

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (AMENDMENT) REGULATIONS 2006
2006 No. 644

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Amendments are needed to Housing Benefit legislation to ensure that rent allowances can continue to be paid (rather than becoming rent rebates) when management orders are in force.

2.2 And to ensure that where, in Scotland, a No Rent Payable order or notice is revoked, a terminating HB decision is consequently revised.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Provisions in the English Act and the Scottish Act will introduce new licensing and registration regimes for private rented properties. This will mean that for the vast majority of private landlords in Scotland there will be a requirement to register with their local authority. Mandatory registration in Scotland will give tenants the assurance that they let from landlords who are fit and proper to be letting houses, while (for the first time) giving local authorities a means of dealing effectively with the worst tenants and a sound basis for engaging with the private rented sector to enhance the contribution it makes to meeting housing need.

4.2 In England and Wales, there will be selective licensing by local authorities of private landlords, which will be focussed on areas of low housing demand and areas suffering from anti-social behaviour. There will also be selective licensing of Houses in Multiple Occupation.

4.3 These Acts will allow certain sanctions to apply where a property is unlicensed or unregistered. Provisions in the Scottish Act will also allow for sanctions to apply where a landlord fails to address the anti-social behaviour of his tenants.

4.4 These sanctions will include the introduction of various types of management orders, which in Scotland can apply where a landlord fails to address anti-social behaviour by his tenants. Elsewhere they can apply where a property is

unlicensed, or in order for a local authority to secure occupation of long-term empty private sector homes. During the period that these management orders are in force, the local authority effectively steps into the shoes of the landlord. As a result, the rent becomes payable to the local authority rather than the landlord.

4.5 In Scotland, there are also provisions for the issue of No Rent Payable orders where a landlord fails to address the anti-social behaviour of his tenants and No Rent Payable notices where the landlord is not registered. As their names suggest, when these orders or notices are in force, the landlord is not able to charge rent to their tenants. These orders can apply regardless of whether the tenant is getting housing benefit and the anti-social behaviour must have taken place at or in the locality of the house, and thus be something which the landlord had some control over.

4.6 As a consequence of these provisions, it has become necessary to make corresponding adjustments to both Housing Benefit and Decisions and Appeals legislation. The Housing Benefit (Amendment) Regulations 2006 are intended to make the following changes, to take effect from 3rd April 2006.

- To prescribe rent rebates as rent allowances for periods where management orders are in force.
- To allow a terminating HB decision to be revised (rather than the customer invited to make a new claim) where a No Rent Payable order or notice, is revoked due to a successful appeal against it.

4.6 We have consulted the Local Authority Associations on these amendments. The amendments were supported. The Social Security Advisory Committee has seen the regulations in draft and has agreed that the legislation need not be formally referred to the Committee.

5. Extent

5.1 These Regulations extend to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Where a person is liable to pay rent to a housing authority, HB must take the form of a rent rebate. Otherwise a rent allowance is payable. So once one of the various types of management order is put in place, rent rebates would become payable and, because rent rebates are not referred to the rent officer, this could lead to claimants unfairly gaining (or in cases where the Local Housing Allowance applies to the rent allowance, they could lose out if the amount they had been

receiving as a result of the Local Housing Allowance was higher than their rent). To ensure that the status quo is maintained, we propose that where a management order is put in place, rent allowances continue to be paid, and this legislation is intended to achieve this.

- 7.2 As the effect of a No Rent Payable order or notice is that a landlord cannot charge rent, HB will end once they are issued. Where there is a successful appeal to the Sheriff against that order or notice (meaning HB can continue) the tenant would need to make a new claim for HB. The local authority would only be able to backdate if they were satisfied that there was good cause for failure to claim earlier. These draft regulations will amend the HB Decisions and Appeals Regulations to allow the terminating decision to be revised where there is a successful appeal against a No Rent Payable order or notice. This is intended to ease administration, and ensure that claimants do not lose out if their appeal is resolved more than 52 weeks after their HB stops or if the local authority does not consider this particular circumstance to be “good cause”.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business, charities or voluntary bodies.
- 8.2 The impact on the public sector is nil.

9. Contact

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can answer any queries regarding this instrument.