

**EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (AMENDMENT) REGULATIONS 2011**

2011 No. 1736

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 Housing Benefit for most single people aged under 25 years living in the private rented sector is limited to the “shared accommodation rate” (SAR), based on rent levels for a single room in accommodation which is not self-contained. This Instrument amends the age threshold so that from 1 January 2012 the SAR will apply to most single people aged under 35 years. This is being done to help reduce Housing Benefit expenditure and the Government feel that it is right that single people aged 25 to 34 in receipt of Housing Benefit have to make the same choices about their accommodation as those not in receipt of benefit.

2.2 In addition this instrument introduces two exemptions to the SAR for the new age group, for homeless people who have slept rough or who are at risk of sleeping rough and for ex-offenders who could pose a risk of serious harm to the public. The Instrument also ensures that some claimants who have been claiming since before April 2011 who will be affected by both the Local Housing Allowance changes and these shared accommodation rate changes experience only one reduction in benefit at the end of their transitional protection period. (see 4.7 below).

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

None.

4. Legislative Context

4.1 This instrument is being made to extend the SAR to people aged at least 25 years but under 35, so as to implement the announcement made by the Chancellor in the Spending Review on 20 October 2010.

4.2 The Chancellor announced the increase to the age threshold for the SAR as part of the Spending Review on 20 October 2010. http://www.hm-treasury.gov.uk/spend_sr2010_speech.htm. It was further announced by Written Ministerial Statement on 28 March 2011 that the change would be introduced

from January 2012.

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110328/wmstext/110328m0001.htm#1103283000012>

4.3 At the time of the Spending Review it was thought that the measure would be introduced from April 2012. However from April 2011 changes to LHA were introduced that set rates at the thirtieth percentile instead of the median and introduced caps. Having considered the interaction with the transitional protection arrangements for these changes, which were made by S.I. 2010/2835 and S.I. 2010/2836, it was decided that the change should be brought forward to January 2012. These transitional protection arrangements introduced a protection period of up to nine months. If the shared accommodation change was not moved forward to January it would mean individuals affected would see two decreases in HB entitlement in quick succession.

5. Territorial Extent and Application

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 The principle that people aged under 25 in the private rented sector should have their housing benefit limited to the rate appropriate for shared accommodation was introduced in 1996. The rationale for the SAR was to avoid a situation where those in receipt of Housing Benefit could afford a level of accommodation that they would not be able to maintain were they employed. It also reflects that sharing accommodation is common among younger people; 45% of non-student single under 25s in the private rented sector with no children and who have not declared any HB receipt live in shared accommodation.

7.2 With the introduction of the Local Housing Allowance (LHA) in April 2008, as the new method of calculating Housing Benefit, for those in the private rented sector, the principle has remained that the rate appropriate for single young people is the SAR i.e. that for non-self contained accommodation. In this memorandum we use the term “shared accommodation rate” as a generic term to cover both LHA and pre-LHA cases.

7.3 Currently the shared accommodation rate applies to:

- single people aged under 25 years;

- single people aged 25 or over who live in accommodation that is not self-contained; and
- couples with no children who live in accommodation that is not self-contained.

7.4 The current rules allow exemptions (so that the one bedroom self contained rate would apply). These are:

- tenants in certain supported accommodation;
- claimants entitled to the severe disability premium;
- claimants who have a non-dependant residing with them;
- claimants under the age of 22 years who were formerly in social services care;
- claimants entitled to an additional bedroom to accommodate a non-resident carer because they require overnight care.

7.5 From 1 January 2012 the age threshold for the SAR will increase from 25 years to 35 years.

7.6 This instrument is being introduced in order to:

- help reduce Housing Benefit expenditure;
- ensure greater fairness - ensuring that those receiving Housing Benefit do not have an advantage over those who are not on benefit, and that they have to make similar choices about what they can afford;
- ensure that Housing Benefit rules reflect the housing expectations of people of a similar age not on benefits;
- remove a potential work disincentive.

7.7 Existing exemptions, including those in receipt of the severe disability premium and those with a non-resident carer will continue to apply to the new age group as they currently apply to those aged under 25 years. Having listened to stakeholders and considered the recommendations of the Social Security Advisory Committee the Government has decided to make two additional exemptions for the extended age group only. The first is for ex-offenders who could pose a risk to the public if they lived in shared accommodation. The second is aimed at preventing or rehabilitating from rough sleeping. It exempts those who have spent time in a hostel specialising in the rehabilitation and resettlement of the homeless within the community.

7.8 Expenditure on Housing Benefit has increased significantly from £11 billion in 2000/2001 (£15 billion in today's prices) to over £21.5 billion in 2010/2011. This measure is expected to save around £200m per year beyond the current Spending Review period 2011/12 to 2014/15.

7.9 While Exchequer savings are a significant reason for introducing this measure, it also creates more of a level playing field, in the affected age group between recipients of Housing Benefit and those who are not on benefit. It is also

thought likely to decrease work disincentives by ensuring that those on Housing Benefit cannot afford properties that they could not afford if they were not on benefits. The Government believes that work should be people's first choice and also that it is reasonable that those slightly older working age individuals who have recourse to public funds should have their Housing Benefit limited in this way. Exemptions will remain for the most vulnerable.

7.10 Many in the 25-34 age group choose to live in shared accommodation. Over one third of the single 25 to 34 year-olds potentially affected by this measure are already living in shared accommodation.¹

7.11 Representations have been made to Government to exclude a number of groups which it is considered might not be able to share accommodation. However, rather than making a number of varied exemptions which could capture many who could in fact share, the Government considers that Discretionary Housing Payments² are the right approach to supporting people in vulnerable situations as they offer flexibility and are based on local decisions which can be targeted as needed. The Government has decided however that there are two groups that should be made exempt from the age increase: ex-offenders who pose a risk to the public; and former rough sleepers or those at risk of sleeping rough.

7.12 The ex-offenders exemption will apply to a small group who are aged 25 or over who are subject to active multi-agency management under the Multi Agency Public Protection Arrangements (MAPPA³). Offenders subject to MAPPA arrangements are in the main 25 years or over. In Scotland MAPPA legislation is not yet fully in force in relation to violent and certain other offenders and so local authorities are to apply the exemption where they consider a claimant would present a risk of causing serious harm to the public. This is considered appropriate in order to safeguard the public rather than relying on Discretionary Housing Payments.

7.13 The second exemption will apply to people who have spent three months or more in a homeless hostel, or more than one hostel, specialising in rehabilitating and resettling this group within the community. To benefit from this exemption claimants would need to have been offered and to have accepted support services to enable them to be rehabilitated or resettled in the community. The three month qualifying condition is designed to target the exemption at people receiving a sustained programme of rehabilitation rather than people who have sporadic, short term stays.

¹ Single Housing Benefit Extract, March 2010 data

² Discretionary Housing Payments are available for those who experience a shortfall in meeting the contractual rent and can be considered where, in the authority's opinion, financial assistance with housing costs is required

³ MAPPA are the statutory arrangements for managing sexual and violent offenders. It is a mechanism through which agencies discharge their statutory responsibilities and protect the public in a co-ordinated manner.

7.14 This exemption addresses the concerns raised by a number of commentators about the impact of these changes on rough sleepers, and in particular the silting up of hostel accommodation. Some of these individuals will have drink or drug dependencies, behavioural or mental health issues or a combination of these. The Government accepts that without this exemption it will be difficult to secure suitable move-on accommodation for this group to help them in to a more settled way of life, which could undermine the Government's efforts to tackle rough sleeping and homelessness. This exemption has been targeted at people aged 25 years and over as there is increasing prevalence among this age group of rough sleeping.

Consolidation

7.15 An informal consolidated text will be available to the public free of charge 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 As this measure was announced by the Government as part of the Spending Review package, no formal public consultation was undertaken. However, the Department engaged with a number of stakeholder groups on how the measure should be implemented. These included Crisis, Citizens Advice, Shelter, Homeless Link and other government departments both on a one-to-one basis and through the DWP Policy and Strategy Forum, which is comprised of key customer representative organisations. Draft regulations were sent to the Local Authority Associations for comment but they made no submissions to DWP.

8.2 Proposals for regulations were also considered by the Social Security Advisory Committee (SSAC) on 4 May 2011. The Committee decided to refer the proposals for public consultation, which took place over a four week period and ended on 17 June 2011. The proposals formally referred to the Committee increased the age threshold from 25 years to 35 years but made no further exemptions other than those already in place.

8.3 SSAC received responses from a wide range of organisations and individuals and several presented information about the market for and availability of shared accommodation. None of the respondents supported the proposed changes and the majority questioned the rationale for them. The Committee presented its report to the Government on 6 July 2011 in which it recommended that the proposal to increase the age threshold should not go ahead in its current form, but if it does, it recommended a number of modifications. Its

report is published alongside this Instrument as part of the Act paper in which the Government formally responds to SSAC's recommendations.

8.4 Many respondents working with disadvantaged and excluded groups commented that most of the clients with whom they work with, including offenders, people with substance abuse problems, mental and other health problems could not and should not be housed in shared accommodation. Respondents cited security and personal safety issues, and the risks of mixing people who are ill-equipped to manage the stresses and conflicts that can arise in shared living space. They mentioned concerns about their clients becoming homeless, which would place pressure on other services.

8.5 The Government's view is that discretionary housing payments are the right approach to supporting those in more vulnerable situations who do not meet the qualifying conditions for the existing exemptions from the shared accommodation rate. Local decision-making that is based on a well-informed understanding of local conditions and the circumstances of individual claimants can be an effective way of allocating additional support to meet different circumstances.

8.6 However, following the discussions with stakeholders, and in light of the SSAC report, it has been decided to make the two exemptions to the extension in age outlined in part 7 above for a small group of ex-offenders and for former rough sleepers or those at risk of sleeping rough. The former is to be included as the Government is keen to avoid a situation that potentially risks putting members of the public in danger. The latter addresses concerns raised by a number of commentators about the impact of these changes on rough sleepers, and in particular filling up and preventing the moving on from hostel accommodation. The Government accepts that without this it will be difficult to secure suitable move-on accommodation for this group to help them in to a more settled way of life, which could undermine the Government's ambition to end rough sleeping. This exemption has been targeted at people aged 25 and over who are at greater risk of rough sleeping.

9. Guidance

9.1 The Regulations have been laid as soon as practicably possible after having consideration of the SSAC report. This allows local authorities just under six months before implementation in order to amend their IT systems and procedures and make appropriate arrangements to train and inform their staff of the change. Further guidance will be issued to local authority housing benefit teams to explain the changes in full. In addition, the changes will be publicised by making posters and leaflets available to local authorities and customer advice groups and by updating the information available on DirectGov.

10. Impact

10.1 There is no impact on business or civil society organisations. However, the exemption for rough sleepers and ex-offenders will benefit voluntary organisations and charities that run hostels in that there will be less bed-blocking as they will be able to find appropriate self-contained accommodation for these groups.

10.2 The impact on the public sector is negligible. Although local authorities will need to update their computer systems to reflect this change to the age threshold such changes will be relatively minor.

10.3 A full impact assessment has not been published for this instrument

10.4 An Equality Impact Assessment and Impact Document were published on the DWP website on 9 May <http://www.dwp.gov.uk/docs/eia-hb-shared-accommodation-age-threshold.pdf> and is included the Act paper that accompanies this Explanatory Memorandum.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The measure aims to achieve Housing Benefit savings which will be assessed by monitoring administrative data.

12.2 The Government is committed to undertaking an independent review of the changes to Housing Benefit that came into effect from April 2011 and that review will also include the changes made by this instrument. This will include comprehensive primary research to look at the effects on different types of households in a range of areas, including London, the rest of England, Scotland and Wales.

12.2 An independent consortium led by Ian Cole from the Centre for Regional Economic and Social Research (CRESR) at Sheffield Hallam University has been commissioned by the Department to carry out the review. Other key team members are Peter Kemp of Oxford Institute of Social Policy, Carl Emmerson of the Institute for Fiscal Studies (IFS) and Ben Marshall from IPSOS-MORI

12.3 The evaluation will cover the impact of the measures on:

- homelessness and moves
- the shared accommodation rate and Houses in Multiple Occupancy
- Greater London

- rural communities
- black and minority ethnic households
- large families
- people with disabilities
- working claimants
- landlords
- the housing and labour market

12.4 The consortium will look at the impacts of the Housing Benefit changes at a national and local level. The consortium will carry out work in nineteen carefully selected case study areas, chosen to reflect a balanced mix of communities and household types, including three each in Scotland and Wales and thirteen in England but with a concentration on the key area of London and the South East. They will report their findings to DWP in the Spring of 2013 which will then be published.

13. Contact

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.

Keeling Schedule

2 Interpretation

(1) In these Regulations—

“young individual” means a single claimant who has not attained the age of ~~25~~ 35 years, but does not include such a claimant—

(a) whose landlord is a registered housing association;

(b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989 which had previously been made in respect to him either—

(i) after he attained the age of 16 years; or

(ii) before he attained the age of 16 years, but had continued after he attained that age;

(c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;

(d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children's hearing under section 70 of the Children (Scotland) Act 1995 (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—

(i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or

(ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;

(e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—

(i) after he attained the age of 16 years; or

(ii) before he attained the age of 16 years, but had continued after he attained that age; or

(f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—

- (i) after he attained the age of 16 years; or
- (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age; or
- (g) who is a person who requires overnight care; or
- (h) who has attained the age of 25 years and to whom paragraph (1A), (1C) or both apply;

(1A) This paragraph applies to a claimant (“C”) if—

- (a) C has, for a total of at least 3 months (whether or not continuously), occupied as his home one or more hostels for homeless people; and
- (b) whilst occupying such a hostel, C has been offered and has accepted support services with a view to assisting him to be rehabilitated or resettled within the community.

(1B) For the purposes of determining whether the claimant meets the condition in paragraph (1A)(a), “hostel for homeless people” refers to a hostel, as defined in paragraph (1), the main purpose of which is to provide accommodation together with care, support or supervision for homeless people with a view to assisting such persons to be rehabilitated or resettled within the community.

(1C) This paragraph applies—

- (a) in England and Wales, to a claimant (“C”) if C is the subject of active multi-agency management pursuant to arrangements established by a responsible authority under section 325(2) of the Criminal Justice Act 2003 (arrangements for assessing etc. risks posed by certain offenders)⁽⁴⁾; or
- (b) in Scotland, to a claimant (“C”) if C is—
 - (i) the subject of local inter-agency risk management or management by the multi-agency public protection panel pursuant to arrangements established by the responsible authorities under section 10(1) of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders)⁽⁵⁾; or
 - (ii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(b) or (d) has not been

⁽⁴⁾ 2003 c. 44. Section 10(1) was amended by S.I. 2008/ 912. See “MAPPA Guidance (2009) Version 3.0” published in April 2009 by the Secretary of State.

⁽⁵⁾ 2005 asp 14. See Justice and Communities Circular JD/3/2008 and NHS CEL (2007) 8, “Sections 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005, Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland”, Version 4, published by the Scottish Ministers in April 2008, ISBN 978 0 7559 1673 3.

brought fully into force and C is considered by the relevant authority to be a person who may cause serious harm to the public at large; or

(iii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(e) has not been brought fully into force and who has been convicted of an offence, if by reason of that conviction, C is considered by the relevant authority to be a person who may cause serious harm to the public at large.

12M Transitional protection—reduction in LHA

(1) This regulation applies where—

(a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;

(b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—

(i) regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling; or

(ii) regulation 13C(3) (anniversary of LHA date); and

(c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.

(2) Where this regulation applies, the claimant's eligible rent is—

(a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or

(b) in any other case, the lower of—

(i) the amount of the eligible rent which applied immediately before 1st April 2011; or

(ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

(a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;

(b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger

category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);

(c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;

(d) the relevant authority is required to determine an eligible rent following a change of dwelling; or

(e) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) ~~Where~~ **Subject to paragraph (4A), where** the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).

(4A) Where on the day when the eligible rent ceases to apply because of paragraph (3)(a), the claimant is a young individual who has attained the age of 25 years—

(a) the eligible rent will be the maximum rent (LHA) which would apply if the relevant authority were to determine one by reference to that date, but

(b) the LHA date for the purposes of regulation 13C will remain the date by reference to which the local housing allowance used in the determination referred to in paragraph (1)(b) was identified.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D.