

EXPLANATORY MEMORANDUM TO
THE INCOME-RELATED BENEFITS (SUBSIDY TO AUTHORITIES)
(TEMPORARY ACCOMMODATION) AMENDMENT ORDER 2009

2009 No. 2580

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 makes changes to the way Housing Benefit subsidy is calculated for those customers claiming Housing Benefit and living in temporary accommodation provided by a local authority. It will replace the current scheme (known as thresholds and caps) with a more appropriate method of determining subsidy for Housing Benefit customers living in any of the following types of temporary accommodation: private sector (or ‘short-term’) leased (PSL), licensed and board and lodging accommodation (for example, bed and breakfast accommodation). The changes will take effect from 1 April 2010.

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

3.1 None.

4. Legislative Context

4.1 Housing Benefit subsidy is the means by which local authorities can recoup, from the Department for Work and Pensions, their costs from making Housing Benefit payments to customers. For customers living in the three types of temporary housing referred to above, local authorities have discretion over the rents that are charged to their tenants and, consequently, the levels of Housing Benefit that may be awarded to those entitled to it. This is because they are treated as rent rebate cases (due to the local authority being the landlord) and are held by authorities outside of the Housing Revenue Account (HRA)¹. For non-HRA rent rebate cases, by controlling the maximum level of Housing Benefit subsidy available to local authorities, the Department will be able to manage Housing Benefit expenditure in this area. Changes to the current subsidy arrangements are achieved through amendments to the Income-related benefits (Subsidy to Authorities) Order 1998. This amendment will not affect customers’ Housing Benefit entitlement but is intended to influence changes (indirectly) to rent levels in temporary accommodation.

¹ Local authorities in England (where most of the temporary accommodation caseload exists) must account for properties that have been leased or held under licence from the private sector outside of their HRA. In Wales and Scotland, private sector leased accommodation may be held both within and outside of the HRA.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why?

7.1 From 1 April 2010², this statutory instrument will introduce a new Housing Benefit subsidy scheme for customers living in temporary accommodation. In most cases, local authorities use temporary accommodation in order to meet a statutory duty under relevant homelessness legislation (the scope of the duty varies between England, Scotland and Wales). The new subsidy scheme has been designed to better reflect the actual costs faced by local authorities in providing this type of accommodation. In developing the policy our key objectives were to:

- encourage more local authorities to charge customers a fair market rent for the type and location of the property occupied;
- make a reasonable contribution to local authorities' costs of leasing and managing temporary accommodation; and
- control the overall level of Housing Benefit expenditure on customers living in temporary accommodation.

7.2 This instrument replaces thresholds and caps with a new Housing Benefit subsidy scheme. Subsidy will be calculated using a new set of formulae that relates to the type, location and size of the properties in which customers in temporary accommodation have been placed, as follows:

- *Short-term leased (by local authorities only) and self-contained licensed accommodation*

The maximum amount of Housing Benefit subsidy for customers accommodated in these properties will (for each week) be based on 90 per cent³ of the Local Housing Allowance rate appropriate to the size (number of bedrooms) and location (Broad Rental Market Area) of the property in use, plus an additional amount for management costs (£40 if the placing local authority is in London and £60 if not).

2 Section 140A of the Social Security Administration Act refers to subsidy being paid each 'year', which is defined in the Local Government Finance Act 1992 as 'any period of twelve months beginning with 1st April'.

3 A notional 10% reduction from LHA rates is included to reflect the management costs that are often factored into private sector rents by landlords and lettings agencies which would then be reflected in LHA rates. An additional amount for management costs as accounted for separately.

- *Board and Lodging (B&B) and non self-contained licensed accommodation*

The maximum amount of Housing Benefit subsidy for customers placed in these properties will be the appropriate one-bedroom Local Housing Allowance rate (the self-contained rate) per week.

7.3 In all cases, the actual level of Housing Benefit subsidy will be the lower of either the weekly Housing Benefit entitlement (the amount payable to the customer), or the maximum amount (the subsidy cap). On expenditure up to the cap 100 per cent subsidy is payable and, for expenditure above the cap, nil subsidy is payable. The maximum Local Housing Allowance rate to be used in the formula is the five-bedroom rate.

7.4 The formula for short-term leased accommodation applies, in England and Scotland, to cases held outside of the local authority's Housing Revenue Account (HRA). In Wales, the formula will apply to leased properties both within and outside of the HRA⁴.

7.5 For customers living in accommodation held under licence (self-contained and non self-contained) and board and lodging accommodation, the subsidy rules apply where those customers have been placed by local authorities under a homelessness duty.

7.6 Also in the amendment is a restriction for subsidy purposes, such that where properties have between two and five rooms suitable for living in, at least one of those rooms must be treated as a living room. For properties with six rooms or more, at least two of those rooms must be treated as living rooms.

Why will the subsidy formula for leased and self-contained licensed accommodation use Local Housing Allowance rates based on the size of the property and not the size of the household?

7.7 Unlike for mainstream Local Housing Allowance cases, the LHA rates used will be determined by the size of the property (the number of bedrooms) and not the household (the number of occupiers). This approach will help to ensure that subsidy reflects the actual costs attached to the property that has been leased. Although this introduces some element of risk that local authorities may over-accommodate households, using a system that determines rates based on household size would risk creating the perverse incentive of overcrowding households to claim extra subsidy. LHA rates determined by property size will also afford local authorities greater certainty over the amount of subsidy they will have available over the period of the lease.

What are management costs for and why two different subsidy rates – one for London and one for outside?

⁴ Scottish local authorities are also able to account for leased accommodation within the HRA. The Department will explore the possibility of aligning these cases with the new arrangements at a later date once the potential impact is better understood.

7.8 With input from members of a temporary accommodation working group (set up in January 2008) the Department looked in detail at the activities involved in managing leased accommodation and the associated costs. An amount for management activities and the financial risks attached to the running of private sector leasing schemes is usually factored into customers' rents to ensure that such schemes remain financially viable. These costs are generally made up of: staffing costs, maintenance / repair works, voids (the cost of holding properties on a lease which are temporarily vacant), bad debt (due to customer rent arrears) and handback costs (i.e. negotiating repairs with landlords before handing the property back to them when the lease has ended).

7.9 Actual management costs vary from one authority to another. In arriving at the additional amount payable for management costs, it was important to balance the requirement to make a reasonable contribution towards actual costs with limiting the potential for some authorities to continue generating large surpluses. The additional management costs element (the £60 and £40 for non-London and London authorities respectively) takes into account evidence surrounding the actual costs of leasing in different regions (the leasing 'sub-market') and how that compares with Local Housing Allowance rates (which form the basis of the 'rent element' in the formula). For London authorities, where a lower amount for management costs is payable in subsidy, evidence⁵ suggests that in most cases leasing and management costs will still be covered. Outside of London, the evidence⁶ suggests that a higher amount in addition to the rent element is appropriate.

The size and nature of the problem that the changes seek to address

7.10 The subsidy scheme to be replaced – a simple system of thresholds and caps – was first derived from average local authority rents in 1998, and has since been adjusted in various ways. The 'threshold' is the lower of the two amounts, applied to customers placed into board and lodging accommodation. The higher amount – the 'cap' – is applied to customers placed into short-term leased or licensed accommodation. The threshold figure was set at a rate lower than the actual cost of placing people into bed and breakfast accommodation in order to discourage its usage. The higher subsidy cap figure was pitched at a level broadly intended to allow local authorities to lease a range of properties. An amendment to the Subsidy Order in 2002 increased the level of Housing Benefit subsidy available up to the cap, which subsequently made leasing schemes more financially viable for local authorities.

7.11 Since April 2002, total Housing Benefit expenditure on customers living in temporary accommodation (subject to thresholds and caps) across Great Britain increased significantly, from £254m (in 2002/03) to £644m in 2007/08. This partly reflected an increase in the use of local authority run leasing schemes in London as a result of a more generous subsidy scheme from 2002. However, in the four years from the end of 2003/04 to the end of

5 Evidence includes results of the DWP questionnaire in 2007 and the BFI report from May 2007. It also includes DWP estimates of the impact on individual local authorities, evidence from housing associations (who lease in the same areas) and other expert views.

6 Evidence includes DWP estimates of the impact on individual local authorities, results from the DWP questionnaire, written evidence from various local authorities and other expert views.

2007/08, expenditure in London more than doubled, from £271m to £545m respectively (an increase of 101 per cent), whilst the number of households in leased accommodation run by local authorities went up by only 39 per cent over the same period⁷. So the rise in HB expenditure over the years has been disproportionate to increases in the caseload and was considered by the Department to be unsustainable. The overall temporary accommodation caseload, in Great Britain, has actually reduced, from around 111,000 households in 2005, to around 90,000 households in March 2008⁸.

7.12 Following an information gathering exercise carried out by DWP in 2007⁹, which focused on the operation of PSL schemes in London, it became clear that some local authorities were (and are still currently) using the system of thresholds and caps to generate surplus revenues. This is achieved by charging tenants (most of whom claim Housing Benefit) the same rents – at or around cap level – regardless of the size or location of the properties actually used to house them. Most households in temporary accommodation require smaller properties of between one and three bedrooms; the leasing and management costs for which could usually be expected to fall below the subsidy cap. Subsidy surpluses are also achieved by local authorities placing households into cheaper areas outside of their own boroughs whilst charging cap-level rents.

7.13 For example, a central-London authority with a subsidy cap of around, say, £400 per week¹⁰, might place a household outside of its borough, say in east London into a two bedroom property but still set a weekly rent at the cap level of £400. This amount can then be claimed in full through Housing Benefit subsidy (assuming the customer involved is entitled to full Housing Benefit) because the rent falls within the cap. However, the going rate for a two-bed property in east London might be only £200pw, and the actual leasing costs are likely to be lower still. So even after management costs have been taken into account, this approach has allowed local authorities to generate significant amounts of surplus subsidy revenue.

7.14 Although such surpluses have helped local authorities in London to fund other important services, this is not what Housing Benefit was intended for by Parliament. Many customers living in temporary accommodation in London are still facing rents that are excessively high when compared with market level rents for the type of property they occupy. Not only do high rents increase Housing Benefit expenditure, they are perceived by many customers as a barrier to work (despite the availability of in-work Housing Benefit). High rents also mean extending the poverty trap for customers who do find work.

7 Source data: Communities and Local Government (total households in private sector leased accommodation (by a local authority) rose from 15,900 (March 2004) to 22,040 (March 2008)).

8 Source data: [Communities and Local Government](#), [Welsh Assembly](#) and [Scottish Government](#) websites – quarterly homelessness statistics (31 March 2005 and 31 March 2008).

9 From a report published in May 2007 by the Benefit Fraud Inspectorate (part of the Department for Work and Pensions) based on interviews with 19 local authorities, which was then followed by a questionnaire sent by the Department to all London local authorities and several outside of London, in the summer of 2007.

10 Figures are for illustrative purposes only.

7.15 It should be emphasised that relatively few local authorities have adopted this approach¹¹, but these authorities tend to be based in London and have large caseloads in temporary accommodation. In other areas of Great Britain, mostly outside of London, the arbitrary nature of thresholds and caps can mean that leasing schemes are run within very tight financial margins and even, in some cases, at a loss to the local authority. The system of thresholds and caps simply does not reflect the true costs of placing households into temporary accommodation, which has led to unrealistic rent levels and high expenditure.

Public interest

7.16 Local authorities clearly have a direct interest in the level of Housing Benefit subsidy available to them. Registered Social Landlords (who also operate leasing schemes for use as temporary accommodation although their customers¹² are not currently subject to the same subsidy rules) will also have an interest. This is because any changes that may impact on local authority-run leasing schemes could lead to changes in the level of demand for housing association-run leasing schemes. Voluntary organisations that are involved in preventing and tackling homelessness have an interest as there could be an indirect impact on customers as rent levels are adjusted in light of the changes to subsidy.

Consolidation

7.17 Informal consolidation of the 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/>

8. Consultation

8.1 These proposals were developed with the help of a temporary accommodation working group, which first met in January 2008 and continued to meet over the course of that year. The group included officials from Communities and Local Government (CLG), the devolved administrations, the Local Government Association (LGA), the Welsh Local Government Association (WLGA), London Councils, the Convention of Scottish Local Authorities (COSLA) and a number of representatives of different housing associations. We are grateful for their assistance and the benefit of their expertise.

8.2 Local authorities have been aware for some time that changes to the current subsidy regime were being explored by the Department. It was first

11 Results from a questionnaire sent to local authorities in London in 2007 showed that 14 of the 22 respondents with leasing schemes charged average rent levels at or around (within 5 per cent) the level of their subsidy caps at the time. Although this is a majority of those questioned (and a significant proportion of the caseload), it represents a minority of the overall number of local authorities in Great Britain.

12 Customers living in temporary accommodation where the landlord is the housing association are treated for HB purposes as rent allowance cases, for whom a different set of subsidy rules apply. The Department will explore the possibility of aligning these cases with the new scheme at a later date.

announced in a subsidy circular in November 2007¹³ that the Department was seeking to reform thresholds and caps and there have been various updates since then, including an outline of the proposals published in [Housing Benefit Direct \(issue 90\)](#) in June 2009. On the basis that stakeholder involvement has been maintained throughout the policy development phase, a six-week consultation with the LAAs was considered adequate. This consultation (which included the LAAs, several voluntary organisations with an interest in homelessness, leading housing associations, CLG and the devolved administrations) ended on 28 August 2009.

8.3 The Department received eleven separate responses from organisations including the LGA, WLGA, London Councils, the Welsh Assembly, Shelter, a PSL management company and five individual local authorities, four of which were London-based. The LGA and London Councils confirmed they were in favour of these reforms, in principle. However, most respondents (including the LGA and London Councils) wrote asking for increases to the level of subsidy available by making the formulae more generous. There were also concerns about the lower amount payable to London authorities for management costs which, it was claimed by some respondents, might lead to reductions in the standard of temporary accommodation or to other local authority service provision. The WLGA argued for a more generous subsidy package for customers living in B&B accommodation. On the other hand, the PSL management company (with sizeable caseloads in both London and Scotland) felt that the proposed subsidy limits would be adequate, given the current market, and instead argued for Housing Association Leasing (HAL) schemes to be subject to the same rules, to even out competition for leasing.

8.4 The Department does not intend to amend the subsidy formulae at this time but will continue to monitor the impact of the reforms and will review the formulae which are used to determine the caps for these cases annually. The Department may also seek to align HAL schemes to this subsidy regime at a later date.

9. Guidance

9.1 Full details of the new arrangements will be shared with all local authorities through a subsidy circular and a contact point is already available for anyone with queries.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is a limited impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument.

¹³ [HB/CTB Subsidy Circular S5/2007](#) – I have tried to access this link but the page cannot be found so you will need to update it.

10.4 An equality impact assessment is attached.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and Review.

12.1 The Department will continue to monitor the impact of the proposed changes to HB subsidy. This will be carried out through regular monitoring of HB expenditure in this area, ongoing discussions with members of the LAA Steering Group and through feedback from other government departments (i.e. CLG and the devolved administrations) as well as individual local authorities. The Department will review the subsidy formulae, including the additional amount payable for management costs annually.

13. Contact

Joe Stacey at the Department for Work and Pensions - Tel: 020 7449 5346 or email: joseph.stacey@dwp.gsi.gov.uk – can answer any queries regarding the instrument.