

**EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (LOCAL HOUSING ALLOWANCE
AND INFORMATION SHARING) AMENDMENT REGULATIONS
2007.**

2007 No.2868

AND

**THE HOUSING BENEFIT (STATE PENSION CREDIT) (LOCAL
HOUSING ALLOWANCE AND INFORMATION SHARING)
AMENDMENT REGULATIONS 2007.**

2007 No. 2869

AND

**THE HOUSING BENEFIT (LOCAL HOUSING ALLOWANCE,
MISCELLANEOUS AND CONSEQUENTIAL) AMENDMENT
REGULATIONS 2007.**

2007 No. 2870

AND

**THE RENT OFFICERS (HOUSING BENEFIT FUNCTIONS)
AMENDMENT ORDER 2007.**

2007 No. 2871

1. This explanatory memorandum, which covers four statutory instruments, has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 Taken as a whole, these instruments provide for the national rollout of the Local Housing Allowance (LHA) on 7 April 2008, which currently operates in 18 Pathfinder local authorities. The LHA is a reform of the housing benefit scheme which provides for a simplified method of calculating benefit entitlement for cases in the deregulated private rented sector based on the number, gender and age of occupiers and location. In general, housing benefit will be paid directly to customers in LHA cases, subject to safeguards.
 - 2.2 **The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007** amend the Housing Benefit Regulations 2006 so as to:

- a. provide for the national rollout of the LHA;
- b. re-make provisions which were made under the powers that are repealed by the Welfare Reform Act 2007 (with amendments in some cases); and
- c. provide for a new regime for the supply of information relating to housing benefit claims and awards from local authorities to rent officers.

2.3 The Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 make equivalent provision to that in the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 for people who have attained the qualifying age for State Pension Credit. They are subject to minor distinctions to reflect the differences between the underlying regulations which they amend.

2.4 The Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007 amend:

- a. Various Social Security regulations that are consequential on (i) the provisions relating to national rollout of the LHA in the Housing Benefit (Local Housing Allowance and Information Sharing) Regulations 2007 and the Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007 and (ii) the need to remake certain provisions (with amendments in some cases) which were made under powers that are repealed by the Welfare Reform Act 2007; and
- b. Regulations relating to decisions and appeals by requiring the appropriate relevant authority to make a decision when it is required to determine a maximum rent (LHA), or where it is required to make a referral to rent officer as 52 weeks have elapsed since the previous referral. This regulation also requires local authorities to make a decision when change of circumstances, which does not need to be notified by the customer, occurs.

2.5 The Rent Officers (Housing Benefit Functions) Amendment Order 2007 amends two existing Orders that relate to the functions of Rent Officers. Article 2 provides for the existing Pathfinder provisions to be applied to all other local authorities in England and Wales on the 20th of March 2008, which provides a common platform on which to "bolt on" the provisions required for the national rollout of LHA. Those local authorities operating the LHA for the first time will not be functioning as Pathfinder authorities. Immediately after this, on the 20th of March, article 4 inserts new provisions to ensure that the national rollout versions of LHA determinations and broad rental market area of determinations are made in advance of rollout day for all local authorities, ready for rollout day. Articles 5 to 9 make other amendments, mainly linked to amendments made by the regulations and remove the remaining elements of the Pathfinder regime. Article 10 remakes amendments to the Order made in the Housing Benefit and Council Tax

Benefit (Consequential Provisions) Regulations 2006 and updates references. Articles 11 to 19 make broadly equivalent provisions relating to Scotland.

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

3.1 None.

4. Legislative Background

- 4.1 Section 30(2) of the Welfare Reform Act 2007 provides for section 130A to be inserted into the Social Security Contributions and Benefit Act 1992. The new section provides new regulation making powers for the Secretary of State in relation to the determination of appropriate maximum housing benefit which are more specifically appropriate for the LHA approach to the determination of appropriate maximum housing benefit, facilitating the national rollout of the LHA. All three sets of regulations make first use of the new section 130A.
- 4.2 These regulations (in conjunction with the Order) provide for the national implementation of the LHA on the 7th April 2008.
- 4.3 As well as making provision for the national roll-out of LHA, the regulations re-make certain other regulations which relate to the determination of the appropriate maximum housing benefit due to the repeal, or partial repeal, of a number of existing provisions. For this reason the regulations include provisions relating to, for example, the appropriate maximum housing benefit for council tenants or private rented sector tenants who will not move on to the LHA regime until they move home or break their claim.
- 4.4 Section 35(2) of the Welfare Reform Act 2007 provides new powers to enable regulations to be made requiring persons to provide information to rent officers, revoking certain existing powers. These powers make provision relating to the information that local authorities must send to rent officers in order for them to set the LHA rates for a particular area, as well as making case specific determinations on individual non-LHA cases.
- 4.5 Section 30(3) of the Welfare Reform Act provides for powers for the Secretary of State to prescribe when local authorities must review a housing benefit award.
- 4.6 The new powers came into force on [XX] October 2007 for the purpose of making the new regulations and will come into force on 7th April 2008 for all other purposes. On 7 April 2008, the current powers will be repealed, except to the extent that they are saved by the Welfare Reform Act 2007 (Commencement No. XX, and Savings and Transitional Provisions) Order (S.I. 2007/XXXX).¹

¹ This makes the necessary savings and transitional provisions so that existing regulations can be used even after the new regime applies where necessary, for example, to deal with backdated claims. It also makes provision for the staggered move to the new powers and new regulations for non-Pathfinder LHA cases discussed in paragraph 4.8.

- 4.7 All Pathfinder LHA claims will move to the new regulations and the national roll-out LHA regime on rollout date, 7 April 2008. New claims on or after this date will also be dealt with under the new regulations.
- 4.8 For non-Pathfinder LHA cases the move to the new regulations will be staggered. In some cases the move to the new regulations will coincide with a move onto LHA. In other cases, they will move onto the new version of existing regulations that provide for non-LHA cases. In any particular case the move to the LHA regime will happen when a trigger event occurs, usually the next date on which the local authority would have had to determine a fresh appropriate maximum housing benefit for that case. This may be because of a change of circumstances such as a move to a new house, or because it was time for the annual request to the rent officer to make a new case specific determination. This is the “relevant date” in the commencement provisions in the regulations. There is a long-stop date of one year after roll out and all remaining non-LHA cases will be transferred to the new regulations on that date.

5. Territorial Extent and Application

- 5.1 The Regulations and the Order apply to Great Britain, except that articles 2 to 10 of the Order apply to England and Wales and articles 11 to 19 apply to Scotland.

6. European Convention on Human Rights

- 6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The housing benefit system has been criticised as overly complex and difficult to administer. This not only contributes to delays in processing of claims but is a barrier to work for many customers and provides insufficient protection for others. It is also a system that does little to encourage personal responsibility or customer choice – many have no reason to take interest in how much rent they pay – or how it is paid.
- 7.2 LHA provides for a new way of calculating housing benefit for certain tenancy types. LHA will apply to customers living in the de-regulated private rented sector and receiving benefit towards their rent. LHA, unlike the current system which is based on property specific rent officer determinations, will pay similar amount of benefit to customers with similar circumstance living in a similar area. Unlike the current system customers will not be able to elect for payments to be made to their landlord; the intention is to make payments of benefit direct to tenants, subject to safeguards.
- 7.3 The LHA was introduced for private sector tenants in nine Pathfinder local authorities between November 2003 and February 2004. A rigorous and independent evaluation was commissioned. A second group of nine authorities began operating the LHA between April and July 2005 to

gather good practice on implementation arrangements in preparation for national implementation.

- 7.4 Some departures from the existing pathfinder scheme were made to take account of formal evaluation findings and informal feedback from pathfinder sites.
- 7.5 The key changes include:
- a. an upper limit (cap) on excesses of £15 per week;
 - b. amended size criteria (setting entitlement and rates by reference to the number of bedrooms entitled to);
 - c. calculation of rates based on median local rent levels; and
 - d. rolling out the LHA to new customers only and those existing customers who move home.
- 7.6 There is a scheme of transitional protection for customers on the Pathfinder version of LHA as they will move onto the rollout version of LHA on the 7th April 2008.

Consultation

- 7.7 Formal consultation was carried out in the 2006 Welfare Reform Green Paper A new deal for welfare: Empowering people to work. Following this consultation and the evaluation of the pathfinder authorities, some changes were made to the original LHA model.
- 7.8 Stakeholders' views on the proposal were sought through written consultation and stakeholder meetings. Stakeholders included:
- local authorities;
 - the 18 local authorities that have introduced Local Housing Allowance; and
 - a wide range of interest groups including the National Housing Federation, Chartered Institute of Housing, Council of Mortgage Lenders and the Citizens Advice Bureau.
- 7.9 In addition, discussions have been held with Communities and Local Government and HM Treasury.
- 7.10 In recognition of the potential impact on devolved housing policy, the Department has consulted with the devolved administrations.
- 7.11 Formal consultation with the local authority associations took place over six weeks from 19 June 2007. Most responses highlighted minor drafting changes although some were concerned with the effect of the cap on excesses; the role of rent officers in setting LHA rates and areas; and concerns about the operation of the Single Room Rent.

Guidance

- 7.12 Detailed guidance will be provided to all local authorities along with a Communications Toolkit. Guidance material and other supporting products have been drafted in conjunction with the Pathfinder and Second Wave Group local authorities and with relevant stakeholders. These will provide the information needed to begin the implementation process.

Consolidation

- 7.13 The DWP concluded an exercise to consolidate the Housing Benefit and the Council Tax Benefit Regulations in March 2006. The consolidated regulations came into force on 6th March 2006. Therefore, there are no plans to carry out an exercise in the near future. However, an informal consolidated text will be available on the DWP website approximately three to four months after the regulations and order come into force.

8. Impact

- 8.1 A full regulatory impact assessment has not been published for this instrument as it has no direct impact on the costs of business, charities and the voluntary sector.
- 8.2 The LHA is intended to simplify the multiple rules and restrictions that housing benefit claimants in the private sector face. Evaluation evidence has shown that the administration of housing benefit under LHA is improved as it is quicker and easier to administer than under current rules. Local authorities have also been provided with £59 million to prepare for the implementation of the LHA.

9. Contact

- 9.1 If you have any queries regarding the instrument, please contact Adrian Pateman at the Department of Work and Pensions on telephone number: 0207 712 2105 or e-mail: Adrian.Pateman@dwp.gsi.gov.uk