

EXPLANATORY MEMORANDUM TO
THE BENEFIT CAP (HOUSING BENEFIT) REGULATIONS 2012

2012 No.

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

The instrument makes provision for a cap on the total amount of welfare benefits to which a person is entitled from April 2013 by reducing the amount of Housing Benefit to which that person is entitled.

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

None

4. Legislative Context

4.1 Section 96 of the Welfare Reform Act 2012 allows for the introduction of a benefit cap. Initially the cap will be applied by local authorities reducing a claimant's Housing Benefit until the introduction of Universal Credit, when the cap will be applied by the Department for Work and Pensions (the Department) as part of the Universal Credit calculation. The Department expects to bring forward regulations on Universal Credit for Parliamentary scrutiny in the autumn. However, as Universal Credit will be phased in over a number of years, we would propose to operate the benefit cap via the administration of Housing Benefit where necessary, until all claimants have moved over to the new Universal Credit rules.

4.2 The benefit cap policy was subject to considerable debate and scrutiny during the passage of the Welfare Reform Bill. A grace period of nine months was announced at the Commons consideration stage of the Welfare Reform Act 2012 on 1st February 2012 for people who lose their job.

4.3 At the same time Ministers agreed to publish in 2014 a review of the cap after the first year of operation (April 2013 – April 2014)¹.]

4.4 Ministers had announced the exemptions for claimants entitled to Disability Living Allowance, Working Tax Credit and war widows and widowers pensions during the various debates.

4.5 These Regulations amend the Housing Benefit Regulations 2006, which apply where neither the claimant nor the claimant's partner has attained the qualifying age for state Pension Credit.

¹ <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120201/debtext/120201-0002.htm>

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 Benefit Cap (Housing Benefit) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 From April 2013 the Government will introduce, through Housing Benefit, a cap on the total amount of benefit that working-age people can receive so that households on out of work benefits will no longer receive more in welfare payments than the average weekly wage for working households. The benefit cap will only be applied to claimants who fall under the working age Housing Benefit regulations and not the state Pension Credit Housing Benefit regulations.

7.2 The Government's consultation document, "*21st Century Welfare*", published in July 2010² asked people "What steps should the Government consider to reduce the cost of the welfare system and reduce welfare dependency and poverty." As reported in, "Consultation response to 21st Century Welfare," published in November 2010³, many people responded to that question by suggesting that there should be a benefit cap, introduced to restrict the amount of welfare payments people can receive while out of work.

7.3 The intention is that the benefit cap will complement the introduction of Universal Credit in acting as a work incentive as those claimants moving into work will be exempt from the measure. The Government intends also that it will promote greater fairness in the Welfare System, and will reduce benefit expenditure and help tackle the financial deficit. The cap will contribute savings of £275m per annum in its first two years of operation.

7.4 During the passage of the Welfare Reform Bill (Welfare Reform Act 2012) the Government had discussions with MPs, Peers and external stakeholders to explain the rationale for the introduction of the benefit cap, to set out the Department's early plans for delivering the cap and to discuss issues arising. As a result certain groups will be exempt from the cap. There is also a grace period before the benefit cap would be applied of 39 weeks for those who have worked at least 50 weeks within the last 52 weeks.

7.5 The benefit cap (i.e. the rate at which the total amount of welfare benefits paid cannot exceed) is £350 for a single person and £500 for couples and those with

² www.dwp.gov.uk/docs/21st-century-welfare.pdf

³ www.dwp.gov.uk/docs/21st-century-welfare-response.pdf

dependant children. However, not all benefits are included in this calculation, which reflects the intentions of the cap as a work incentive.

- 7.6 Where the total amount of welfare benefits exceeds the cap, the local authority will reduce a claimant's entitlement to housing benefit by the amount of the excess. However, housing benefit will not be taken below the minimum amount payable of £0.50 under the current rules, to ensure that claimants are still able to access discretionary help from their local authority (through the Discretionary Housing Payment Scheme) and to other services where eligibility is dependent on being in receipt of Housing Benefit.
- 7.7 The Government expects different households to have different behavioural responses to the cap but those affected will have a number of options to consider. These include starting work, reducing their non-rent expenditure, making up any shortfall in housing benefit using a proportion of their other income or moving to cheaper accommodation or area. A number of measures are in place to ease the transition for families affected by the policy.
- 7.8 The Department is giving all existing claimants who could potentially be affected by the cap early notice, so we can offer them appropriate support to change their circumstances and move into work. Those who are affected by the cap will have access to immediate employment support from Jobcentre Plus and its partners, the Work Programme and Work Choice. The Department will work intensively with claimants explaining and identifying the support available locally and how they can look at other options if appropriate.
- 7.9 In response to the concerns raised about the potential impact of this measure on different groups the Government is providing additional funding – solely to support those who will be affected by this measure - of up to £75 million in 2013/14 and up to a further £45 million in 2014/15 for Discretionary Housing Payments. The intention is that these funds are used to give short-term, temporary relief to families who may face a variety of challenges. Each case is considered on its own merits rather than on pre-defined criteria.

- ***Consolidation***

- 7.10 An informal consolidated text of this instrument will be available to the public free of charge in due course via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

- 8.1 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 formal six week consultation, ending on 29 June 2012, with the local authority associations on draft regulations. The draft instrument was also shared with key stakeholders including National Housing Federation, Citizens Advice, Crisis and Shelter and the devolved administrations. In total the Department received 14 responses to its consultation on the draft instrument.

8.2 Some responses reiterate policy concerns raised during the debates in Parliament: the Department will continue to monitor the issues closely and will publish in 2014 a review of the cap after the first year of operation. Specific areas of concern raised include;

- The grace period's 50 out of 52 weeks qualifying period and whether this is too stringent;
- The implications of moving from Disability Living Allowance to Personal Independence Payment given potential differences in coverage;
- Regional differences in housing costs and concerns for vulnerable individuals and families who use temporary and supported accommodation, which incur additional costs that make them more expensive than mainstream accommodation.

8.3 Other responses raise helpful points on the practicalities of administering the policy: the Department will consider these as it works through the detail of delivering the policy. Comments include;

- Communication of the cap to claimants should clearly state that the cap and the resultant reduction in benefit is as a result of the changes being applied by the Government not the local authority;
- Concern over various additional costs to local authorities and the clarity of local authority roles and responsibilities in administering the cap;
- The need for adequate data sharing to provide accurate and timely information to local authorities on the total benefits and tax credits received by a claimant.

8.4 These Regulations are not subject to statutory referral to the Social Security Advisory Committee (SSAC) as it is planned that they will be made within 6 months of the commencement of the relevant enabling power. However, in recognition that this is a new area of policy, the Secretary of State for Work and Pensions asked the SSAC to scrutinise them. The SSAC are consulting on the proposals, primarily on the impact and mitigation of the cap, which will inform the Department's continuing work on developing appropriate support for local authorities and for benefit claimants.

8.5 There have also been discussions with the Local Authority Association Steering Group, the Practitioners Operational Group and the Department for Work and Pensions/local authority IT Suppliers Forum to look at the practical implications of the changes, and to look at the type and level of support they require for successful implementation of these changes. The Department 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. It has started to publicise these proposed changes through appropriate channels such as

the Department for Work and Pensions website⁴ to make sure that those 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 local authorities⁵. Local authorities also have access to the Discretionary Housing Payments good practice guide, which is being revised to include advice on how Discretionary Housing Payments can support claimants affected by the benefit cap.
- 9.3 The Department is working closely with other Government Departments and key stakeholders at a national level to ensure they understand what the cap is and the impact it has on their business and the people they represent. Jobcentre Plus will mirror this work at a local level to understand the implications for the local landscape and economy in order to identify the required help and support needed in their area. Jobcentre Plus districts will be working closely with local authorities in their area to offer appropriate support to those affected by the cap.
- 9.4 Some families affected by the benefit cap may be receiving help as part of the Troubled Families Programme. We will work closely with Troubled Families co-ordinators in local authorities, and with Department for Communities and Local Government, to identify these families and ensure that they are aware they may be affected by the cap and can put the appropriate support measures in place.

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, increased contact with advice centres) cannot be quantified with any degree of certainty at this stage as it is not possible to predict the behavioural responses of those affected by the benefit cap.
- 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 on the impact of the benefit cap was published in January 2012. An updated version of this impact assessment is attached to this memorandum and will be published alongside it on the Legislation website: <http://www.opsi.gov.uk/si/si-2012-index>. The main change since the previous, January 2012, impact assessment is the inclusion of the exemptions announced during the progress of the Bill. The most significant of these is the inclusion of the grace period which was outlined at para 7.3.

⁴ <http://www.dwp.gov.uk/>

⁵ <http://www.dwp.gov.uk/local-authority-staff/>

10.4 This reduces the headline number of households affected to 56,000, from the January figure of 67,000. However there has been no material movement in the breakdowns of this total, by the various household characteristics such as location, family composition or sector of the rental market.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

There will be a full evaluation of the benefit cap which will explore its effectiveness and analyse the appropriateness of the policy design and delivery model. The evaluation will inform any recommendations to Ministers on whether the cap would benefit from any changes to its structure or delivery. Linked to this, the Minister for Employment announced to Parliament on 1st February 2012 that the Department will publish a review of the cap after the first year of its operation. The review will cover all the areas required for the evaluation of government policies and will be published in autumn 2014.

Key themes of the evaluation

- **Delivery** – How effective has the delivery of the benefit cap been (in all its delivery stages)? How effective has staff training and awareness-raising been? What has happened in terms of support, and use of the Work Programme? How effective have the working relationships been between the Department for Work and Pensions, the Department for Communities and Local Government and local authorities? How has the cap impacted on Jobcentre Plus and local authorities' performance?
- **Work and Well Being** – What impact has the cap had on movement into work or increases in hours of employment.
- **Behaviour Change** – What impact has the cap had on where claimants can afford to live, and on household structure?
- **Income and Well Being** – What impact has the cap had on claimants' income levels?
- **Beliefs and Expectations** – What impact has the cap had on attitudes towards work and benefit receipt? What impact has the cap had on public attitudes towards benefit receipt?
- **Wider Indicators** – What impact has the cap had on vulnerable individuals and families? What impact has the cap had on the number of children in poverty? What impact has the cap had on the number of people in temporary accommodation?

13. Contact

Philip Rescorla at the Department for Work and Pensions Tel: 020 7449 5270 or email: philip.rescorla@dwp.gsi.gov.uk can answer any queries regarding the instrument.