

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (AMENDMENT) REGULATIONS 2012

2012 No. 3040

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. **Purpose of the instrument**
 - 2.1 This instrument brings in two changes to Housing Benefit from April 2013. The introduction of:
 - size criteria into the assessment of Housing Benefit for working age claimants in the social rented sector; and
 - different review arrangements to support changes to the Local Housing Allowance (LHA) to include uprating by reference to the Consumer Price Index (CPI) changes.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Context**
 - 4.1 This instrument stems from Section 69 of the Welfare Reform Act 2012 and introduces one of a number of Housing Benefit savings measures first announced by the Chancellor as part of the June 2010 Budget¹. The introduction of size criteria restrictions to the calculation of Housing Benefit for working age claimants living in the social rented sector are intended to achieve total Exchequer savings of around £1 billion in Great Britain by 2014/15.
 - 4.2 Legislation² to introduce uprating of Local Housing Allowance in line with the Consumer Price Index from April 2013, was made and laid on 6 March 2012 and came into effect from 2 April 2012. The changes in this instrument on this matter relate solely to the annual review arrangements for individual awards of Local Housing Allowance rather than the link to CPI itself.

¹<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100622/debtext/100622-0006.htm>

² The Rent Officers Order (Housing Benefit Functions) (Amendment) Order 2012
<http://www.legislation.gov.uk/uksi/2012/646/contents/made>

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Welfare Reform, Lord Freud, has made the following statement regarding Human Rights:

In my view the provisions of the Housing Benefit (Amendment) Regulations 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why?

Social sector size criteria (under-occupation)

7.1 Housing Benefit expenditure has almost doubled in cash terms from £11 billion in 2000/01 to £21 billion in 2010/11 and left unreformed, it would reach £25 billion by 2014/15, which is unsustainable. Limiting the amount of Housing Benefit that working age claimants in the social rented sector are entitled to, based on their household size, will help contain rising expenditure. This change is important as it is likely to deliver around a fifth of the expected annual savings of more than £2 billion to result from the Housing Benefit reforms announced in the Emergency Budget and Spending Review in 2010. However, depending on the behavioural effects of this change it could generate smaller savings in Housing Benefit expenditure or the savings could be greater. This will be due in part to how claimants and social landlords react to this change and this aspect will be monitored to determine the extent to which this policy objective is achieved.

7.2 At February 2012, there were approximately 3.4 million Housing Benefit claimants living in the social rented sector. Claimants in the social rented sector make up approximately 67% of all Housing Benefit claimants at an annual cost of around £13 billion. About two million are of working age.

7.3 The Department published analysis of the potential impacts of these changes during the parliamentary passage of the Welfare Reform Act 2012 in an Equality Impact Assessment in October 2011³. This has now been updated and is published alongside this instrument⁴. Overall the average weekly loss for existing claimants will be around £14, with an average weekly loss of about £12 for claimants under-occupying by one bedroom and about £22 for those under occupying by two or more bedrooms. Around 660,000 claimants are likely to be affected by this measure.

³ <http://www.dwp.gov.uk/docs/eia-social-sector-housing-under-occupation-wr2011.pdf>

⁴ <http://www.legislation.gov.uk/new/ukxi>

7.4 Options open to people who would see a reduction in their Housing Benefit might include:

- taking up employment or increasing their working hours;
- making up the rent from other sources of income;
- taking in a lodger, or
- asking family members to contribute more.

Some people are expected to choose to move and may need advice and assistance from their local authority, social landlords and others to do so.

7.5 As well as helping to contain Housing Benefit expenditure this change will ensure that all tenants, regardless of their tenure type, are treated consistently. Unlike those in the private rented sector, claimants living in the social rented sector currently receive Housing Benefit for any size accommodation, even where this is too large for the household's needs. In the private rented sector size criteria determine the maximum property size for which Housing Benefit will meet the costs based on household size. Introducing restrictions for working age claimants in the social sector from April 2013 to reflect household size, using the same size criteria as currently used for calculating Housing Benefit for private sector claimants under Local Housing Allowance rules, will ensure parity of treatment. The changes also aim to strengthen work incentives among people of working age living in social rented housing, make better use of available social housing stock and increase mobility in the social rented sector.

7.6 From 1 April 2013, using information on the number of bedrooms in a claimant's property and details of people living in the claimant's household the size criteria will be used to assess whether a claimant is under-occupying his/her accommodation. One bedroom will be allowed in the size criteria for each of the following:

- A couple
- A person who is not a child (age 16 and over)
- Two children of the same sex
- Two children who are under 10 years of age
- Any other child
- A non-resident overnight carer.

7.7 All occupiers (except foster children⁵) will be taken into account and the size criteria applied to establish whether or not the claimant is under-occupying their home and by how many bedrooms. Where a claimant is deemed to be under-occupying, one of two percentage reduction rates will be applied:

⁵ Foster children are not included in the assessment of any income-related benefits but any fostering allowances paid for that child/children are disregarded in full.

- 14% where under-occupying by one bedroom
- 25% where under-occupying by two or more bedrooms.

7.8 The reduction will apply to the total eligible rent for the dwelling including any eligible service charges and will affect all existing working age claimants who are under-occupying their accommodation from 1 April 2013. All working age claimants making new claims to Housing Benefit on or after 1 April 2013 and who are under-occupying will be affected from the date that they are entitled to Housing Benefit, but no earlier than 1 April 2013.

7.9 In response to the concerns raised about the potential impact of this measure on different groups the Government announced an additional £30m a year for the discretionary housing payment budget from 2013/14. This additional funding is aimed specifically at two groups:

- disabled people who live in significantly adapted accommodation; the extra funding will enable them to remain in their existing homes;
- foster carers, including those who need to keep an extra room when they are in between fostering.

Local Housing Allowance – changes to review arrangements

7.10 Changes to the Rent Officers (Housing Benefit Functions) Order 1997 took effect from 2 April 2012⁶ and allowed for the introduction of the uprating of Local Housing Allowance rates by CPI. This means that from April 2013, Local Housing Allowance rates will be set annually at the lower of:

- the previous Local Housing Allowance rate uprated by the September 2012 CPI inflation, or;
- the 30th percentile of local market rents in September 2012.

7.11 These amendments were covered in SI 2012 No. 646 and the supporting Explanatory Memorandum which can be accessed via the following link: <http://www.legislation.gov.uk/ukSI/2012/646/contents/made>

7.12 The move to annual CPI uprating of Local Housing Allowance rates from April 2013, means that the current process for reviewing LHA at the anniversary date of claim is no longer a requirement. This is because all claimants will have their benefit assessed each April when the new rates and the anniversary date becomes superfluous. Setting the rates annually also provides an opportunity to simplify the current review arrangements.

⁶ equivalent amendments were made to the Rent Officers (Housing Benefit Functions) (Scotland) Order

7.13 The provision for reviews at the anniversary date, will be abolished from January 2013. This proposed start date for the change is to avoid claimants having two re-assessments of their LHA close together where there has been no relevant change of circumstances, for example if their last anniversary date was in the period January to March 2013.

7.14 Also included in these regulations, is a provision to review LHA cases where there has been a change in rent since the annual review, either an increase or a decrease. This is to avoid the situation where tenants could be faced with a shortfall in meeting their rent until their case could be reviewed the following April. It also means having a system that quickly responds to changing circumstances, allowing rent information to be updated during the year.

7.15 Taken together, these changes to administration will bring LHA in line with other benefits, so the LHA review will take place in April alongside the changes to other benefits. They also fit with the intention and principles for the treatment of housing costs under Universal Credit.

Consolidation

7.16 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 No formal consultation was undertaken on the changes contained in this instrument but the Department engaged with key stakeholders on an informal basis during the parliamentary passage of the Welfare Reform Act 2012 when these changes were debated in full. The Department held a six week consultation, ending on 31 May 2012, with the local authority associations on draft regulations. The draft instrument was also shared with key stakeholders including the National Housing Federation, Chartered Institute of Housing, Citizens Advice, Crisis and Shelter and the devolved administrations.

8.2 The Department received seven responses on the draft instrument; the key themes are summarised below. Four of the respondents wanted to see the size criteria amended to allow an extra bedroom for specific groups such as foster children, disabled children⁷ and non-resident children subject to shared care

⁷ A Court of Appeal judgment handed down on 15 May 2012 in the cases of Burnip, Trengove and Gorry will enable local authorities to award an extra room within the Housing Benefit calculation for private sector tenants for a disabled child/children where they are satisfied that those children are unable to share a

arrangements. One respondent suggested that the size criteria should be amended within Universal Credit to allow every household one spare bedroom. These matters were debated during the passage of the Act through Parliament where the Government, while sympathetic, made it clear that exempting specific groups from the size criteria measure was unaffordable. The Government acknowledged the need to provide help for certain groups and announced a further £30m for Discretionary Housing Payments (see paragraph 7.9), confirming that it would keep the Discretionary Housing Payments funding under review.

8.3 Three respondents welcomed the lack of a definition of what constitutes a bedroom within the regulations as they felt that gave landlords more flexibility. This matter is covered in guidance for local authorities; the Department's view is that it is for landlords to specify the size of the property, which ought to match what is on any tenancy agreement and reflect the level of rent charged for a particular property.

8.4 Two respondents commented that they felt it unfair that the percentage reductions for the size criteria change would be applied to a claimant's eligible rent and service charges. The Department's view is that changing this approach would introduce unwelcome operational complexity to the Housing Benefit calculation.

8.5 Although there is no requirement to submit this instrument to the Social Security Advisory Committee, as it contains only regulations that are being made within six months of section 69 of the Welfare Reform Act 2012 coming into force, it was sent to the Committee on an informal basis. The Committee raised concerns about the potential impact of the social sector size criteria and the actual effect of these changes on the behaviour of landlords and tenants and the wider impacts on other areas such as homelessness, health and education. It acknowledged the importance that the Department for Work and Pensions places on the full evaluation of the social sector size criteria measure and wanted to see an evaluation that took account of local variations and that looks at the adequacy of Discretionary Housing Payments funding; the Department has accepted the Committee's offer to work with them on the design of the evaluation. The Department also accepted the Committee's offer to help quality assure material that is being prepared to help inform claimants likely to be affected by these changes.

8.6 The policy has also been subject to debates in both Houses of Parliament as part of the parliamentary passage of the Welfare Reform Act 2012⁸ when

bedroom because of their disabilities. The Department is applying for permission to appeal the decision to the Supreme Court.

⁸ links to the relevant Hansard extracts are listed at the end of this document in the Annex

illustrative regulations were shared and discussed with interested parties during the passage of the Act towards the end of 2011.

8.7 Informal consultation has been carried out with a number of landlords and local authorities through a social landlord advisory group set up by the Department for Communities and Local Government to help look at the practical implications of the changes. There have also been discussions with the Local Authority Association Steering Group, the Practitioners Operational Group and the DWP/local authority IT Suppliers Forum to look at the type and level of support they require for successful implementation of these changes. DWP is continuing to work closely with these groups so that it can meet their needs.

9. Guidance

9.1 The Department is working with IT suppliers to implement the changes and is developing a range of communication products aimed at raising awareness, including online information resources such as leaflets and posters for local authorities and others to download locally. It has started to publicise these proposed changes through appropriate channels such as the DWP website to make sure that people likely to be affected by these changes know about them in advance.

9.2 Comprehensive guidance about the changes and their implementation is being developed for local authorities to assist them with the effective delivery and communication of the changes. This guidance will be made available through the standard web-based products with which the Department communicates with Housing Benefit managers. Local authorities also have access to the 2011 good practice guide that was published after the introduction of the Local Housing Allowance changes, which includes advice on different communication methods, alternatives to letters and the value of follow up communications.

9.3 The Chartered Institute of Housing, with support from the Department for Work and Pensions and the Department for Communities and Local Government, has developed a toolkit of information and best practice for local authorities and housing associations. This is designed to help landlords prepare for the size criteria changes as well as offer advice on how they can support tenants who are affected by the changes. The toolkit is available on the Chartered Institute of Housing's website.

10. Impact

10.1 This legislation has no direct impact on the private sector or civil society organisations. The indirect impact of the changes contained in this instrument (for example, social landlords collecting rent to supplement Housing Benefit shortfalls, and increased activity to collect rent arrears) cannot be quantified with

any degree of certainty at this stage as it is not possible to predict the behavioural effects of tenants or their landlords.

10.2 There will be some impact on the public sector with one-off costs for local authority housing benefit and housing departments to implement these changes. There are also likely to be ongoing additional administration costs to meet increased levels of activity on Discretionary Housing Payment requests. The Department is working closely with the Department for Communities and Local Government to assess the financial impact of these changes on local authorities as part of its work to quantify the extent of any new burdens for local authorities.

10.3. An impact assessment to cover the social sector under-occupation measure was published on 16 February 2011⁹. An updated version of this impact assessment is attached to this memorandum and will be published alongside it on the OPSI website: <http://www.opsi.gov.uk/si/si-2012-index>
The main changes are to the average weekly Housing Benefit reductions, which were revised following an announcement on 14 December 2011 confirming the percentage reduction rates as 14% and 25% (see paragraph 7.7 above). The average weekly reduction will be around £14 per week rather than the £13 in the earlier assessment, which was based on percentage reduction rates of between 10% to 15% and 20% to 25%. Similarly, the updated average losses for claimants under-occupying by one bedroom will be £12 per week (previously £11) and £22 per week (previously £20) for two or more bedrooms per week. The updated impact assessment suggests fewer claimants under-occupying by two or more bedrooms will be affected by the introduction of size criteria for working-age claimants in the social rented sector, but this is partially offset by a greater number of claimants under occupying by just one bedroom. The number of claimants likely to be affected by this measure is now estimated to be 660,000 rather than 670,000. The changes to cases affected reflect an update to the survey data on which the analysis is based.

10.4 An impact assessment covering the uprating of local housing allowance by CPI was published on 26 March 2012¹⁰. The administrative changes in this instrument to support the implementation of this reform have no effect on the impact assessment.

11. Regulating small business

The legislation does not apply to small business.

12 Monitoring & review

12.1 The success criteria of the social sector change will be that it:

⁹ <http://www.dwp.gov.uk/docs/social-sector-housing-under-occupation-wr2011-ia.pdf>

¹⁰ <http://www.dwp.gov.uk/docs/hb-lha-cpi-uprating-wr2011-ia.pdf>

- contains growing Housing Benefit expenditure and helps reduce the Budget deficit to deliver the expected savings of around £500 million a year to the Exchequer;
- encourages greater mobility within the social rented sector, as figures from the English Housing Survey suggest that under 4% of households moved within the social rented sector in 2010/11:
- strengthens work incentives among people of working age living in social rented housing with about 18 per cent¹¹ of Housing Benefit claimants living in the social rented sector and under the age of 60 in work; and
- makes better use of available social housing stock from the expected position at the introduction of the size criteria in 2013 with 31% of working age social rented sector Housing Benefit claimants under-occupying their accommodation.

12.2 In addition to the Department's own ongoing monitoring of the policy, it will commission independent monitoring and evaluation to explore the effects of the introduction of size criteria in the social rented sector. This will consist of some primary field research into the impacts of the changes, which is expected to be undertaken over a two year period from April 2013 to March 2015. Preparatory work should start in 2012/13 and initial findings are expected to be available to Parliament and published in accordance with the Department's publication protocols in early 2014 with final reporting in late 2015. The research methodology and scope will be finalised in consultation with contractors and key stakeholders once the initial commissioning work has been undertaken over the summer. The measurement of the success criteria will be finalised in consultation with contractors and key stakeholders once the commissioning work has been completed.

12.3 The evaluation is likely to include a range of social landlords in local authorities across England, Scotland and Wales. Different types of authorities including a range of urban, rural and county district local authorities will be included; they will be selected to cover a range of different housing market demands. This approach should ensure that the effects of the introduction of size criteria can be explored fully and offer a sound insight into the experiences of tenants. The evaluation and monitoring will include the impact of the measures on:

- Supply of accommodation
- Rural areas
- People unable to share rooms such as couples and disabled children
- Vulnerable individuals
- Financial status
- Health and wellbeing

¹¹ [Single Housing Benefit Extract, Feb 2012.](#)

- Family life, particularly where the family has multiple problems.

12.4 The regulatory changes to the LHA review arrangements will not be included in the monitoring arrangements specified above for the social sector size criteria, nor will there be any discrete monitoring of these administrative changes. It should be noted however, that there will be monitoring arrangements for the overall LHA CPI uprating policy to look at any divergences between LHA rates and market rents. Those arrangements will involve publishing rates from the Valuation Office Agency each year to provide transparency to the public and parliament and to monitor any divergences between LHA rates and market rents within each broad rental market area.

13. Contact

13.1 Nina Young at the Department for Work and Pensions (Tel: 020 7449 5351) or email: nina.young@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Annex

Welfare Reform Bill Hansard links for debates on the social sector size criteria (under occupation measure)

Hansard link for the amendments in the Commons; **31 March 2011** in Committee (columns 325 to 327 and 331):

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/110331/pm/110331s01.htm>

Hansard link for Commons Committee on **3 May 2011** (columns 674 to 704 and 715 to 718)

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/110503/pm/110503s01.htm>

Hansard link for Commons Report stage on **13 June 2011** (columns 591 to 604)

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110613/debtext/110613-0003.htm>

Hansard link second reading in the House of Lords on **13 September 2011** (columns 690, 709 to 711)

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110913-0003.htm>

Hansard link for the Lords Committee stage debate on **14 December 2011** (column references 1285 through to 1316):

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111214-0001.htm#11121475000781>

Hansard link for Commons consideration of Lords amendments **1 February 2012** (column references 916 to 924 and 928 to 951)

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120201/debtext/120201-0004.htm>

Hansard link for Lords amendments in ping pong **14 February 2012** (column references 705 to 727)

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120214-0002.htm>

Hansard link for Commons consideration of Lords amendments (ping pong) **21 February 2012** (column references 751 to 767)

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120221/debtext/120221-0001.htm>

Hansard link for Lords amendments in ping pong **29 February 2012** (column references 1370 to 1384)

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120229-0002.htm#12022980000074>