

**EXPLANATORY MEMORANDUM TO**  
**THE HOUSING BENEFIT AMENDMENT REGULATIONS 2009**

**2009 No. 614**

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 amends the Housing Benefit Regulations<sup>1</sup> to limit the Local Housing Allowance (LHA) levels, which determine the maximum Housing Benefit to be paid to private rented sector tenants, to the five bedroom rate in any area. From 6 April 2009, the five bedroom LHA rate will be the maximum payable for all new customers and those who move address to help prevent excessively high rents being met. A different process will be applied for existing customers who will be protected for 26 weeks from the date the new rate applies to their claim.

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

3.1 None

**4. Legislative Context**

4.1 The Housing Benefit regulations make provision for a person's entitlement to be calculated using a maximum rent determined by the rent officer in accordance with the Rent Officers (Housing Benefit Functions) Order 1997<sup>2</sup>. The rent officer arrangements apply to de-regulated tenancies in the private rented sector. For claims made in respect of relevant tenancies after the 7<sup>th</sup> April 2008 the maximum rent is the LHA determined by the rent officer for the Broad Rental Market Area (BRMA) in which the property is situated. A BRMA is defined as an area in which people live and enjoy a range of health, educational, recreational, banking and retail services. Rent officers collect market evidence of rents in these areas and then set rates for a range of property sizes up to five bedrooms. The LHA rates are set at the median level for each property size so that around 50% of the rental market should be affordable for people claiming Housing Benefit. The rates are reviewed and published monthly so that prospective tenants know the levels of rent which will be met by benefit. LHA rates for properties with six bedrooms or more are provided to the local authorities on request.

4.2 The Housing Benefit regulations specify the number of bedrooms that a household requires and provide for the maximum Housing Benefit to be the lowest of either, the applicable LHA, or the actual rent (less any items which are ineligible for

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<sup>1</sup> The Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

<sup>2</sup> In Scotland, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

benefit such as heating) plus £15. There is currently no limit on the number of bedrooms a customer may be entitled to and be covered by the LHA. The amendment regulations have the effect of limiting the maximum rate of benefit for all households to the LHA rate for a property with five bedrooms, regardless of their family size from 6<sup>th</sup> April 2009.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain only.

## **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 The Department is bringing forward these regulations following concerns raised by the three national rent services in England, Scotland and Wales which have reported difficulties in determining LHA rates for larger properties. This is because there are not enough properties available to rent of this size to gather sufficient market evidence to arrive at a LHA rate that accurately reflects the availability of properties for rent within a given BRMA. Rents for larger properties vary considerably, many are at the luxury end of the rental market and this can have a distorting effect which impacts substantially on median levels for the LHA. This issue was highlighted in the media recently where one family was receiving around £12,000 per calendar month in Housing Benefit to live in a seven bedroom property in London. Although this case is exceptional, rents for larger properties generally are not reflective of the properties that are usually available to most people, even those in well paid work. For example, LHA rates for larger properties in some inner London areas exceed £3,000 per calendar month and rates in excess of £2,000 per calendar month are not uncommon particularly in greater London and the South. These rates allow customers to claim for rents that the vast majority of people, even in well paid jobs, would not be able to afford without recourse to Housing Benefit. Some tenants may be encouraged to take on very high rents which would create disincentives for them to work. It is important to note however, that the issue in arriving at robust median rates has been found by the rent services to be a national problem rather than an issue restricted to higher cost areas.

7.2 A small minority of customers will be impacted by the cap on LHA levels at five bedroom rates. We estimate that less than 1% of households receiving Housing Benefit and living in the private rented sector are entitled to benefit for properties of more than five bedrooms. This equates to 5,000 households within the caseload subject to the LHA at the end of 2009/10. Of these, many are expected to be already living in properties of less than six bedrooms.

7.3 The Equality Impact Assessment <sup>3</sup> demonstrated that there could be a disproportionate percentage of customers from minority ethnic groups entitled to six or more bedroom properties, raising concerns of indirect discrimination, although the proportion of non-white<sup>4</sup> households entitled to larger properties is still smaller than the proportion of white households. As the sample of households entitled to six or more bedrooms in the Housing Benefit subgroup is too small to analyse on its own, we used the characteristics of households entitled to five or more bedrooms to then estimate the characteristics of households entitled to six or more bedrooms. Under this assumption, it is roughly estimated that of the fewer than 5,000 LHA caseload entitled to larger properties at the end of 2009/10, under about 2,000 will be non-white customers. Taking five or more bedroom characteristics as a guide to six or more bedroom characteristics, it is roughly estimated that of the fewer than about 5,000 larger properties in the LHA caseload under about 2,000 will be non-white customers at the end of 2009/10. The Department recognises this disproportionate impact on ethnic minority groups, but considers this to be justified and proportionate due to the following mitigation factors:

- In some areas there is little difference between the rates for five bedroom properties and larger sized properties so a proportion of the market will still be affordable for households getting Housing Benefit ;
- In many BRMAs tenancies on properties with six or more bedrooms are in single figures suggesting that a wider issue may be the general lack of availability of larger properties;
- That these rules reflect what actually happens now. The majority of larger families, including those not on benefit, do not live in properties with more than five bedrooms;
- The LHA bedroom allocation criteria are more generous than the room standard part of the statutory overcrowding criteria;
- The majority of larger households include non-dependants who may be able to play a greater role in paying for their accommodation;
- Existing tenants will have a period of transitional protection during which they can renegotiate rents or seek alternative accommodation; and
- Local authorities may make Discretionary Housing Payments where they consider it necessary to avoid hardship.

7.4 The changes mean that from 6<sup>th</sup> April 2009 customers who are claiming Housing Benefit will know in advance that the maximum level of benefit they are entitled to is the published LHA rate for properties with five bedrooms.<sup>5</sup> The change does not mean that customers with larger families will be unable to rent properties of more than five bedrooms. Instead, customers will be paid the level of benefit set for five bedroom properties and can choose how best to rent accommodation that is most suitable for their families.

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<sup>3</sup> <http://www.dwp.gov.uk/resourcecentre/LocalHousingLargerProperties.pdf>

<sup>4</sup> The small numbers of households entitled to larger properties necessitated the grouping of ethnicity into just two categories, with the common distinction between white and other ethnic groups being employed.

<sup>5</sup> If a customer has not claimed Housing Benefit in the previous 52 weeks and was able to afford their rent when they took on a tenancy the local authority can meet their full rent for 13 weeks.

7.5 Existing customers will continue on their current rate of benefit until their claim is reviewed by the local authority, usually at the annual point of their claim. At this point their claims will be reassessed using the five bedroom LHA rate within their area. These customers will benefit from a period of 26 weeks' transitional protection at the higher rate of benefit from the point the new rate would otherwise apply. For example a customer whose LHA rate is reviewed on 13<sup>th</sup> April 2009 will be protected at their existing rate for a further 26 weeks from that date. A customer whose review is not due until 4<sup>th</sup> January 2010 will be protected until June 2010.

7.6 The transitional protection for existing customers could end earlier if:

- they change address
- there is a change in the composition of the household (for example a member of the household leaves); or
- they become entitled to the more generous 12 month period of protection because a family member or relative who was residing in the property has died.

- ***Consolidation***

7.7 There are no plans to consolidate the amendments although consolidated versions of legislation relating to Social Security are available on the Department's website. (<http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>)

## **8. Consultation outcome**

8.1 The Secretary of State announced that changes would be made to the design of the LHA on 20<sup>th</sup> October 2008. A six week consultation exercise on the regulations was held between 18<sup>th</sup> December 2008 and 30<sup>th</sup> January 2009. The Department consulted with a wide range of stakeholders including local authorities, the devolved administrations, landlords' representative groups, charitable bodies and a wide range of welfare rights organisations, including the Child Poverty Action Group, Shelter, Disability Alliance and Citizens Advice. The Social Security Advisory Committee (SSAC) carried out a similar consultation over a four week period. The Minister agreed that the consultation period should be limited to six weeks, as this does not represent a significant policy shift, in order to allow the regulations to come into force from April 2009; in line with its agreement with local authorities to introduce new Housing Benefit legislation in either April or October. The change is being introduced from April as Ministers are not prepared to continue to meet excessive rents for longer than is necessary.

8.2 In total there were 27 responses to both consultations and, although there was general agreement that it is wrong to meet exceptionally high rents, the cap at the five bedroom rate was considered to be a disproportionate response to the problem. Respondents considered that the proposal could increase homelessness, rent arrears and overcrowding. There were also concerns that the equality impact assessment published by the Department demonstrated a disproportionate impact on ethnic minority groups who are more likely to have large households. The SSAC report recommended that the regulations should not proceed and that the option of deriving a rate from LHA rates for smaller properties or individual determinations by rent

officers should be considered further.

8.3 In response to concerns about homelessness and overcrowding, Ministers are satisfied that the mitigating factors as set out in paragraph 7.3 are sufficient. Ministers had considered the alternative options recommended by the SSAC report but had rejected them for the following reasons.

8.4 A derived rate was rejected as it would introduce extra complexity into the LHA system. It would constitute a different methodology for larger properties and the method of calculating these rates may not be transparent to customers. Nor would a derived rate (such as deriving a six bedroom rate as the sum of the applicable five bedroom and shared room rates) necessarily reflect the rental market or achieve the aim of making larger properties accessible. Rents may not increase proportionately in line with the number of bedrooms because floor area and location may be more important factors to consider. In Gloucester, for example, such a derived six bedroom rate would have been £354.46 for January 2009 while the median six bedroom LHA rate was £403.85. Although in some cases the derived rate could be higher than the current LHA rate for properties with six bedrooms or more. In Grimsby, for example, such a derived six bedroom rate would have been £228.04 for January 2009 while the median six bedroom LHA rate was £196.15.

8.5 The option of individual referrals to rent officers was rejected because it lacks transparency. Larger families would not know what element of support they would be entitled to in advance and this is a key aim of the LHA. In addition, this will not reflect one of the key principles of the LHA to pay a benefit rate based on the area rather than a property specific rate. It could also perpetuate the problem of giving benefit recipients access to properties that would not normally be taken on by low income workers, potentially creating barriers to entering work.

8.6 However, Ministers have agreed in response to the consultation that transitional protection for existing customers should be extended from the 13 weeks originally proposed to the 26 weeks suggested in the consultation responses. The response to the SSAC recommendations is published in a Command Paper alongside the regulations.

## **9. Guidance**

9.1 Full guidance will be issued to local authorities along with a leaflet that can be used to publicise the changes and notify existing customers well in advance.

## **10. Impact**

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

10.2 The impact on the public sector is negligible. Local authorities will need to award transitional protection in a very small number of cases and have been consulted fully about these changes.

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

**11. Regulating small business**

11.1 The legislation does not apply to small business.

**12. Monitoring & review**

12.1 The LHA scheme is currently being monitored as part of the commitment to a review of the scheme after 2 years of operation. Diversity issues will be included in the current monitoring arrangements for the whole scheme and findings will be reported in the two year review subject to the limitations of the available data.

**13. Contact**

Clare Mitton at the Department for Work and Pensions Tel: 0207 449 5336 or email: [clare.mitton@dwpgsi.gov.uk](mailto:clare.mitton@dwpgsi.gov.uk) can answer any queries regarding the instrument.