging accommodation with a daily rent liability, s/he will be entitled to Housing Benefit from the first day of occupation.

A person can make a claim for backdating of Housing Benefit for up to six months where s/he can show that s/he meets all the qualifying conditions and that there has been continuous good cause for not making a claim earlier (but see section 6.2 if a person is at least the qualifying age for PC).

NIHE is hoping to introduce phone and web based claims. No date for this has yet been fixed.

### **3. EXTENDED PAYMENTS**

A person whose entitlement to Income Support, JSA(IB), ESA, Incapacity Benefit or Severe Disability Allowance (SDA) has ended as a result of her/him or partner starting work, increasing hours of work or increasing earnings will be entitled to an extended payment of Housing Benefit.

This means that for the four weeks following entitlement to Income Support, JSA(IB), ESA, Incapacity Benefit or Severe Disablement Allowance (SDA) finishing, Housing Benefit will be paid at the same rate as that being paid when entitlement to one of the benefits ended, unless the rate to which the person or her/his partner would be entitled in her/his new circumstances is higher.

To qualify for an extended payment, a person or partner must satisfy the following conditions:

- was entitled to and in receipt of Income Support, JSA(IB) or ESA(IR) and entitlement ended because s/he or partner started work or increased hours of work or increased earnings and s/he has been continuously entitled to and in receipt of Income Support, JSA or ESA(IR) (or a combination of these) for 26 weeks; or
- unless s/he is getting PC, s/he or her/his partner was entitled to and in receipt of Contribution-based ESA (ESA(C)), Incapacity Benefit or SDA and not entitled to Income Support, JSA(IB) or ESA(IR) and entitlement ended because s/he or partner started work or increased hours of work or increased earnings and s/he was continuously entitled to and in receipt of ESA(C), Incapacity Benefit or SDA or a combination of these for at least 26 weeks.

If the above applies a person must also satisfy the following conditions namely:

- the increase in working hours or earnings is expected to last for five weeks or more; and
- liability for rent will continue for at least four weeks.



It is not necessary to make a claim for an extended Housing Benefit payment. A person must notify the Social Security Agency or NIHE of the change of circumstances and payment should then be made automatically.

## 4. PAYMENT OF HOUSING BENEFIT

Housing Benefit for NIHE tenants is paid in the form of a reduction in rent. Housing associations tenants and private tenants are usually paid by account transfer although in certain circumstances Housing Benefit may be paid directly to the landlord.

Housing Benefit must be paid directly to the landlord where a person is on Income Support, JSA, ESA or PC and the Social Security Agency is paying part of that to cover rent arrears. Direct payments will also be made where at least six weeks rent arrears are owed unless NIHE considers it not to be in the person's overriding interests to pay the money directly to the landlord.

NIHE also has discretion to make direct payments where the person requests this or it is decided that it is in her/his best interests or s/he has left accommodation and there are rent arrears. The LPS has similar powers to make direct payments.

Housing Benefit is paid in arrears. Where Housing Benefit is paid directly to a landlord, the payment is made four weeks in arrears. A person who began to receive Housing Benefit before 7 October 1996 continues to get payment in advance unless s/he moves accommodation or has a break in her/his claim.

Providing a person claims on an official application form and gives all the information needed to deal with the claim, NIHE is under a duty to give a decision within fourteen days of the application or as soon as is reasonably practicable thereafter. Private and housing association tenants whose claims are not decided within fourteen days are entitled to an interim payment until the claim is finally sorted out.

Whilst claiming Housing Benefit, a person has an ongoing duty to report any changes in circumstances (see section 7) which might affect entitlement.

## 5. CALCULATING HOUSING BENEFIT

How Housing Benefit for people under the qualifying age for PC is worked out depends on whether a person is in receipt of Income Support, JSA(IB) or ESA(IR) or not.

### **□ Person on Income Support, JSA(IB) or ESA(IR)**

Housing Benefit for a person on Income Support, JSA(IB) or ESA(IR) is worked out by calculating maximum Housing Benefit (ie 100 per cent eligible rent and 100 per cent eligible rates). This is the amount of assistance a person on Income Support, JSA(IB) or ESA(IR) is entitled to.



To work out maximum Housing Benefit, see 5.1.

**□ Person not on Income Support JSA(IB) or ESA(IR)**

There are four steps to calculating Housing Benefit for a person not on Income Support, JSA(IB) or ESA(IR).

These are:

**Step 1:** calculate maximum Housing Benefit (ie 100 per cent eligible rent and 100 per cent eligible rates);

**Step 2:** calculate the person's applicable amount for Housing Benefit;

**Step 3:** calculate the person's income for Housing Benefit;

**Step 4:** compare income with applicable amount.

If income is less than applicable amount, maximum Housing Benefit is payable.

Where income is greater than applicable amount, apply taper to the excess figure to reduce Housing Benefit entitlement.

## **5.1 Step 1: calculate maximum Housing Benefit**

Maximum Housing Benefit is 100 per cent eligible rent and 100 per cent eligible rates. In practice, this will mean the normal rent and rates charged minus any deductions for non-dependent adults living at home, fuel charges, meal charges and certain service charges where these are included as part of the rent. However, eligible rent for private sector tenants can also be restricted to a level lower than the contractual rent in certain other circumstances (see section 9). From April 2011 for new claimants and on a phased basis through to January 2012 for existing claimants, a cap has been introduced to the maximum rent in the private rented sector. Any accommodation with more than four bedrooms will have the four bedroom rate cap applied. For more information see Section 9.2 and 9.4.

### **5.1.1 Deductions for non-dependants**

Adults living at home are expected to contribute towards the rent and rates therefore set deductions are made from eligible rent and rates. These deductions are as follows.



**Weekly deductions for rent**

Aged eighteen or over, in full-time paid work (and not on Pension Credit) and gross income of:

£420.00 or more	£94.50
£338.00 - £419.99	£86.10
£253.00 - £337.99	£75.60
£195.00- £252.99	£46.20
£133.00 - £194.99	£33.65
Less than £133.00	£14.65

**Weekly deductions for rates**

Aged 18 or more, in full-time paid work and gross income of:

£394.00 or more	£9.90
£316.00 - £393.99	£8.25
£183.00 - £315.99	£6.55
Less than £182.99	£3.30

These income levels only apply to non-dependants in full-time paid work but see below if the non-dependant is also on PC.

Full-time paid work is paid employment of sixteen hours or more a week. Gross income is gross wages (before tax and national insurance deductions) and most other income.

Income which is disregarded includes Disability Living Allowance (DLA), Attendance Allowance and payments from the MFE Trust (formerly the Macfarlane Trust and the Eileen Trust) the Independent Living Fund and the Skipton Fund.

Where a non-dependant is not in full-time paid work, a weekly deduction of £14.65 will usually apply. Exceptions to this rule provide that in certain cases no deductions will be applied (see below).

A weekly deduction of £14.65 will be made where a person is on Income Support or JSA(IB) or ESA(IR) and aged 25 or over.

No deduction will be made for any non-dependant who is:



- receiving a relevant training allowance; or
- aged under 25 and on Income Support, JSA(IB) or ESA(IR) which does not include a work related or support component; or
- on a Jobskills programme; or
- receiving PC; or
- in prison; or
- in hospital for more than 52 weeks; or
- a full-time student during her/his period of study unless it is the summer vacation and s/he is in full-time work; or
- aged under eighteen; or
- currently staying in the household but whose normal home is elsewhere.

No non-dependant deductions will be made if the person claiming or partner is:

- is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such as for a 28 week period where a person ceases to be so certified); or
- receiving Attendance Allowance or any rate of the care component of DLA.

This applies regardless of the number of non-dependants at home or their circumstances.

### 5.1.2 Fuel charges

Housing Benefit will not usually be paid for fuel charges (for example, heating, lighting, hot water or cooking) that are included as part of rent.

However, a service charge for the use of fuel in communal areas will be met where that charge is separately identified from any other charge for fuel used within accommodation.

How fuel charges are treated depends upon whether or not the charge for fuel is specified as part of the rent. The general rule is that if the fuel charge is specified, this amount is deducted from rent. Where the fuel charge is unspecified, a flat rate fuel deduction is made. The amount deducted from eligible rent is as follows.

- **Where the person occupies more than one room**

Heating	£28.80
Hot water	£3.35
Lighting	£2.30
Cooking	£3.35
<b>Total</b>	<b>£37.80</b>





- **Where the person occupies one room only**

Heating or heating combined with either hot water or lighting or both	£17.23
Cooking	£3.35
<b>Total</b>	<b>£20.58</b>

### 5.1.3 Charges for meals

Any charge for meals as part of rent will not be covered by Housing Benefit. Where housing costs include an amount for meals or board, then a set deduction will be made in working out eligible rent. People in hostels or board and lodging are likely to be affected by these rules.

The deductions are as follows.

- **Where at least three meals a day are provided**

for a person and each  
additional member of the  
family aged sixteen or over    £26.85

for each additional member  
of the family aged under  
sixteen                                £13.60

- **Where breakfast only is provided**

for a person and each  
additional member of the  
family, regardless of age        £3.30

- **In all other cases (part-board)**

for a person and each  
additional member of the  
family aged sixteen or over    £17.85

for each additional  
member of the family aged  
under sixteen                        £9.00

A higher meals deduction in respect of a young person aged sixteen will not begin until the first Monday in September following her/his sixteenth birthday.



#### 5.1.4 Service charges

The general rule is that service charges are eligible for Housing Benefit if they are reasonable, paid as part of the tenancy and not specifically excluded from assistance. However, service charges in supported accommodation are treated differently (see 5.1.5). Service charges eligible for Housing Benefit include:

- services for the provision of adequate accommodation including general management costs, gardens, children's play areas, lifts, entry phones, communal phone costs, portering, rubbish removal and TV and radio relay for UK channels only;
- laundry facilities (for example, communal laundry facilities), but not charges for the provision of personal laundry service;
- furniture and household equipment (as provided in a furnished tenancy), but not if there is an agreement in which the furniture will eventually become the tenant's own property;
- cleaning of rooms and windows in communal areas.

The following services are not eligible for Housing Benefit:

- sports facilities;
- television rental, licence and subscription fees;
- transport;
- personal laundry service;
- medical expenses;
- nursing and personal care;
- counselling and other support services;
- provision of an emergency alarm system;
- food, including prepared meals;
- charges in respect of any other service not connected with the provision of adequate accommodation and not included in the list of eligible charges above.

#### 5.1.5 Service charges in supported accommodation

Supported accommodation means:

- accommodation provided by NIHE, a housing association, a registered charity or voluntary organisation where a person receives care, support or supervision provided by or on behalf of that body; or
- hostel type accommodation for people without a fixed way of life which is funded by the Resettlement Agency;
- accommodation occupied by a private sector tenant for which social services have made a community care assessment.



For people in supported accommodation, service charges are not eligible for Housing Benefit. Instead, NIHE funds the landlord (eg a voluntary organisation or other social landlord) to provide the following services:

- cleaning of rooms and windows if neither the person claiming nor anyone else in her/his household is able to do it;
- the provision of an emergency alarm system in accommodation which is specifically designed or adapted or particularly suitable for elderly, sick or disabled people;
- general counselling and support to help a person:
  - maintain the security or safety of her/his accommodation; or
  - comply with certain terms of the tenancy agreement;
- other counselling and support services provided by a warden in appropriate types of accommodation, eg sheltered accommodation.

## 5.2 Step 2: calculate applicable amounts

Housing Benefit is based on a comparison of income with a person's applicable amount (ie personal allowances plus premiums). A person's applicable amount is calculated in the same way for Housing Benefit as for Income Support except that:

- the applicable amount for Housing Benefit includes components (where the person or her/his partner has limited capability for work) as well as personal allowances and premiums for children and qualifying young people whereas the applicable amount for Income Support does not.

Applicable amounts are fixed by the government every April. The amounts that apply depend on age, whether single, a lone parent or one of a couple and the number of children and/or qualifying young people.

### 5.2.1 Personal allowances

Status	Age	Amount
Couple	both under 18	£87.50
	both under 18 (person claiming on main phase ESA)	£114.85
	either partner aged 18 or over	£114.85
Lone parent	aged under 18	£57.90
	aged under 18 (on main phase ESA)	£73.10



	aged 18 or over	£73.10
Single person	aged under 25	£57.90
	aged under 25 (on main phase ESA)	£73.10
	aged 25 or over	£73.10
Child/qualifying young person	per child/qualifying young person	£66.90

A child or qualifying young person is someone who the person is responsible for and who lives in the same household. This includes anyone under sixteen. It also includes anyone aged sixteen or over but under 20 who counts as a qualifying young person for Child Benefit purposes, including a person who:

- has left relevant education or training up to and including 31 August after her/his sixteenth birthday;
- has left education or training and is registered for work, education or training and is within her/his extension period;
- is aged sixteen or over and under 20 and started or enrolled on the course of training before turning nineteen and is either on a full-time course of non-advanced education or approved training or has finished such a course and been accepted on another such course. Special rules apply to those aged over nineteen.

A person aged sixteen or seventeen is entitled to Housing Benefit if s/he satisfies the normal rules of entitlement. Special rules apply to sixteen and seventeen year olds who claim Housing Benefit and who have been looked after by social services. People in this category should seek support from social services and if necessary contact Law Centre (NI) for further advice. Children who are being fostered by a claimant are not treated as occupying the claimant's home. The claimant will receive extra foster care payments to cover costs in relation to fostering.

### 5.2.2 Premiums

Premiums are added to basic personal allowances in recognition of extra expenses due to disability or having children and/or qualifying young people.

#### 5.2.2.1 Family premium

A family premium is awarded in respect of a family with a child or qualifying young person. One family premium applies regardless of the number of children or qualifying young people.





### 5.2.2.5 Enhanced disability premium

This premium is applicable where a person or any member of her/his family who is under the qualifying age for PC:

- is in receipt of the high rate care component of DLA; or
- is or can be treated as having limited capability for work related activity.

In most cases, a person is treated as receiving the highest rate care component of DLA during any period when it is suspended because s/he is in hospital.

A separate premium is paid for each person who is disabled and can be paid on top of any other premium.

#### Amount

per child/qualifying young person	£24.43
single adult	£15.75
couple	£22.60

### 5.2.2.6 Severe disability premium

The severe disability premium is awarded where:

- a single person:
  - is in receipt of Attendance Allowance or DLA (higher or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; and
  - has no one receiving CA for her/him; and
  - has no non-dependants aged eighteen or over normally residing with her/him; or
- the person claiming and partner both receive Attendance Allowance, DLA (higher or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance or the person receives one of those benefits and the partner is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified); and
  - someone is receiving CA for one of them, but not the other; and
  - there are no non-dependants aged eighteen or over normally residing with them (couple lower rate); or
- the person claiming and partner are both receiving Attendance Allowance, DLA (higher or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; and
  - no one receives CA for either the person or partner; and



- there are no non-dependants aged eighteen or over normally residing with them (couple higher rate).

**Amount**

single person	£61.85
couple (lower rate)	£61.85
couple (higher rate)	£123.70

**Note:** A person who receives one of the required benefits and has a partner who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) is treated as a single person.

**5.2.2.7 Disability premium**

To qualify for a disability premium, the person or her/his partner must be under the qualifying age for PC. There are three routes to the disability premium.

- A person can qualify if s/he or her/his partner:
  - receives DLA, Working Tax Credit (WTC) which includes a disability or severe disability element, war pensioner’s mobility supplement, Constant Attendance Allowance or payments from the invalid vehicle or war pensioners vehicle schemes; or
  - is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified).

A person on ESA, or who has or is treated as having limited capability for work, will not receive a disability premium with Housing Benefit. S/he may instead qualify for a work related activity or a support component (see 5.2.3 below). This applies even if a claimant would qualify for a disability premium on other grounds eg because s/he or her/his partner gets DLA or her/his partner gets Incapacity Benefit. However, if the claimant’s partner becomes the claimant and s/he does not have limited capability for work then the disability premium can be included. It may therefore be advantageous to put the claim in the partner’s name. If in any doubt, contact Law Centre (NI).

**Amount**

single person	£32.35
Couple	£45.95

**5.2.3 Components**

A work related activity or support component is added to the personal allowances and premiums in recognition of extra expenses due to a person having limited



capability for work. The person must be under the qualifying age for PC. Only one component can be added. If both the person claiming and her/his partner satisfy the rules for a component, the one that relates to the person claiming is added. A person cannot get a disability premium with a component (see 5.2.2.7 above)

The components are paid at one rate (there is no couple rate). In some cases (eg where one member of a couple qualifies for a support component and the other to a work-related activity component) it may be in the couple's interests to swap who claims Housing Benefit. If in any doubt, contact Law Centre (NI).

### 5.2.3.1 Support component

A person can qualify for a support component if:

- s/he is not entitled to a disability premium; and
- s/he or her/his partner has claimed ESA; and
- s/he or her/his partner has, or is treated as having, limited capability for work-related activity; and
- the ESA assessment phase has ended or the person is terminally ill.

#### Amount

single person	£36.20
couple	£36.20

### 5.2.3.2 Work-related activity component

A person can qualify for a work-related activity component if:

- s/he is not entitled to a disability premium; and
- s/he or her/his partner has claimed ESA; and
- s/he or her/his partner has, or is treated as having, limited capability for work; and
- the ESA assessment phase has ended or the person is terminally ill.

#### Amount

single person	£29.05
couple	£29.05

## 5.3 Step 3: calculate income

Income includes earnings, net profit if self-employed and other income. The income of a child/qualifying young person is ignored. All earnings are subject to a disregard. The treatment of income depends upon the source of the income.





### 5.3.1 Earnings

Earnings include:

- Statutory Sick Pay (SSP);
- Statutory Maternity Pay (SMP);
- Statutory Paternity Pay (SPP);
- Statutory Adoption Pay (SAP);
- holiday pay; and
- any payments not wholly, exclusively and necessarily incurred in carrying out the duties of employment.

Net earnings are counted (ie gross earnings minus tax, national insurance and half of any personal pension contribution).

In self-employment, net profit is calculated. This means all self-employed earnings minus reasonable expenses, tax, national insurance contributions and half of any payment towards a personal pension.

In the case of childminders, the net profit is one third of earnings less tax, national insurance and any pension contribution.

Reasonable expenses are those wholly and exclusively incurred for the purposes of running the business. Where an item is used partly for work and partly for private purposes (eg a car or phone), the costs are apportioned between the two and only costs associated with the business are allowed.

Reasonable expenses include:

- repayments of capital on loans for replacing equipment and machinery;
- repayment of capital on loans for, and income spent on, the repair of a business asset except where this is covered by insurance;
- interest on a loan taken out for the purposes of the business;
- excess of VAT paid over VAT received;
- banking or commission charges on converting earnings from another currency into sterling.

Reasonable expenses do not include:

- any capital expenditure;
- depreciation;
- money for setting up or expanding the business (eg the cost of adapting the business premises);
- any loss incurred from the beginning of the current assessment period. If the business makes a loss, the net profit is nil. The losses of one business cannot be offset against the profit of any other business in which a person is engaged;
- capital repayments on loans taken out for business purposes;



- business entertainment expenses;
- unpaid liabilities, even if earnings are deposited with a trustee-in-bankruptcy to discharge;
- debts not proven to be bad debts, though expenses in recovering a debt can be deducted.

#### **5.3.1.1 How earnings are worked out**

Earnings are normally assessed on the last five weeks before a claim if a person is paid weekly or the last two months if paid monthly. Where earnings fluctuate or there has been a recent change in earnings or about to be such a change, a different period can be used to give a more accurate picture.

If a person has just started work, an estimate can be based on likely future earnings.

For the self-employed, earnings are normally assessed over an appropriate period to determine earnings. This period must not be longer than a year.

#### **5.3.1.2 Earnings disregards**

Earnings are subject to the following disregards:

- £25 where the person is a lone parent;
- a permitted work disregard where the person or her/his partner is doing permitted work (see 5.3.1.2.1 below);
- £20 where the person or her/his partner qualifies for a disability or severe disability premium or a work related activity or support component;
- £20 for a part-time firefighter, auxiliary coastguard, lifeboat person, part-time army service (NI), part-time PSNI reserve or in the territorial army;
- £20 where carer premium is awarded;
- £10 if a couple where none of the above apply;
- £5 if single and none of the above apply.

Only one disregard can apply. Where the person and her/his partner both have earnings, only one disregard applies between them.

##### **5.3.1.2.1 Permitted work disregards**

If the person or her/his partner is doing 'permitted work' while receiving ESA(C), Incapacity Benefit, Severe Disablement Allowance or National Insurance credits for limited capability or incapacity for work, and earnings are subject to the permitted work earnings limit for that benefit or credit, earnings for Housing Benefit are subject to the same disregard (either £20 or £103). If the person is a lone parent, the lower permitted work disregard is £25 instead of £20.

If earnings from the permitted work are less than the appropriate disregard, the remainder can be used up on earnings from other work. For a partner's earnings, this only applies up to a maximum of £20 unless s/he is also doing permitted work.



### 5.3.1.2.2 Additional earnings disregard

Whichever standard earnings disregard applies is increased by £17.10 where:

- a person or partner receives the 30 hour element as part of WTC; or
- a person or partner receives the family premium as part of Housing Benefit and one works at least sixteen hours a week; or
- a person or partner receives the disability premium or the work related activity component or support component as part of Housing Benefit and is working sixteen hours or more a week. The person for whom the premium/component is awarded must work sixteen hours; or
- a person or partner is aged 25 or over and works 30 hours or more a week; or
- a person is a lone parent and works sixteen hours or more a week.

There is no increase in the standard earnings disregard where the person's (plus partner's) earnings do not exceed the total of:

- whichever standard earnings disregard applies; and
- childcare charges disregarded against income (see below); and
- the additional 30 or sixteen hour earnings disregard of £17.10.

Where the total earnings exceed the total of the above and there is an award of WTC, £17.10 of WTC is disregarded.

### 5.3.1.2.3 Childcare charges

Relevant childcare charges of up to £175 if the person is paying for one child and £300 for more than one child per week can be offset against earnings when calculating Housing Benefit. In certain circumstances, they can be offset against earnings plus WTC and Child Tax Credit (CTC) – see below. The help is for childcare in respect of a child or children under fifteen (sixteen if disabled) and is available to:

- a couple where both are working sixteen hours a week or more;
- a couple where one member is working sixteen hours a week or more and the other member is treated as incapacitated or in hospital or in prison;
- a lone parent working sixteen hours a week or more;
- couples and lone parents who are off work sick. However, for lone parents it will stop after they are off work for 28 weeks.

Childcare must be provided by a:

- registered childminder or other registered childcare provider such as a nursery; or
- school or other establishment specifically exempt from registration under the Children (NI) Order 1995; or



- childcare scheme operating on Crown property or out of hours club or school premises run by the school or local health and social services trust or education and library board; or
- foster parent or carer who provides childcare for someone other than a child being fostered; or
- childcare scheme run by an approved provider (eg breakfast club or after school club for children aged seven or over);
- childcare provided in a child's own home by a person approved by a health and social care trust under the Home Care Providers Scheme. Childcare provided by a parent or relative (step-parent, grand-parent, brother, sister, uncle or aunt) in the home of the child or relative is excluded.

Weekly childcare charges should be calculated over whatever period, not exceeding a year, that gives the best estimate of the average weekly charge. Childcare charges can be calculated where an agreement for childcare has been made but charges for that care have not yet been incurred. The calculation of future charges is based on a written estimate provided by the person and childminder or childcare provider.

In certain cases, earnings plus WTC or CTC can be subject to the childcare disregard. This applies where the earnings of the person claiming are less than the lower of either her/his childcare charges or her/his childcare costs disregard.

A person engaged in remunerative work immediately before becoming entitled to SSP, ESA, lower rate Incapacity Benefit, Income Support or national insurance credits on grounds of incapacity will continue to be treated as in remunerative work for childcare disregard purposes for a period.

Childcare charges can be deducted for a new born baby or newly adopted child where a person on maternity, paternity or adoption leave is receiving SMP, SAP, SPP or maternity allowance and was in remunerative work before the maternity, paternity or adoption leave began.

### **5.3.2 Other income**

Some income is counted in full, some is partly disregarded and some is completely disregarded.

#### **5.3.2.1 Income counted in full**

- WTC and Child Tax Credit (CTC) awarded less any deduction to recover an overpayment which arose in a previous tax year (but see 5.3.1.2 for exceptions);
- all national insurance benefits eg ESA(C), JSA(C), Incapacity Benefit (except Widowed Mothers and Widowed Parents Allowance, see 5.3.2.2 below);
- Retirement Pensions (including occupational pensions);
- Carer's Allowance;
- Severe Disablement Allowance;



- Industrial Injuries Benefits (except Constant Attendance Allowance and Exceptionally Severe Disablement Allowance);
- Maternity Allowance.

### **5.3.2.2 Income partly disregarded**

- Child maintenance paid by an absent parent is disregarded in full. Other kinds of maintenance from a former partner have the first £15 ignored if a family premium is included in Housing Benefit;
- £15 of any Widowed Mothers and Widowed Parents Allowance;
- £20 of the weekly payment from a sub-tenant;
- income from boarders, £20 (plus 50 per cent of the balance of the charge);
- an adoption allowance, custodianship payment or payment under the Adoption and Children's Act 2002 (para 3 Sch 4) is taken into account up to the level of the child's or qualifying young person's personal allowance and disabled child premium, if applicable. Anything above that amount is disregarded;
- £17.10 of WTC in certain cases only (see 5.3.1.2.2);
- childcare costs deduction from earnings if a person is on WTC or CTC (see 5.3.1.2.3);
- £10 of War Disablement Pension or War Widow(er)'s or Surviving Civil Partner's Pensions.

### **5.3.2.3 Income disregarded completely**

- a payment from an insurance policy for paying for credit card payments, Hire Purchase debts or other loans up to the amount of the loans and any payments for the policy premium;
- a payment from an insurance policy for paying a mortgage or home loan up to the amount of the weekly repayments and the policy premium;
- any component of DLA;
- Attendance Allowance;
- certain personal injury payments;
- Child Benefit;
- child maintenance payments made by a child's parent who is not the partner of the person claiming;
- compensation payments to a person contracting HIV after a blood transfusion or tissue transplant;
- Education Maintenance Allowance and grants for non-advanced education including lodging allowances;
- expenses paid for doing voluntary work providing no profit is made;



- extra statutory payments made to compensate for non payment of certain benefits including Income Support, ESA(IR), Mobility Allowance, Attendance Allowance or DLA;
- fostering allowances;
- Guardian's Allowance;
- income of a dependent child;
- income in kind;
- income payable abroad if it cannot legally be transferred to the UK;
- ESA(IR);
- Income Support;
- Job Start Allowance;
- JSA(IB);
- NIHE payments for support services;
- payments made by a non-dependant, eg a relative living with the person;
- payments from Independent Living Fund and Skipton Fund;
- payments under Article 18, 35 or 36 of the Children (NI) Order 1995 from social services;
- payments under the Employment Retention and Advancement Scheme;
- payments to haemophilia sufferers under the Macfarlane Trust (now MFE Trust) and certain other trusts;
- Pension Credit Guarantee Credit (PC(GC));
- pensioner's Christmas bonus;
- regular charitable and voluntary payments except in a trade dispute or for the first fifteen days worked after one;
- some payments made to persons participating in certain training courses for rehabilitation or to assist people with disabilities under specific statutory provisions;
- Social Fund payments;
- travel and childcare expenses, the training premium, mandatory top-up and discretionary special needs payments for the New Deal;
- travelling expenses and living away from home allowances for JTS and YTS;
- all social security benefits from abroad analogous to any of the social security benefits listed above.



### 5.3.2.4 Income from capital

Where a person or partner has savings between £6,000 and £16,000, an income of £1 per week will be assumed for every £250 in excess of £6,000 (£10,000 if permanently in a care home). However, actual income from the capital (eg interest) is ignored.

## 5.4 Step 4: calculate entitlement to Housing Benefit

Housing Benefit is calculated by comparing a person's applicable amount and income. Where the applicable amount is greater than the income, then maximum Housing Benefit is payable (ie 100 per cent eligible rent and 100 per cent eligible rates minus any deductions for non-dependants, for fuel, meal and service charges).

Where income is greater than applicable amount, Housing Benefit is reduced below the maximum by means of a set taper.

The taper for rent is 65 per cent of the amount by which income exceeds applicable amounts. For rates, it is 20 per cent of the same excess figure.

### 5.4.1 Example

Robert and Pat, aged 30 and 32, have two children aged seven and five. Robert is unemployed with no source of income. Pat is working 24 hours a week and takes home £106.55 (gross wages £130.00). The family receives Child Benefit of £34.40, WTC of £85.54 and CTC of £122.68. The Child Benefit is disregarded. The couple's rent and rates are £60 and £15 respectively. The family members are all in good health.

#### Maximum Housing Benefit

100% rent	£60.00
100% rates	£15.00

#### Applicable amount

##### - Personal allowances

Couple	£114.85
Child	£66.90
Child	£66.90

##### - Premiums

family premium	£17.45
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<b>Total applicable amount</b>	<b>£266.10</b>
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#### Income

net earnings (ie £106.55 minus £10 standard earnings disregard and	£79.45
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£17.10 additional 30/16 hour earnings disregard)

WTC	£85.54
CTC	£122.68

<b>Total income</b>	<b>£287.67</b>
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**Calculate Housing Benefit**

Income exceeds applicable amount by £21.57

**(a)** Apply taper to excess.

Rent 65% of £21.57	= £12.94
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Rates 20% of £21.57	= £4.31
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**(b)** Deduct from maximum Housing Benefit.

Housing Benefit for rent is £60.00	
minus £12.94	= £47.06

Housing Benefit for rates is £15.00	
minus £4.31	= £10.69

Entitlement to Housing Benefit is **£57.75** a week.

They will pay **£17.25** rent and will be assessed under the Rate Relief Scheme for further help with rates (see section 14).

**5.5 Under occupancy rules from 2016/17 (bedroom tax)**

A restriction is being introduced on the number of bedrooms in a socially rented home which will be covered by Housing Benefit. The legislation will be passed in Northern Ireland some time during 2016.

The new size criteria could have a major impact on people who have unused bedrooms within their rented accommodation. The deduction will be:

- fourteen per cent of the total eligible rent for ‘under occupation’ by one bedroom; or
- 25 per cent of the total eligible rent for ‘under occupation’ by two bedrooms or more.





People who have their Housing Benefit reduced may be able to apply for discretionary housing payments. Other options include moving to a smaller property, taking in a lodger or paying the shortfall in Housing Benefit themselves.

There will be exceptions, and more detailed notes will be available from the Law Centre in the future. If further assistance is needed regarding these changes please contact the Law Centre.

**However, there will be a mitigation in place within Northern Ireland, effectively meaning that no-one should be affected by the Bedroom Tax until 2020.**

It is likely that, in practice, the new size criteria will be introduced along with their mitigation measures early 2017 (see <https://www.nidirect.gov.uk/articles/changes-to-housing-benefit-payments>).

## 6. PEOPLE OF QUALIFYING AGE FOR PC

This section applies to people who are of at least the qualifying age for PC, are not getting JSA(IB) or ESA(IR) and do not have a partner getting Income Support, JSA(IB) or ESA(IR). These rules can differ from those which apply to other people claiming Housing Benefit. They are also more generous.

Before 6 April 2010, the qualifying age for PC was 60. From that date, for both men and women, it is an age increasing to 65 between April 2010 and November 2018 in line with the increase in pensionable age for a woman under Part 1 of Schedule 2 of the Pensions (NI) Order 1995. The Pension age (and age for PC) will go up to 66 in October 2020. So for a woman, the qualifying age for PC depends on her date of birth. For a man, the qualifying age for PC is the pensionable age of a woman with the same date of birth as him.

### 6.1 Qualifying conditions

The qualifying conditions outlined in section 1 also apply to people of at least the qualifying age for PC with the exception of the capital rules.

#### 6.1.1 Capital rules

The capital rules for people of at least the qualifying age for PC and in receipt of PC(GC) are more generous as there is no limit to the amount of capital a person and/or partner can have and continue to be entitled to claim Housing Benefit. All the capital of the person and/or partner is ignored.

Where a person of at least the qualifying age for PC is not in receipt of PC(GC), Housing Benefit will not be paid where a person and/or partner has capital over £16,000.



The first £10,000 in capital is ignored.

Tariff income is applied to capital between £10,000 and £16,000. A person will be treated as having an assumed income of £1 for every £500 or part of £500 above £10,000.

The capital of a child/qualifying young person is ignored.

## 6.2 Claiming Housing Benefit

For people of at least the qualifying age for PC and claiming PC, the process is as set out below.

- A person claiming PC will, upon request, be issued with a separate form for claiming Housing Benefit from the Pension Centre.
- If claiming PC(GC), a person must return this form to the Pension Centre within one month of the date when the claim for PC was made. Housing Benefit will start from the first day of entitlement to PC(GC).
- A person claiming savings credit only must also return the form to the Pension Centre. The date of claim will normally be treated as the date when contact was first made, provided a written claim is submitted within one month.

A person of at least the qualifying age for PC and not claiming PC must apply directly to the local NIHE district office or the local LPS office (if owner occupier). The process outlined in section 2 applies.

Claims for Housing Benefit for people of at least the qualifying age for PC who are not on JSA(IB) or ESA(IR) and do not have a partner on Income Support, JSA(IB) or ESA(IR) can be automatically backdated for a maximum of three months providing all the conditions of entitlement are met throughout the backdated period. The person does not have to show good cause for her/his late claim.

## 6.3 Extended payments

A person of at least the qualifying age for PC whose Income Support, JSA(IB) or ESA(IR) ceases because s/he or her/his partner claims PC can continue to get Housing Benefit at the same rate for four weeks.

A person of at least the qualifying age for PC whose ESA(C), Incapacity Benefit or Severe Disablement Allowance ceases because s/he or her/his partner starts work or increases earnings or hours is entitled to an extended payment of Housing Benefit. The rules are the same as for those under the qualifying age for PC as outlined in section 3.

## 6.4 Payments of Housing Benefit

Housing Benefit for people of at least the qualifying age for PC is paid in the same way as for those under that age. This is outlined in section 4.



A person has an ongoing duty to report changes in circumstances. A person claiming Housing Benefit and on PC is also legally obliged to report in writing:

- changes to her/his tenancy;
- changes affecting residence or income of any non-dependant whom s/he resides with;
- any absence from home of more than (or likely to be more than) thirteen weeks.

In addition, a person who is only getting the savings credit of PC must report:

- changes affecting a child/qualifying young person living with her/him (excluding birthdays);
- change in capital which takes (or may take) it above £16,000;
- changes in the income or capital of a:
  - non-dependant whose income and capital are treated as her/his;
  - partner which have not been taken into account since getting PC;
- if a partner or non dependant stops, begins or resumes living with her/him.

## 6.5 Calculating Housing Benefit

The calculation of Housing Benefit for a person of at least the qualifying age for PC depends on whether s/he or partner is getting PC(GC) or not.

### • Person on PC(GC)

Housing Benefit for a person on PC(GC) is worked out by calculating maximum Housing Benefit in the same way as for those under the qualifying age for PC as outlined in section 5.1, with one addition. As well as the circumstances outlined in section 5.1.1 where no deduction will apply for certain non dependants, no deduction will be made for any non-dependant who is:

- a full-time student, where the person claiming or partner is 65 or over and neither partner is claiming JSA(IB), Income Support or ESA(IR).

### • Person not on PC(GC)

Housing Benefit for a person or partner not in receipt of PC(GC) is worked out in a broadly similar manner to that of a person or partner not getting Income Support, ESA(IR) or JSA(IB). The four steps outlined in section 5 apply but there are clear differences in calculating applicable amounts, income and capital.

#### 6.5.1 Step 1: calculate maximum Housing Benefit

Maximum Housing Benefit is 100 per cent eligible rent and 100 per cent eligible rates. This is worked out in the same way as for those on PC(GC) as outlined above.

However, if a person or partner is aged 65 or over and a non-dependant comes to live with her/him, the non-dependant will be ignored for 26 weeks. Where a person has a



non-dependant living with her/him and the income or circumstances of the non-dependant change, triggering a higher deduction, this will not be applied for 26 weeks.

### 6.5.2 Step 2: calculate applicable amounts

The calculation of a person's applicable amount for people of at least the qualifying age for PC is made up of:

- personal allowances; and
- premiums.

The applicable amount includes personal allowances and premiums for partners and dependent children.

However:

- the adult personal allowance is higher;
- only certain premiums can be included.

#### 6.5.2.1 Personal allowances

Status	Age	Amount
Couple	both partners aged under 65	£237.55
	either partner aged 65 or over	£252.30
Lone parent	aged under 65	£155.60
	aged 65 or over	£168.70
Single pensioner	aged under 65	£155.60
	aged 65 or over	£168.70
Child / qualifying young person	per child	£66.90

#### 6.5.2.2 Premiums

The premiums and associated qualifying conditions for a person of at least the qualifying age for PC and not in receipt of PC(GC) are the same as those outlined in section 5.2.2 with some exceptions. The exceptions are that the family premium lone parent rate and the enhanced disability premium adult rates are not applicable. Neither the Support Component nor the Work-related Activity Component is applicable.

Therefore only the following premiums can be included and added to personal allowances:



- family premium (ordinary rate only);
- disabled child premium;
- enhanced disability premium (child/qualifying young person rate only);
- severe disability premium; and
- carer's premium.

### 6.5.3 Step 3: calculate income

Where a person or partner of at least the qualifying age for PC is not in receipt of PC(GC), income is calculated in much the same way as for PC. However, where a person and/or partner is in receipt of the savings credit of PC only, income is worked out differently (see 6.5.3.4).

In either case, the income of a child or qualifying young person is ignored.

#### 6.5.3.1 Earnings

What counts as earnings and the calculation of earnings for a person of at least the qualifying age for PC is similar to the earnings as outlined in section 5.3.1. Any differences in the treatment of earnings are outlined below.

#### Earnings disregards

The four main levels of disregard of £25 or £20 or £10 or £5 and the permitted work disregards as outlined in 5.3.1.2 apply. Additional disregards apply in certain circumstances. These are explained below.

A £20 earnings disregard also applies where a person or partner is of at least the qualifying age for PC and s/he:

- continues in employment which attracted the £20 disregard below the qualifying age for PC and there is no break of more than eight weeks in either employment or the claim for Housing Benefit; or
- is receiving Incapacity Benefit (long-term), SDA, Attendance Allowance, DLA, any mobility supplement, the disability or severe disability element of WTC or ESA including work related activity or support component; or
- is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified); or
- has been incapable of work for 364 days (196 days where terminally ill);
- has (or is treated as having) limited capability for work and the ESA assessment phase has ended.

The standard earnings disregard is increased by £17.10 under the same conditions as for those under the qualifying age for PC (see 5.3.1.2) and also where a person or partner is at least that age and s/he is working at least sixteen hours a week and:

- receives:



- ESA which includes a support or work related activity component;
- Incapacity Benefit (long-term);
- SDA;
- Attendance Allowance;
- DLA;
- any mobility supplement;
- the disability or severe disability element of WTC; or
- is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified); or
- has been incapable of work for 364 days (196 days if terminally ill).

In the case of couples, the person who is disabled must work sixteen hours or more a week. The standard earnings disregard is not increased by £17.10 and, instead, £17.10 of any WTC award is disregarded in exactly the same circumstances applicable to those under the qualifying age for PC in 5.3.1.2.

Relevant childcare charges of up to £175 if the person is paying for one child and £300 for more than one child per week can be offset against earnings when calculating Housing Benefit. In certain circumstances, they can be offset against earnings plus WTC or CTC. The rules are the same as for those aged under the qualifying age for PC as outlined in 5.3.1.2. In addition, childcare charges can be disregarded where one of a couple works sixteen hours a week or more and the other 80 or over.

### **6.5.3.2 Other income**

Some income is counted in full, some is partly disregarded and some is completely disregarded.

#### **Income counted in full**

- WTC awarded less any deduction to recover an overpayment which arose in a previous tax year (but see 6.5.3.1 for exceptions);
- all national insurance benefits including ESA(C), JSA(C), Incapacity Benefit (except Widowed Mothers and Widowed Parents Allowance, see below);
- Retirement Pensions (including occupational pensions);
- Carer's Allowance;
- Industrial Injuries Benefits (except Constant Attendance Allowance and Exceptionally Severe Disablement Allowance);
- social security benefits from abroad which are similar to the above;
- pension protection fund payments;
- income from a personal pension;



- income from a retirement annuity contract (disregard of interest payable on loan in certain circumstances);
- payment under an equity release scheme;
- overseas pension;
- civil list act pension;
- payments from previous employment for early retirement due to ill-health or disability (but not under a court order or claim settlement).

**Income partly disregarded**

- £15 of any maintenance payment paid for the person or partner if the family premium is included in the applicable amount for Housing Benefit. Child maintenance payments are disregarded;
- £15 of any Widowed Mothers and Widowed Parents Allowance;
- £10 of War Disablement Pension, War Widow(er)'s Pension or Surviving Civil Partner's Pensions;
- £20 of weekly payment from a sub-tenant;
- income from boarders, £20 (plus 50 per cent of the balance of the charge);
- £17.10 of WTC in certain cases only (see 6.5.3.1);
- childcare costs deduction from earnings as in 5.3.1.2 and also where one of a couple works sixteen hours a week or more and the other 80 or over;

**Income disregarded completely**

- an adoption allowance, custodianship payment or payment under the Adoption and Children's Act 2002 (para 3 Sch 4);
- an amount of income equal to the parental contribution made to a student's grant or loan for the period of grant or loan;
- any component of DLA;
- any payment ordered by a court to be made to the person or her/his partner or child because of accident, injury or disease;
- Attendance Allowance;
- Child Benefit;
- Child Tax Credit;
- child maintenance;
- extra statutory payments made to compensate for non-payment of certain benefits;
- fostering allowances;
- Guardian's Allowance;



- income of a child or qualifying young person;
- income payable abroad if it cannot legally be transferred to the UK;
- NIHE payments for support services;
- payments to haemophilia sufferers under the Macfarlane Trust (now MFE Trust) and certain other trusts;
- payments made by a non-dependant eg a relative living with the person;
- payments from Independent Living Fund and Skipton Fund;
- pensioner's Christmas bonus;
- periodic payments made to a person or partner under a settlement agreement for a claim for personal injury;
- regular charitable and voluntary payments;
- Social Fund payments;
- student loans and grants;
- all social security benefits from abroad which are similar to any of the above;

#### **6.5.3.3 Income from capital**

Where a person claiming or partner is of at least the qualifying age for PC but is not getting PC(GC) and has capital between £10,000 and £16,000, an income of £1 per week will be assumed for every £500 in excess of £10,000.

#### **6.5.3.4 Income and savings credit only cases**

Income for a person or partner who is only getting the savings credit of PC is worked out by:

- taking the income (and capital) figure used by the Social Security Agency in the calculation of PC, then:
- adding the following income:
  - PC (savings credit);
  - any income and capital of a partner not taken into account in calculating PC;
  - any income of a non-dependant which can be treated as income of the person claiming. This only applies in limited cases;
- then subtracting the following:
  - childcare charges earnings disregard; and
  - the highest amount disregarded, where applicable, for:
    - lone parent earnings; or
    - payments of maintenance by former partner or partner's former partner; or





- payments of maintenance made by the parent of a child or qualifying young person who is a member of the family of the person claiming but only where the parent is not the person claiming or her/his partner; and
- the increase (of £17.10) to the standard earnings disregard; and
- any discretionary increase to £10 disregard for certain war pensions.

#### 6.5.4 Step 4: calculate entitlement to Housing Benefit

Entitlement to Housing Benefit is worked out in exactly the same way as for a person under the qualifying age for PC, as outlined in section 5.4. It is calculated by comparing a person's applicable amount and income.

Where the applicable amount is greater than the income, then maximum Housing Benefit is payable (ie 100 per cent rent and 100 per cent rates minus any deductions for non-dependants, for fuel, meal and service charges).

Where income is greater than applicable amount, Housing Benefit is reduced below the maximum by means of a set taper. The taper for rent is 65 per cent of the amount by which income exceeds applicable amounts. For rates, it is 20 per cent of the same excess figure. For further details see section 5.5.

##### 6.5.4.1 Example 1

Lenny is 67 and lives alone in a NIHE house. He pays £55 rent and £8 rates weekly. His only income is his Retirement Pension (CAT A) of £119.30 per week and PC(GC) of £38.95. He has savings of £6,000.

Lenny is receiving PC(GC) and is automatically entitled to maximum Housing Benefit.

#### Maximum Housing Benefit

100% eligible rent                      £55.00

100% eligible rates                      £8.00

Entitlement to Housing Benefit is **£63.00** a week. He will pay **nothing** in rent and rates.

##### 6.5.4.2 Example 2

John and Sarah are aged 65 and 63. They live together in a NIHE house. John receives a Retirement Pension of £119.30 per week and also receives DLA high rate care of £82.30. Sarah receives Retirement Pension of £65.70 per week and £75.00 spousal maintenance weekly. The couple's rent and rates are £60 and £15 respectively.



**Maximum Housing Benefit**

100% rent	£60.00
100% rates	£15.00

**Applicable amount**

**Personal Allowances**

Couple	£252.30
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<b>Premiums</b>	Nil
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<b>Total applicable amount</b>	£252.30
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**Income**

John's Retirement Pension	£119.30
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Sarah's Retirement Pension	£65.70
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Maintenance	£75.00 (no disregard as spousal maintenance and no family premium in payment)
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<b>Total income</b>	£260.00
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**Calculate Housing Benefit**

Income exceeds applicable amount by £7.70

**(a) Apply taper to excess**

Rent 65% x £12.15	= £5.01
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Rates 20% x £12.15	= £1.54
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**(b) Deduct from maximum Housing Benefit**

Housing Benefit for rent is £60.00 minus £5.01	= £54.99
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Housing Benefit for rates is £15.00 minus £1.54	= £13.46
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Entitlement to Housing Benefit is **£68.45 a week**.

They will pay **£6.55** rent and will be assessed under the Rate Relief Scheme for further help with rates (see section 14).



## 7. RECOVERY OF OVERPAYMENTS

A person claiming Housing Benefit is legally obliged to report in writing changes in circumstances including:

- when entitlement to ESA(IR), Income Support or JSA(IB) ends;
- changes to circumstances of non-dependants; and
- if not on ESA(IR), Income Support or JSA(IB), changes in savings, income, and family status (eg separation, marriage or cohabitation).

A person may notify changes of circumstances by phone to NIHE on 034 4892 0902.

Where information is not given or such information is incorrect or a mistake is made by an official body, a person claiming or any other person, an overpayment of benefit may result.

NIHE (or LPS) is entitled to recover all overpayments of Housing Benefit except where:

- the overpayment has arisen due to an official error; and
- the person claiming, or any person acting on her/his behalf or any other person to whom the payment was made (this includes a landlord), could not have reasonably known that an overpayment was being made at the time the payment was notified or received and did not cause or contribute to the error being made.

Decisions to recover an overpayment must be notified in writing and give specific information to the person. Failure to do so may render the overpayment irrecoverable. The period of overpayment should always be checked.

Where an overpayment of Housing Benefit has been or will be recovered by NIHE from a landlord, both the landlord and the tenant must be notified of the effect of the recovery on the tenant's obligations to the landlord.

Overpayments can be recovered from future payments of Housing Benefit or from most other social security benefits (though not Guardian's Allowance) where the overpayment resulted from a failure to disclose information or misrepresentation of information.

For a person on ESA(IR), Income Support, JSA(IB) or PC, guidance from the Department for Social Development suggests that the maximum amount that can be recovered is £10.95 a week. However, if the person has been found guilty of fraud, admitted fraud or agreed to pay a penalty, the maximum amount is £17.75 a week. If the person has any earnings subject to a disregard, the deduction can be increased by half of that disregard. A smaller deduction can be negotiated if this is causing hardship. For a person not on Income Support, JSA(IB), ESA(IR) or PC, the rate of repayment can be negotiated.



## 8. BENEFIT FRAUD

Fraud can occur when a person deliberately misleads NIHE or the LPS, or fails to, or allows another person to fail to notify promptly a change of circumstances that could affect entitlement to benefit. There are three options available to NIHE and the LPS in relation to fraud, namely:

- formal caution;
- penalty;
- prosecution.

### 8.1 Formal caution

Caution is generally used for less serious offences. A person will be asked to attend a formal caution interview where s/he will be asked to sign a record admitting the offence and accepting the caution.

Accepting a caution means that a person will not normally be prosecuted. The caution may be cited in court where a person is successfully prosecuted for a further offence.

### 8.2 Penalty

A person can be offered the option of paying a penalty if:

- an overpayment is found to be recoverable and a decision to this effect has been issued;
- the overpayment resulted from an act or omission by the person and occurred after 18 December 1997;
- there are grounds for prosecuting the person for an offence relating to the overpayment.

The penalty is an additional 30 per cent of the recoverable overpayment caused by the offence. It is added to the amount of overpayment and recovered in the same way.

A person will be sent a notice setting out the broad terms of the penalty and will be invited to an interview to discuss acceptance of the penalty. A person does not have to make the decision to accept the penalty at the interview but will be allowed five days to make up her/his mind. Once a person has entered into an agreement to pay the penalty, s/he will have 28 days in which to change her/his mind.

**Note:** Acceptance of a formal caution or penalty will bring immunity from prosecution for the specified offences. However, a person may still be prosecuted for related offences such as an Income Support overpayment.



Acceptance of a formal caution or penalty is an admittance of guilt. Caution or penalty should not be accepted just to avoid prosecution if the person did not commit the offence. A person will not automatically be prosecuted if s/he does not accept the formal caution or penalty. Prosecution will depend on the evidence that NIHE or the LPS has obtained.

### **8.3 Prosecution**

Fraud is a criminal offence. There are two main offences which can result in prosecution:

- making false representations for obtaining benefit;
- making dishonest representations for obtaining benefit.

The maximum penalty in the Magistrates Court for making a false representation is a £5,000 fine or three months in prison or both. For the second offence, making dishonest representations the maximum penalty is six months in prison or a fine of £5,000 or both. Where a case is tried on indictment in the Crown Court, the maximum penalty is an unlimited fine, seven years in prison or both. This is in addition to repayment of any overpayment that may have occurred.

#### **8.3.1 Benefit sanctions**

In addition to a fine, imprisonment and recovery of any overpayment, NIHE or the LPS can apply benefit sanctions.

The government has introduced a 'one strike' sanction which applies where a first offence of benefit fraud results in a prosecution, caution or an administrative penalty. The additional sanction is the reduction of benefit for four weeks as below. This will be additional to any recovery of overpayment or administrative penalty. A claimant who accepts a caution or administrative penalty has a four week period in which to change her/his mind. If a second or subsequent benefit fraud offence results in another administrative penalty or caution then a further sanction of thirteen weeks reduction of benefit will apply. The government intends to increase the period of sanctions to thirteen weeks for one strike and 26 weeks for two strikes in 2012.

This only applies to offences committed after the introduction of Fraud Legislation on 1 April 2002.

A person's Housing Benefit will be reduced as follows:

- 20 per cent of the appropriate personal allowance for a single person if the person claiming or any member of her/his family is pregnant or seriously ill, or where the person who committed the offence is appealing an incapacity for work decision and already has a reduction in benefit;
- in most other cases, 40 per cent of the appropriate personal allowance for a single person;



- from 1 September 2011, new legislation has been introduced to allow for a 100 per cent reduction in benefit in certain cases.

If the person or a member of her/his family is entitled to Income Support or JSA(IB), no benefit sanction will be applied.

## 9. RESTRICTIONS ON ELIGIBLE RENT

The rent used to work out a person's entitlement to Housing Benefit may be restricted, ie reduced by NIHE, if s/he is a private rented sector tenant. This means that the Housing Benefit paid may not cover the contractual rent. It may be possible to apply for discretionary housing payments. If this happens, see section 9.7.

There are three sets of rent restriction rules. These are:

- local Housing Allowance rules;
- local reference rent rules;
- pre-January 1996 rules.

### 9.1 Local Housing Allowance rules

From 7 April 2008, maximum rent for Housing Benefit is calculated using the Local Housing Allowance (LHA) rules. The LHA rules were introduced in Northern Ireland for new claims from 7 April 2008. If a person's rent was restricted under other rules on this date, the old rules will continue to apply until there is a relevant change of circumstances such as a break in the Housing Benefit claim or a change of address.

There are exceptions to this rule and tenants affected should seek further advice before making the decision to move house.

#### 9.1.1 Exempt groups

Tenants in the following categories are not subject to the rules on LHA:

- a registered housing association or NIHE tenant;
- a tenant of a tenancy controlled under the Private Tenancies (Northern Ireland) Order 2006;
- a person who makes payments for a houseboat, caravan or mobile home which s/he occupies as her/ his home;
- a person who pays rent for a place in a hostel.

#### 9.1.2 Local Housing Allowance

The LHA is a standard amount of Housing Benefit which is set for listed sizes of properties in designated Broad Rental Market Areas (BRMA).



The size of the household and the age of the people in it will determine what size of property and what rate of LHA the person's Housing Benefit will be based on. If there is a shortfall with the contractual rent the tenant will be liable to pay this. See section 10 on discretionary payments.

### 9.1.3 Rate of LHA

This will be the standard LHA for the BRMA dependent on the size of the household and the number of bedrooms it is deemed under the rules the person requires.

A BRMA is an area where a person could reasonably be expected to live considering access to facilities and services for health, education, recreation, personal banking and shopping and having regard to public transport. It must include a variety of types of accommodation and tenancy and sufficient private rented accommodation to ensure that the LHA for the categories of dwelling in the area is representative of the rents that a landlord might reasonably be expected to obtain in that area.

## 9.2 Categories of dwellings

NIHE makes LHA determinations for the following categories of dwelling:

- a bedroom in a shared house;
- self-contained one bedroom accommodation;
- two, three and four bedroomed accommodation.

Accommodation of more than four bedrooms will be treated as if it is a four bedroomed property when calculating LHA.

## 9.3 Size criteria

The LHA will depend on the number of people in the benefit household. Special rules apply to young people under 35 (these rules changed from January 2012 and previously applied to people under 25) and people (including couples without children) in shared accommodation. One bedroom each is allowed for:

- every adult couple;
- any other adult aged sixteen or over;
- any two children of the same sex;
- any two children regardless of sex if under ten and;
- any other child.

No other type of room is taken into consideration.

A single person under 35 has a LHA based on a room in a shared house regardless of the type of accommodation s/he actually occupies. This single room local housing



allowance does not apply if the person qualifies for a severe disability premium or is a care leaver under 22 or has a non-dependant.

A person aged over 35 (or a person of any age who is a member of a couple) without children is allowed the LHA for self-contained one bedroom accommodation unless s/he actually lives in shared accommodation, in which case the single room LHA will apply. This single room LHA does not apply if the person (or partner) qualifies for a severe disability premium or is a care leaver under 22 or has a non-dependant.

## 9.4 How NIHE calculates the Local Housing Allowance

NIHE draws up a list of rents for private rented sector tenancies in the broad rental market area. The properties included should be in a reasonable state of repair and should have the relevant number of rooms. NIHE must assume that no-one entitled to Housing Benefit has sought the tenancy and must disregard any amount that relates to the provision of ineligible services and facilities including the use of furniture.

The LHA for each category of dwelling is the 30<sup>th</sup> percentile of rent in the relevant list. This changed from the 50<sup>th</sup> percentile in April 2011. This now means that LHA rates have been reduced so that about one in three properties for rent in an area should be affordable on Housing Benefit rather than five in ten properties as before April 2011.

In addition, the LHA rates were frozen to act as a benchmark in April 2012. In future years, the LHA will rise by the Consumer Price Index rate of inflation or level of 30<sup>th</sup> percentile assessed market rent, whichever is lower.

From January 2015, the LHA is capped to the following amounts so that LHA weekly rates in any area cannot exceed:

- £260.64 for a one bedroom property;
- £302.33 for a two bedroom property;
- £354.46 for a three bedroom property;
- £417.02 for a four bedroom property. The four bedroom cap also applies to accommodation with more than four bedrooms.

An additional bedroom within the size criteria can be included where a disabled person or partner (with a long term health condition), has a need for overnight care that is provided by a non-resident carer.

Where the LHA for a category is less than for a smaller category of accommodation then the LHA will be set at the same rate as that for the smaller accommodation.

A rent restriction can be delayed where a member of the family or close relative who lived in the accommodation dies. In this case, unless the eligible rent is the same or higher than the local housing allowance rules then:





- no restriction is applied for twelve months from the date of death where the person was not claiming Housing Benefit. Eligible rent will be the contractual rent minus any ineligible charges; or
- any eligible rent which applied on the date before the death continues to apply for a further twelve months.

In addition, where the tenant, a member of the family or a relative living in the home could meet the housing costs when it was taken on then no restriction will be made for the first thirteen weeks unless the claimant or partner were entitled to receive Housing Benefit in the past 52 weeks.

## 9.5 Local reference rent rules

Before 7 April 2008, maximum rent for Housing Benefit was calculated in the following way.

NIHE asked the LPS for advice in determining a claim-related rent, taking account of the property, its size, whether the rent was too high and the tenant's household. The LPS calculated a local reference rent representing the mid-point of rents in a locality. These figures were compared with the rent actually being charged to the person (the contractual rent). To work out the size of the dwelling allowed, the LPS allowed one bedroom or room suitable for living in for each of the following occupiers:

- a married or unmarried couple;
- a person who is not a child (ie someone aged sixteen or over);
- two children of the same sex;
- two children under ten;
- a child.

In addition, the following number of rooms suitable for living in was allowed:

<b>number of occupiers</b>	<b>number of rooms</b>
----------------------------	------------------------

less than four	one room
four to six	two rooms
seven or more	three rooms

The eligible rent was restricted to the lowest of:

- the claim-related rent;
- the local reference rent;
- the contractual rent.

A restriction can be delayed for twelve months after the death of anyone who used to live in the person's accommodation and whose circumstances would have been taken into account in deciding whether or not to impose a restriction. No maximum rent



must apply at the date of death. Further, if the tenant, a family member or relative lives in the same dwelling and was able to meet the housing costs when first moving in then no restriction will apply for the first thirteen weeks unless the person received Housing Benefit in the last 52 weeks.

## 9.6 Pre January 1996 rules

Some tenants still have their rents restricted under less harsh rules which applied before January 1996. These rules apply to tenants living in exempt accommodation. This includes accommodation provided by a housing association, registered charity or voluntary organisation where care, support or supervision is provided. It does not apply to organisations with a Supporting People contract with NIHE.

These rules also apply to claimants who have been continuously entitled to and in receipt of Housing Benefit since 1 January 1996 and still occupy the same accommodation as their home. Under these pre-1996 rules, NIHE can restrict the amount of rent eligible for Housing benefit where:

- the person and her/his household (including non-dependants and tenants/boarders) occupy accommodation larger than they reasonably require; or
- the rent or rates payable are unreasonably high compared to suitable alternative accommodation.

In looking at suitable alternative accommodation, NIHE must consider the nature and facilities of the alternative accommodation, bearing in mind the age and health of the person's family and whether s/he has security of tenure. In this case, alternative accommodation is not suitable unless it will be occupied on reasonably equivalent terms.

Where the person or one of her/his family is at least the qualifying age for PC, or is incapable of work or has limited capability for work, or is responsible for a child or qualifying young person, no restriction is made, unless:

- there is suitable cheaper accommodation available; and
- it is reasonable to expect the person to move, taking account of her/his employment prospects and the effect of a change of school on any child.

Any rent restriction must be limited only to the amount that NIHE considers reasonable.

No restriction can be made within twelve months of the death of anyone who used to live in the person's accommodation and whose circumstances would have been taken into account in deciding whether or not to impose a restriction.

Further, if a person or someone else in the household was able to meet the housing costs when first moving in, then no restrictions will apply for the first thirteen weeks unless the person previously received Housing Benefit in the last 52 weeks.



## 9.7 Other information about rents

If the LHA rules apply, a person can contact NIHE for information about the rate of LHA which will be paid to her/his household. If the household requires five or more bedrooms according to the size criteria and no LHA has been set for that size of property, the person can ask NIHE to set a LHA for that size of property.

If local reference rent rules apply to a person, s/he can ask NIHE for a pre-tenancy determination to get an indication of what level of maximum rent NIHE would allow for the household and the property.

## 10. DISCRETIONARY HOUSING PAYMENTS

Discretionary housing payments (DHPs) are also available where eligible rent has been restricted.

NIHE has discretion to make additional payments of Housing Benefit where a person needs assistance with eligible housing costs. This will generally be relevant to people claiming who are vulnerable because of ill health, disability or family issues. These are free standing payments made at the discretion of NIHE to help those with severe financial difficulties. DHPs are likely to become more important as a result of savings made elsewhere in Housing Benefit.

Claims for DHPs should be made to the relevant regional office. A list of these is available on NIHE's website, [www.nihe.gov.uk](http://www.nihe.gov.uk).

## 11. TEMPORARY ABSENCES FROM HOME

If a person is temporarily absent from home, s/he can get Housing Benefit for up to either thirteen or 52 weeks depending on the circumstances.

The thirteen or 52 weeks should run continuously from the date the person leaves home. If a person returns during this period, even for relatively short spells (unless a prisoner on temporary release), the temporary absence (and the 13/52 week period) begins again each time the person leaves.

In either case, there must be an intention to return home within thirteen or 52 weeks, and the accommodation must not be rented out to others. It must be unlikely that the person will be away for longer than thirteen or 52 weeks, or in the case of the 52 week rule only, in exceptional circumstances unlikely to be away for substantially longer than 52 weeks, but payment is only made for 52 weeks.

The 52 week rule applies if the person falls into one of the following categories:

- a remand prisoner held in custody pending trial or sentencing;
- a person required to live away from home as a condition of bail;
- a hospital in-patient;



- undertaking medically approved treatment or convalescence in the UK or abroad;
- absent from home because either the person's partner or dependent child is receiving medical treatment or convalescence in the UK or abroad;
- providing, or receiving, medically approved care in the UK or abroad;
- undertaking an approved training course in the UK or abroad;
- in residential accommodation (ie for respite care), unless s/he has entered this for a trial period to see if it is suitable;
- absent from home through fear of violence and not liable for rent at the temporary address. If the person is liable for rent on the temporary address, s/he may get Housing Benefit for two homes under the rules described in section 1.3.

If a person does not come within one of the above groups, payment is limited to a maximum of thirteen weeks if temporarily absent from home, including where s/he is:

- a convicted, rather than a remand, prisoner and after remission the absence is unlikely to exceed thirteen weeks;
- doing paid work abroad;
- away from home, either in the UK or abroad, eg on holiday or for religious or domestic reasons;
- doing voluntary (unpaid) work away from home in the UK or abroad;
- in residential accommodation on a trial basis with the possibility of permanent residence (in this case alone, s/he has to intend to return home if the accommodation does not suit her/his needs but does not have to intend to return home within thirteen weeks). However, benefit will only be paid for the first thirteen weeks if away for longer than this. The person can have further trial periods, up to a maximum of 52 weeks absence in total.

## **12. STUDENTS**

Special rules apply to students in Housing Benefit. With certain exceptions, full time students cannot claim Housing Benefit during their course (including summer holidays). The exceptions include:

- a person entitled to Income support, ESA(IR) or JSA(IB);
- a single parent;
- a lone foster parent;
- a student with a disability who meets the conditions for a disability or severe disability premium;
- a person who has been incapable of work or has had limited capability for work for 196 days;



- a student who receives a grant supplement (Disabled Students Allowance) for deafness;
- a student who is a pensioner;
- a person in relevant education or under 21 and not on a course of higher education. S/he must have started the course before turning nineteen; or
- a couple with children (or qualifying young people) where both partners are students.

Full time students who fall within these exceptions and who live in and pay for accommodation provided by their educational establishment, eg halls of residence, during a period of study are eligible for Housing Benefit in respect of payments made for such accommodation.

This also applies to part time students who are renting accommodation from their educational establishment but only if they would be eligible for Housing Benefit if they were full time students.

Couples where only one partner is a student can also claim Housing Benefit providing the person claiming is not the full time student.

The calculation of a student's entitlement to Housing Benefit is the same as for other people except for the application of different rules on treating income.

Unless the person is at least the qualifying age for PC, a student grant is taken into account in full, with the following disregards:

- £390 for books and equipment (this figure is sometimes updated for the new academic year so it may increase slightly);
- £303 towards travel (this figure is sometimes updated for the new academic year so it may increase slightly);
- any allowance for tuition and examination fees;
- any allowance for extra expenses for students with disabilities;
- any allowance to meet the cost of attending a residential course away from normal term time accommodation.

Student loans are treated as income but are subject to a weekly £10 disregard. NIHE will assume a maximum loan is being claimed whether or not it is actually taken up.

Access fund hardship payments from educational establishments are treated as voluntary payments and may be ignored or attract a £20 disregard, depending on what the payment is for.

If a loan and Access payment are both made, only one weekly disregard is applied.

Hardship loan payments payable to new entrants in higher education are also ignored.

Where a single person is of at least the qualifying age for PC and not in receipt of JSA(IB) or ESA(IR), student grants and loans do not count as income. For a couple, if



the person claiming or her/his partner is of at least the qualifying age for PC and neither is in receipt of Income Support, ESA(IR) or JSA(IB), student grants and loans received by either member of the couple do not count as income.

## 13. CHALLENGING DECISIONS

A person with the right of appeal against a decision must be notified in writing of the decision, her/his right to appeal against it and the right to request from NIHE a written statement of reasons for the decision. NIHE should provide that statement, so far as is practicable, within fourteen days.

It is possible to apply for revision or supersession of a Housing Benefit decision or to appeal against it to an appeal tribunal. Decisions of appeal tribunals can be appealed on a point of law to the Social Security Commissioner.

For full details of decision making and appeal arrangements, see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.9 Decision Making and Appeals*.

In outline, the basic rules are as follows.

### 13.1 Revision

The main provisions are:

- a one month dispute period during which decisions can be revised:
  - on any grounds; or
  - if NIHE has information showing that the decision was based on a mistake about or ignorance of a material fact;
- late revisions which can be requested up to thirteen months after notification of the decision, but only if specified grounds are satisfied;
- any time revisions which can be made where:
  - the decision arose from official error; or
  - the decision was based on a mistake about or ignorance of a material fact as a result of which the person claiming benefited; or
  - the LPS has made a new determination increasing the claim related rent; or
  - the decision is under appeal.

Revisions cannot be made during the dispute period on the grounds of a change of circumstances. Instead there must be a supersession (see 12.2).

Where a decision is replaced on revision, the new decision takes effect from the same date as the old one. A request for a revision must be made in writing.



## 13.2 Supersession

The rules on Housing Benefit supersessions are similar to those for other benefits. Supersessions can be made at any time but specified grounds must be satisfied.

The main supersession grounds are:

- change in circumstances;
- mistake about or ignorance of a material fact, provided that a revision on those grounds is not possible;
- error of law, provided that a revision on those grounds is not possible;
- the decision is that of a tribunal or Commissioner and was made on the basis of mistake about or ignorance of a material fact;
- the decision is that of a tribunal or commissioner and was made while a test case was pending and it is appropriate to supersede the decision following the making of the test case decision;
- the LPS has made a new determination which reduces the claim related rent.

Supersessions will generally take effect from the date that the supersession decision is applied for (or, if instigated by NIHE, when it is made). Exceptions apply in the following situations:

- change of circumstances (including new LPS determination), in which case the usual Housing Benefit rules apply;
- change of circumstances which is required to be notified, where the change is advantageous to the person claiming but is notified more than one month after it occurs. In this case, the new decision takes effect from the date the change is notified. However, NIHE can accept a late notification and use the more generous rule above if specific grounds are satisfied;
- mistake about or ignorance of a material fact and the new decision is advantageous to the person claiming, in which case the new decision takes effect from the start of the benefit week the application was received by NIHE or otherwise from the date NIHE first had the appropriate information;
- mistake about or ignorance of a material fact in a decision of an appeal tribunal or Commissioner and as a result the decision was more advantageous to the person claiming than it would otherwise have been. The new decision takes effect from the date the appeal or Commissioner decision took effect;
- where a change in legislation has led to a supersession, the new decision takes effect from the date the change in legislation had effect;
- where the decision of a tribunal or commissioner while a test case was pending has led to a supersession on the making of the test case decision. The new decision takes effect from the date the tribunal or commissioner's decision would have taken effect had it been decided according to the test case.



A request for supersession must be made in writing.

### 13.3 Appeals

An appeal must be made within one month of the date of notification of the decision. Late appeals can be accepted up to thirteen months after the date of notification but only if specified grounds are satisfied. Decisions regarding Housing Benefit are not covered by the new 'mandatory reconsideration' rules which apply to other benefits from 23 May 2016.

If a written statement of reasons is requested, the one month period is calculated from the date of receipt of the request by NIHE to the date the statement is provided.

Appeals have to be in writing on an official form, although NIHE can accept a written appeal not on a form. The appeal must be signed by the person appealing, contain particulars of the grounds of the appeal and enable the decision appealed against to be identified. A person not meeting those requirements may be given fourteen days to do so. Decisions should normally be reconsidered on receipt of an appeal.

Housing Benefit appeals will usually be heard by a single legally qualified panel member. The main exception is where there is an issue of financial difficulty, in which case a financially qualified member will join the tribunal.

A person can choose between an oral or paper based appeal hearing. If s/he wishes to opt for an oral hearing, s/he must notify the tribunal clerk on the appropriate form within fourteen days of the date of receiving the form.

There are no strict rules of procedure except that the rules of natural justice should be followed and all parties should receive a fair hearing from an impartial tribunal.

Housing Benefit appeal decisions are subject to withdrawal, striking out and reinstatement, notification, correction, set aside in the same way that appeal decisions for other benefits are.

An appeal from a tribunal's decision can be made to a Social Security Commissioner. A full written statement of reasons for the decision must be sought within a month of the decision being notified. Leave to appeal to the Commissioner must be sought from the chairperson within a month of the date the written statement of reasons was sent to the person.

If leave is granted, the grounds for appeal must be based on the tribunal having erred in law in making its decision.

Where leave is refused, a direct application for leave can be made to the Commissioner within one month of the date notification was sent refusing leave.

The Schedule to the Housing Benefit Regulations (NI) 2006 sets out decisions against which no appeal will lie. In guidance, these decisions are described as administrative, but they include decisions to restrict rent following an assessment by the LPS.





Full details of appealing to the Commissioner are contained in *Law Centre (NI) Encyclopedia of Social Welfare Rights A.9 Decision Making and Appeals*.

## 14. OTHER ASSISTANCE

A person receiving Housing Benefit may be entitled to a Social Fund Funeral Payment. Housing Benefit is a qualifying benefit for a Funeral Payment.

It also may be possible to claim free prescriptions, free or reduced cost dental treatment, sight tests, glasses and fares to hospital if income is low enough. Getting Housing Benefit does not of itself automatically qualify a person for these health benefits.

A person entitled to less than maximum Housing Benefit for rates (including none) because of excess income, may be entitled to help with rates under the Rate Relief Scheme outlined in section 15.

## 15. RATES IN NORTHERN IRELAND

### 15.1 Rate reform

From 1 April 2007, rates bills for domestic properties are based on individual capital values.

Rates bills are calculated by adding together the 2016/2017 regional rate and district rate then multiplying it by the capital value of the property. The regional rate is set by government and the district rate by each local council, usually during February each year.

The LPS is responsible for administering the new rating system, determining the capital value for each property and administering certain Rate Relief Schemes.

### 15.2 Capital values

The capital value of a property is defined as the price a property might reasonably be expected to fetch on the open market if it had been sold on 1 January 2005, subject to a maximum cap. If a domestic property had a capital value of more than £400,000 at 1 January 2005 then the capital value is automatically capped at £400,000. In working out the capital value, LPS takes account of sales evidence from the housing market and makes a number of assumptions.

These include that each property:

- has an average state of internal repair;



- has an average state of fit-out, eg standard kitchen and bathroom relative to its age, type and location;
- has no development potential beyond its current use;
- is free from restrictions.

It is intended that revaluations of capital value should take place every five years. However, this revaluation has been postponed.

### 15.3 Assistance with rates

Assistance with rates is provided by way of:

- a reduction in rates for pensioners aged 70 and over who live alone and pay rates;
- a reduction in rates for people with a disability who meet certain conditions;
- full Rate Relief for full-time students, trainees and certain groups of young people;
- the existing Housing Benefit Scheme;
- a new Rate Relief Scheme

The Housing Benefit and Rate Relief Schemes are means tested. They are separate schemes.

**Please note:** The scheme offering rate relief for full-time students, trainees and certain groups of young people **for new applicants** has been closed from December 2009. Those currently benefiting from the scheme may continue to do so if they continue to satisfy the conditions of entitlement.

### 15.4 Lone pensioner allowance

Lone Pensioner Allowance (LPA) is a non-means tested scheme, which was introduced in April 2008 to assist some pensioners with their needs.

Under the LPA scheme, a person is entitled to 20 per cent discount on her/his rates if s/he is:

- a pensioner aged 70 or over;
- living alone (there are exceptions to this so those affected should contact LPS); and
- paying rates for her/his home.

### 15.5 People with disabilities

A Disabled Person's Allowance will provide help in the form of a reduction in rates where a person with a disability meets certain conditions. If the rated occupier or a person in her/his household is a person with a disability and meets the conditions of the scheme, s/he may be entitled to a reduction of 25 per cent in her/his rates bill.



A person qualifies for a Disabled Person's Allowance if:

- s/he or a member of her/his household has a disability, ie s/he is substantially or permanently disabled or suffers from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4); and
- the property where s/he resides has been adapted to provide:
  - a room (other than a kitchen, bathroom or lavatory) wholly or mainly used by the person with a disability;
  - an additional kitchen, bathroom or lavatory for the use of the person;
  - sufficient floor space to allow the use of a wheelchair which is used and required by the person.

The adaptation required must be of either essential or major importance to the person's well being because of the nature and extent of the disability. Supporting medical evidence may be required. There must be a clear link between the disability and how the property has been adapted.

Transitional protection is available for those who under the previous scheme were getting more than a 25 per cent reduction in rates. They will continue to receive this higher level of relief.

LPS administers this allowance for both owner-occupiers and tenants. A person claiming Disabled Persons Allowance will be issued with a separate form which should be returned to the Disabled Persons Section, Rate Collection, LPS in Belfast.

## 15.6 Full-time students, trainees and young people

Certain groups of people are entitled to full Rate Relief and therefore have to pay nothing. The scheme has closed **for new applicants** from December 2009. Those currently benefiting from the scheme may continue to do so, as long as they continue to satisfy the conditions of entitlement, until they leave their course of education or it is completed, whichever happens first.

Full Rate Relief is provided where a person is:

- a full-time student on a designated course;
- on an approved course of full-time training;
- under eighteen;
- a young person leaving care.

S/he must occupy the dwelling as her/his principal residence (for not less than 24 weeks a year or six weeks in any quarter) and either live alone or live in a property where everyone else falls into one of the above categories.

Designated courses include full-time:

- courses of study at further education colleges;



- degree courses;
- Higher National Diplomas of BTEC;
- Higher National Certificates of BTEC;
- teacher training courses;
- nursing or midwifery courses;
- post-graduate education.

An approved course of training is one provided by an institution under arrangements made by the Department for Employment and Learning under Section 1 of the Employment and Training Act (Northern Ireland) 1950 which:

- leads to a recognised qualification for employment or a particular type of employment;
- is of at least one academic year's duration; and
- the required attendance is normally at least 24 weeks a year with an average of 21 hours study each week (including tuition and periods of study/work).

LPS administers this form of assistance. In order to qualify, all occupants of a property must complete and sign a common application form and return it to LPS Rating Services, Housing Benefit Central Unit, Londonderry House, 21-27 Chichester Street, Belfast BT1 4JB. Ratepayers or landlords can apply on behalf of their tenants. Documentary evidence will be required to confirm eligibility.

## 15.7 Rate Relief Scheme

Rate Relief is a means tested scheme providing help with rates. It is additional to any help with rates provided under Housing Benefit.

It can be claimed by people who are liable to pay rates, either as owner occupiers or tenants, and who are entitled to less than maximum Housing Benefit for rates (including where entitlement is nil) or would be entitled to such if they claimed.

The Rate Relief Scheme is administered by NIHE for tenants and LPS for owner occupiers.

More generous rules apply to people claiming Rate Relief who are of Pension Credit (PC) qualifying age and over, are not claiming Income Support or JSA(IB) and do not have a partner claiming Income Support or JSA(IB) (see section 15.7.5).

The Rate Relief rules on extended payments and challenging decisions are generally similar to those for Housing Benefit. Any overpayment of Rate Relief is recoverable but cannot be recovered from social security benefits.

A Rate Relief week is a period of seven consecutive days starting on a Monday and ending on a Sunday.



### 15.7.1 Who can claim?

A person is entitled to Rate Relief if, from 1 April 2009:

- s/he is a pensioner and has capital of less than £50,000; or
- s/he is not a pensioner and her/his capital is below or equal to £16,000; and
- s/he is liable to make payments for a property (liable to a rate) which s/he occupies as her/his home; and
- there is an appropriate maximum Rate Relief in her/his case; and
- s/he is or, if a claim for Housing Benefit were made, would be entitled to less than 100 per cent Housing Benefit; or
- s/he is not, or if a claim for Housing Benefit were to be made, would not be entitled to any Housing Benefit because her/his income exceeds her/his applicable amount.

Where one member of a family is entitled to Rate Relief, this entitlement excludes any other member being entitled to Rate Relief for the same period.

### 15.7.2 Claiming Rate Relief

A person who wishes to claim Rate Relief should complete a joint application form for Housing Benefit and Rate Relief. However, the relevant authority may decide to treat a letter or written communication as being a valid claim.

Where a person claims Rate Relief within one month of receiving a decision on her/his claim for Housing Benefit, Rate Relief will start from the first day of the Rate Relief week corresponding to the benefit week from which s/he is entitled to Housing Benefit.

The legislation provides for claims for Rate Relief by electronic communication (eg email) where this has been authorised by a direction of the relevant authority.

### 15.7.3 Payment of Rate Relief

Rate Relief for tenants is paid by NIHE. Rate Relief for owner occupiers is paid by the Rating Division of LPS. NIHE or LPS may pay Rate Relief in the manner it considers appropriate using one or a combination of the following methods:

- a payment to the person claiming;
- a reduction in the amount of rates;
- a payment direct to the landlord where, under the Administration Act, an amount of Housing Benefit payable to the person or her/his partner is being paid to the landlord;
- a transfer of fund between NIHE and LPS.



#### **15.7.4 Calculating Rate Relief**

The calculation of Rate Relief is broadly similar to the calculation of Housing Benefit with two significant differences. The taper figure to be used on excess income is twelve per cent and any Housing Benefit entitlement for rates is deducted.

**There are five steps to calculating Rate Relief:**

**Step 1:** calculate maximum Rate Relief;

**Step 2:** calculate the person's applicable amount for Rate Relief;

**Step 3:** calculate the person's income for Rate Relief;

**Step 4:** compare income with applicable amount;

**Step 5:** deduct any Housing Benefit for rates.

If income is less than applicable amount, maximum Rate Relief is applicable.

Where income is greater than applicable amount, apply taper to excess income to reduce maximum Rate Relief. Then deduct any entitlement to Housing Benefit for rates from the figure in step 4 above to arrive at Rate Relief entitlement.

##### **15.7.4.1 Step 1: calculate maximum Rate Relief**

Maximum Rate Relief is 100 per cent eligible rates for a week minus any deductions for non dependants. This is worked out in the same way as for Housing Benefit as outlined in section 5.1.1.

##### **15.7.4.2 Step 2: calculate applicable amount**

This is worked out in the same way as for Housing Benefit as explained in 5.2.

##### **15.7.4.3 Step 3: calculate income**

This is worked out in the same way as for Housing Benefit as detailed in 5.3.

##### **15.7.4.4 Step 4: compare income with applicable amount**

Compare a person's applicable amount and income.

If income is less than applicable amount, maximum Rate Relief is applicable.

Where income is greater than applicable amount, calculate the amount by which income exceeds the applicable amount. This is called excess income. Apply taper to excess income. The taper is set at twelve per cent. Calculate twelve per cent of excess income (the taper amount). Rate Relief is then reduced by the amount of the taper.

##### **15.7.4.5 Step 5: calculate Rate Relief entitlement**

To arrive at Rate Relief entitlement, deduct the weekly amount of any Housing Benefit entitlement for rates from the final figure in step 4.



Where a person has not made a claim for Housing Benefit for rates, an amount equivalent to what her/his entitlement would be if s/he claimed will be deducted instead.

**15.7.4.6 Example**

Robert and Pat aged 30 and 32 have two children aged seven and five. Robert is unemployed with no source of income. Pat is working 20 hours a week and takes home £106.55 (gross wages £130). The family receives Child Benefit of £34.40, WTC of £85.54 and CTC of £122.68. The couple's rent and rates are £60 and £15 respectively. The family are all in good health. Housing Benefit entitlement for rates is £10.63 weekly as outlined in 5.4.1.

**Step 1: Maximum Rate Relief**

100% eligible rates £15.00

**Step 2: Applicable amount**

**Personal Allowances**

Couple	£114.85
Child one	£66.90
Child two	£66.90

**Premiums**

Family premium	£17.45
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**Total applicable amount** £266.10

**Step 3: Income**

Net earnings  
(ie £106.55 minus £10 standard earnings disregard and £17.10 additional 30/16 hour disregard) £79.45

WTC £85.54

CTC £122.68

**Total Income** £287.67

**Step 4: Compare applicable amount with income**

Income exceeds applicable amount by £21.57

(a) apply taper to excess

12% of £21.57	£2.59
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(b) deduct from maximum Rate Relief

£15.00 minus £2.59	£12.41
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**Step 5: Deduct Housing Benefit entitlement for rates from figure in step 4**

£12.41 minus £10.63 (Housing Benefit for rates) = £1.78

**Entitlement to Rate Relief is £1.78**



Total assistance with rates is £12.41

They will have to pay rates of £2.59

### 15.7.5 Rate Relief for a person of pensionable age and over

This section applies to people who are of pensionable age or over, are not claiming JSA(IB) and do not have a partner claiming Income Support or JSA(IB). These rules are similar to those which apply to other people claiming Rate Relief with some exceptions.

The capital rules for people of pensionable age and over and in receipt of PC(GC) are more generous. There is no limit to the amount of capital a person and/or partner can have and continue to be entitled to claim Rate Relief. All the capital of the person and/or partner is ignored.

Where a person of pensionable age or over is not in receipt of PC(GC), Rate Relief will not be paid where a person and/or partner has capital over £50,000.

The adult personal allowance included in the applicable amount is higher. The personal allowances are:

Status	Age	Amount
Couple	both partners pensionable age to 64	£253.94.
	either partner aged 65 or over	£273.13
Single pensioner	Pensionable age to 64	£173.88
	aged 65 or over	£190.96

Otherwise the calculation of Rate Relief for a person of pensionable age and over, who is not claiming JSA(IB) and does not have a partner claiming Income Support or JSA(IB) is worked out in exactly the same way as for those under 60.

The Housing Benefit rules applicable to those over 60 apply to the steps of the calculation.

#### 15.7.5.1 Example

John and Sarah are aged 65 and 63. They live together in a NIHE house.

John receives a Retirement Pension of £119.30 per week and also receives DLA, high rate care of £82.30. Sarah is in receipt of Retirement Pension of £65.70 per week and £75.00 spousal maintenance weekly.

The couple's rent and rates are £60 and £15 respectively. Housing Benefit entitlement for rates is £10.77 weekly as outlined in 6.5.4.2.





**Step 1: Maximum Rate Relief**

100% eligible rates £15.00

**Step 2: Applicable amount**

**Personal allowances**

Couple £273.13

Premiums nil

**Total applicable amount** £273.13

**Step 3: Income**

**Income**

John's Retirement Pension £119.30

Sarah's Retirement Pension £65.70

Maintenance £75.00

**Total income** £260.00

**Step 4: Compare applicable amount with income**

Income is less than applicable amount. If income is less than applicable amount, maximum Rate Relief is applicable.

**Entitlement to Rate Relief is £1.54**

This is paid in addition to Housing Benefit for rates of £13.46

Total assistance with rates is £15.00.

They will have to pay nothing towards rates.

## 16. THE BENEFIT CAP

The benefit cap applies in Northern Ireland from 31 May 2016.

### 16.1 What is The Benefit Cap

The benefit cap limits the amount, in total, that claimants can receive from a list of specified benefits including Housing Benefit. The cap for single claimants is currently £350 a week and £500 for couples with, or without, dependent children, and lone parent families. Most benefit income is taken into account:

- Bereavement Allowance
- Child Benefit ;
- Child Tax Credit;
- Employment and Support Allowance;



- Guardian's Allowance;
- Housing Benefit;
- Incapacity Benefit;
- Income Support;
- Jobseeker's Allowance;
- Maternity Allowance;
- Severe Disablement Allowance;
- Widowed Parent's Allowance;
- Widowed Mothers Allowance;
- Widows Pension.

Where a person's benefit entitlement exceeds the cap, the reduction will be from the person's Housing Benefit award.

## 16.2 Exemptions to the Benefit Cap

The cap will not apply where the person claiming or her/his partner is receiving one of the following benefits:

- Disability Living Allowance (including if received for a dependent child);
- Working Tax Credit;
- Attendance Allowance;
- Industrial Injuries Disablement Benefits;
- Employment and Support Allowance, if paid with the support component;
- War Widow's or War Widower's Pension;
- Carer's Allowance.

The cap will also not apply where the person claiming or her/his partner had in at least 50 out of the last 52 weeks been in employment and not entitled to Income Support, JSA or ESA. In these circumstances, the cap will not apply for 39 weeks from the day after the last day of employment.

Two additional exemptions apply in Northern Ireland as part of the welfare reform mitigations. The first ensured that those in receipt of Carer's Allowance were exempt from the cap but this has now been inserted into the legislation.

The second one ensures that any families with children not exempt under the above provisions will receive a supplementary payment to compensate for any deduction made as a result of the cap being applied. This applies for up to four years.



## 17. LEGISLATION

Housing Benefit is governed by **Sections 122, 129 and 130 to 133 of the Social Security Contributions and Benefits (NI) Act 1992, Sections 73 and 126 to 128 of the Social Security Administration (NI) Act 1992 and the Housing Benefit (Payment to Third Parties) (NI) Order 1996.**

Regulations are contained in the **Housing Benefit Regulations (NI) 2006, SR No. 2006, No. 405 as amended** and the **Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006, SR 2006, No. 406.**

Decision Making and Appeals is governed by the **Housing Benefit (Decisions and Appeals) Regulations (NI) 2001.**

Rates are covered by the **Rates (NI) Order 1977 as amended by the (Amendment) (Northern Ireland) Order 2006 SI No. 2954 (NI 18)**, and by regulations including the **Rate Relief (Education, Training and Leaving Care) Regulations (Northern Ireland) 2007 SR No. 148**, the **Rate Relief (General) Regulations (NI) 2007 SR No. 204** and the **Rate Relief (Qualifying Age) Regulations (Northern Ireland) 2007 SR No. 203** as amended.

## 18. FURTHER INFORMATION

*Housing Benefit and Council Tax Benefit Legislation, 28<sup>th</sup> Edition, CPAG, 2016/2017, £110.00 (including updating supplement). The 28<sup>th</sup> Edition, 2016/2017 is due for release in winter 2016.\**

*Welfare Benefits and Tax Credits Handbook, 18<sup>th</sup> Edition, CPAG, 2016/2017, £61.00.\**

*Housing Benefit Guidance Manual, the Stationery Office, Belfast.*

\*Both available from CPAG, 94 White Lion Street, London N1 9PF. Use both carefully as Housing Benefit in Britain is different from Northern Ireland.

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