

# Housing Benefit Local Housing Allowance Guidance Manual



## *Record of amendments*

- 1 Amendments are serially numbered so that holders can check they have received the full series.
- 2 Incorporate amendments immediately and record that you have done so below.

<b>Serial number</b>	<b>Initials</b>	<b>Date</b>	<b>Serial number</b>	<b>Initials</b>	<b>Date</b>
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# *About this manual*

## *About this chapter*

- 1 This chapter contains overview information about this manual, including
- what information is contained in this manual, and where to find information that it does not contain
  - language and layout of the manual
  - specific technical terms used in the manual and the meaning of them

## *What this guidance manual contains*

- 2 This manual offers guidance on the administration of the Housing Benefit Local Housing Allowance (LHA). It provides information and guidance about
- all aspects of the LHA scheme, and
  - the legal requirements that local authorities must adhere to
- 3 Remember, however, that this manual provides guidance only, and must not be taken as a complete and authoritative statement of the law. If in doubt, local authorities should seek their own legal advice.

4-9

## *What is not contained in this guidance manual*

- 10 This manual does not include guidance about
- the administration procedures for dealing with benefit claims, such as gathering information, and verifying evidence. For more information, see the *HB/CTB Guidance Manual* and *HB/CTB Adjudication and operational circulars*
  - subsidy arrangements for local authorities such as when they are payable and how they are calculated. For subsidy information, see the *HB/CTB Subsidy Guidance Manual* which is updated yearly
  - security related issues. For more information see the *Housing Benefit/Council Tax Benefit Security Guidance*
  - the calculation and recovery of overpayments. For more information see the *HB/CTB Overpayments Guide*

11-19

## *Glossary*

- 20 This manual contains a *Glossary* which lists specific terms used in the administration of benefit claims and gives an explanation of their meaning within the context of this guidance.

21-29

## *Language and layout of the guidance*

- 30 Some ordinary words and phrases have been used in this guidance with a specific meaning to aid ease of reading and understanding, for example
- 'you', is used to mean the person within the LA making the decision or gathering information and evidence
  - 'we', is used to refer to the DWP

31 In this guidance DWP refers to

- Jobcentre Plus offices
- Jobcentres
- Social Security offices
- The Pension Service

32 Jobcentre Plus refers to

- Jobcentre and Jobcentre Plus offices
- Social Security offices

32-99



## *Abbreviations*

<b>BRMA</b>	Broad Rental Market Areas
<b>CTB</b>	Council Tax Benefit
<b>DWP</b>	Department for Work and Pensions
<b>GP</b>	General Practitioner
<b>HB</b>	Housing Benefit
<b>IRL</b>	Indicative Rent Level
<b>IS</b>	Income Support
<b>JSA</b>	Jobseeker's Allowance
<b>JSA(IB)</b>	income-based Jobseeker's Allowance
<b>LA</b>	Local Authority
<b>LHA</b>	Local Housing Allowance
<b>LRR</b>	Local Reference Rent
<b>LSVT</b>	Large Scale Voluntary Transfer
<b>RSG</b>	Revenue Support Grant
<b>RSL</b>	Registered Social Landlord
<b>SP</b>	Supporting People
<b>SRR</b>	Single Room Rent



# Glossary

The following terms used in this manual have the meanings set out below. When the definition is specified in the Social Security Administration Act (SSAA) 1992, the Social Security Contributions and Benefits Act (SSCBA) 1992, or the regulations under the Acts, a reference is given. The definition of a word in inverted commas can be found under its own entry in this Glossary.

**Authorised authority** a housing authority, local authority, charging or levying authority, as appropriate.

*S.134 and 139 SSAA*

**Broad Rental Market Area** is an area

- a** comprising two or more distinct areas of residential accommodation, each distinct area adjoining at least one other in the area
- b** within which a person could reasonably be expected to live having regard to the facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of public and private transport, to and from facilities and services of the same types and similar standard, and
- c** containing residential premises of a variety of types, and within the range of each type a variety of tenancies.

**Cap rent** The cap rent is the aggregate of payments that the tenant is required to make as a condition of occupying the property. This includes payments such as rent or licence payments but does not include payments for non-residential portions of the property. Where rent payments are made by joint tenants, the rent will be apportioned between them. Where the local authority has reason to believe that the contractual rent is above a level that it considers reasonable it may reduce it to an appropriate amount.

*HB Reg 12(1), 13D(12), 12B(3), (4) and (6)*  
*HB (SPC)Reg 12(1), 13D(12), 12B(3), (4) and (6)*

**Child** a person under the age of 16.

*S.137(1)SSCBA*

<b>Claim-related rent</b>	<p>is the lowest figure produced by these three tests</p> <ul style="list-style-type: none"><li><b>a</b> <b>Significantly high test:</b> the rent may be higher than the property is worth. If the rent officer decides that the rent is significantly higher than the landlord could expect to get on the open market, they decide what a reasonable figure would be</li><li><b>b</b> <b>Over-large test:</b> the rent may be too high because the property is larger than the claimant needs. In these cases, the rent officer decides what a reasonable rent would be if the property were of the size needed</li><li><b>c</b> <b>Exceptionally high test:</b> deals with rents that are realistic by market standards but are higher than would be reasonable to expect the taxpayer to fund. In these cases, the rent officer sets a figure that is not exceptionally high by the standards of the neighbourhood</li></ul>
<b>Claimant</b>	<p>means a person claiming benefit.</p> <p style="text-align: right;"><i>HB Reg 2(1), CTB Reg 2(i)</i></p>
<b>Contractual rent</b>	<p>the contractual rent is the rent which the tenant is contractually liable to pay to the landlord.</p>
<b>Couple</b>	<p>means two people of opposite sex or same sex who are living together.</p> <p style="text-align: right;"><i>HB Reg 2(1)</i></p>
<b>Date of claim</b>	<p>means the date the claim is made or treated as made.</p> <p style="text-align: right;"><i>HB Reg 2, HB(SPC) Reg 2, HB Reg 83, 84 and 85, HB(SPC) Reg 64, 65 and 66, CTB Reg 64</i></p>
<b>Decision</b>	<p>a local authority's ruling on any matter under the regulations connected with a HB or CTB claim. However, Rent Officers still make determinations regarding the amount of rent payable.</p>
<b>Dwelling</b>	<p>means residential accommodation.</p> <p style="text-align: right;"><i>S.137(1) SSBA</i></p>
<b>Eligible rent</b>	<p>the amount of rent which may be used to determine the amount of any rent allowance or rent rebate.</p>
<b>Family</b>	<p>a married or unmarried couple with or without children or lone parent with a child or children.</p>
<b>Housing Benefit</b>	<p>is used to cover both a rent rebate and a rent allowance.</p>

<b>Indicative Rent Level</b>	Indicative rent levels are provided each month by the rent officer and give an approximation of the level of rent for various types and sizes of property in a particular area.
<b>Landlord</b>	the person a claimant is liable to pay rent to.
<b>Linked Person</b>	<p>means</p> <ul style="list-style-type: none"> <li><b>a</b> any member of the claimant's family</li> <li><b>b</b> if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household, or</li> <li><b>c</b> any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it</li> </ul> <p style="text-align: right;"><i>HB Reg 2, HB(SPC) Reg 2</i></p>
<b>Local Reference Rent</b>	the local reference rent (LRR) is a figure which represents a broadly average rent in the locality where the claimant lives, for a property with the same number of rooms needed by the claimant. It is defined as a mid point between the highest and lowest markets after removing exceptionally high and low rents.
<b>Married couple</b>	<p>a man and a woman who are married to each other and are members of the same household.</p> <p style="text-align: right;"><i>S.137(1) SSCBA</i></p>
<b>Maximum Rent (LHA)</b>	<p>means the amount determined in accordance with regulation 13D. This means that the maximum rent (LHA) will be the lower of</p> <ul style="list-style-type: none"> <li><b>a</b> the applicable local housing allowance the claimant is entitled to, based on the area in which the claimant lives, or</li> <li><b>b</b> the amount equal to the cap rent determined in accordance with paragraph 13D(4)(a) plus £15</li> </ul> <p style="text-align: right;"><i>HB Reg 13D, HB(SPC) Reg 2</i></p>
<b>Non-dependant</b>	anyone who lives with the claimant, <i>except</i> members of the claimant's 'family', <i>but including</i> any of the claimant's (or their partner's) grown-up children who live with them; a joint occupier of the accommodation; a tenant or a sub-tenant of the claimant; or someone who is paid by a voluntary or charitable organisation to care for the claimant or the claimant's partner and the claimant or the claimant's partner pay for the services provided.

**Occupier(s)** the person(s) whom the authority is satisfied occupy the 'dwelling' to which the claim or award relates, except for any joint tenant who is not a member of the claimant's household.

*HB(SPC) Reg 13D(12)*

**Partner** where a claimant is a member of a couple, the other member of that couple or where a claimant is polygamously married to two or more members of his household, any such member.

*HB reg 2(1)*

**Person affected** a person who is

- a** a claimant
- b** a claimant's deputy, or someone with Power Of Attorney
- c** the local authority
- d** the landlord (in the case of a decision on direct payments of HB), or
- e** a person from whom the local authority decides that an overpayment of HB or CTB is recoverable

**Room** means a bedroom or room suitable for living in except for a room which the claimant shares with any person who is not a member of his household, a non-dependant of his, or a person who pays rent to him or his partner.

*HB Reg 13D(2)(b)(ii), HB(SPC) Reg 13D(2)(b)(ii)*

**Significantly High Rent Determination** the rent officer determines whether the referable rent is significantly higher than the rent which the landlord might reasonably have been expected to obtain for the specified tenancy and, if it is significantly higher, determines a lower level and notifies it to the local authority. Formerly known as the reasonable market rent.

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# *An overview of Local Housing Allowance*

## *About this chapter*

- 1.00 This chapter provides
- background information about the Local Housing Allowance (LHA) scheme
  - information about the LHA scheme's
    - fundamental aims
    - scope
    - implementation, including start dates and method of introduction

## *Background to the LHA scheme*

- 1.01 On 17 October 2002, the Government announced a programme of reform to Housing Benefit (HB), which included the running of a standard LHA scheme in nine Pathfinder areas. The programme of reform was outlined in the prospectus *Building choice and responsibility: a radical agenda for Housing Benefit*. A copy of this report can be viewed on-line, see [www.dwp.gov.uk/housingbenefit](http://www.dwp.gov.uk/housingbenefit)
- 1.02 Following an extensive evaluation process of the nine pathfinder authorities, provision for the national implementation of the LHA was contained in the Welfare Reform Act 2007. The LHA will therefore be introduced nationally from 7 April 2008.
- 1.03 Claimants will receive an LHA based on the
- area in which they live, and
  - number of occupiers in their property
- 1.04 Entitlement to the LHA will be subject to a means-test and proof of a valid tenancy. The payment will normally be to the tenant rather than to the landlord.
- 1.05-1.09

### *Aims of the LHA scheme*

1.10 The fundamental aims of the LHA scheme are to promote

- **Fairness** – Local Housing Allowance bases the maximum amount paid to tenants on the size, composition and location of the household. Therefore, two households in similar circumstances in the same area will be entitled to similar amounts of benefits.
- **Choice** – Tenants can take greater responsibility and choose how to spend their income in a similar way to tenants who are not in receipt of benefits. Like other tenants, they are able to choose whether to rent a larger property, or to spend less on housing and increase their available income.
- **Transparency** – The current link between Housing Benefit and individual rents is complex and does not set out clearly what level of state support is available for people on low incomes. A clear and transparent set of allowance rates helps tenants (and landlords) know how much financial help is available from the state. Tenants are able to compare how much support is available towards their housing costs in different areas and for different property sizes.
- **Personal responsibility** – Empowering people to budget for and to pay their rent themselves, rather than having it paid for them, helps develop the skills unemployed tenants will need as they move into work. The Government believes that, wherever possible, Local Housing Allowance should be paid to tenants, as are most other benefits and tax credits.
- **Financial inclusion** – Ideally, we want people to have their housing payments paid into a bank account and to set up a standing order to pay the rent to their landlord. This has the advantage of being a safe and secure method of payment and provides certainty for landlords that rent will be paid.
- **Improved administration and reduced barriers to work** – For working-age tenants, Local Housing Allowance provides greater certainty about what help is available in and out of work. A simpler system also helps speed up administration of housing payments, giving tenants more confidence when starting a job that any in-work benefit will be paid quickly. A more transparent system may also improve the ability of individuals to move between areas and to take advantage of employment opportunities.

1.11-1.19

## *Scope of the LHA scheme*

1.20 The LHA will apply to HB claimants in the deregulated private sector only. That is, those claimants who may be subject to rent restrictions under current benefit rules.  
*HB Reg 13C, HB(SPC) Reg 13C*

1.21 Tenancies in the Social Sector are exempt from the LHA.  
*HB Reg 13C(5)*

**Note:** Some tenancies may initially appear to fall within the definition of an exemption, however, before making a decision you should establish the status of the landlord, for example, a number of housing operators are charging sub market/social sector rents and appear to be registered social landlords but are not social landlords and will therefore fall within the scope of the scheme.

1.22 Tenancies outside the deregulated private sector, which include those that are not normally subject to current rent restrictions by Rent Officers, are exempt from the LHA scheme. The information below includes those tenancies which are exempt from LHA but is not a definitive list of exemptions. These exempted tenancies are specified in HB Reg 13C(5).  
*HB Reg 13C(5), HB(SPC) Reg 13D(5)*

- **Registered Social Landlord (RSL) tenancies** –Most RSL’s will include their registration number on their correspondence or tenancy agreements. If not, you can verify their registration by checking the Housing Corporation web site. [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)
  - **Note:** Some landlords, who may operate in a similar way to a RSL, have now de-registered with the Housing Corporation. These landlords cannot be classed as a RSL although the tenancy may fall within one of the other exemptions. If in doubt you should check the landlord’s registration
  - In Scotland, check that the landlord is a Registered Housing Association statutorily registered with Communities Scotland under the Housing (Scotland) Act 2001. You can verify their registration by going to the Communities Scotland Public Register of Social Landlords, Web site: [www.esystems.communitiesscotland.gov.uk/register/reg\\_pub\\_dsp.home](http://www.esystems.communitiesscotland.gov.uk/register/reg_pub_dsp.home)
  - In Wales, check that the landlord is a Registered Housing Association, registered with the National Assembly for Wales under section 36 of the Housing Act 1996. You can verify their registration by going to the Social Housing Regulation and Investment Unit of the Welsh Assembly Government Housing Directorate

*Schedule 2  
11(d) Housing Benefit Regulations 2006*

(continued)

## An overview of Local Housing Allowance

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(1.22)-1.24

- (1.22)
- **Protected cases** These are cases protected from the Local Reference Rent by paragraph 4 of schedule 3 (Transitional and Savings Provisions) of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. To satisfy that definition
    - the accommodation must be provided by a county council, housing association, registered charity or voluntary organisation, **and**
    - the tenant must be provided with care, support or supervision by either the landlord or someone acting directly on their behalf. In the latter there must be interposition not merely that the landlord be part of a group co-ordinating care, support or supervision. The landlord must have ultimate responsibility. If the organisation concerned is providing care but is not itself the landlord, its tenants are not exempt from LHA

1.23 Supported housing tenancies (supported accommodation) provided by a private landlord (i.e. not a county council, housing association, registered charity or voluntary organisation) are not exempt from the LHA scheme. Cases where private landlords provide support or care to their tenants should be calculated using LHA rules. Tenants receiving floating support from their local authority, or an appropriate source, but are renting from private landlords are also calculated using LHA rules

- **pre 1989 tenancies** (pre 15 January 1989 England and Wales, pre 02 January 1989 in Scotland)
- **Large Scale Voluntary Transfer** (LSVT) has taken place  
*HB Reg 13D(5)(b)*
- **exceptional cases**, ie caravans, houseboats (including mooring charges), mobile homes and hostels
- **Board and attendance cases** ie where the Rent Officer judges that a substantial part of the rent is attributable to board and attendance, eg hostel accommodation

1.24 NB: claims where the rent includes an element of board and attendance will still need to be referred to the Rent Officer. The Rent Officer will make a decision on whether a substantial part of the rent is attributable to board and attendance and inform the Local Authority that the claim is either

- a) outside of the LHA scheme, in which case he will provide a decision on the rent referred, or
- b) advise that the tenancy falls within the LHA scheme

*HB Reg 13D(10), HB(SPC) Reg 13D(10)*

- 1.25 Tenancies in the following types of accommodation are **not** specifically exempt from the LHA unless they are operated by RSLs. In all cases, registration may be checked with the Housing Corporation or Communities Scotland in Scotland or Welsh Assembly Government in Wales
- **Abbeyfield Society** cases should be assessed under normal LHA rules except where they are registered with the Housing Corporation as a RSL
  - **Almshouses** like Abbeyfields should be assessed under normal LHA rules except where they are registered as a RSL. Note that the registration of Almshouses is comparatively uncommon
  - **Co-operatives** – Exemption from the LHA is dependant on registration with the Housing Corporation or the by the ownership and tenancy of the individual properties they manage. Those who are not registered with the Housing Corporation and are not managing properties owned by RSLs or local authorities will fall within the scope of the LHA
- 1.26 There are four main type of housing co-operative
- **Ownership or par value co-operatives** – The majority of these will be registered with the housing corporation and as such they will be exempt from the LHA scheme, however, some may not be registered and you should ensure that you identify these tenancies as they will fall under the LHA scheme
  - **Tenant management co-operatives** – The co-op will have a management agreement with their landlord who will more than likely be the Local Authority or a housing association. However, in these cases it is important to check the claimants' tenancy agreement
    - a) If the tenancy agreement is between the co-op (as the landlord) and the claimant and the co-op is not registered with the Housing Corporation, then the tenancy will fall within the LHA scheme
    - b) If the tenancy agreement is with the RSL who is providing the property to the co-op or the tenancy agreement is with the co-op who is registered with the Housing Corporation, then the case is exempt from the LHA scheme
  - **Self-build co-operatives** – These are organisations where the tenants have been involved in the building of the properties. The labour that they put into building the properties gives them a 'sweat equity' (ie they own a percentage of the property) and they pay rent for the rest. If the project was funded through the Housing Corporation, their tenants could be RSL tenants and not included within the LHA scheme. Check the Housing Corporation to confirm their status

(continued)

(1.26)-1.41

- (1.26) • **Short life co-operatives** – Short life co-operatives take over properties from local authorities, RSL or private owners that are in some way unlettable, for a fixed period of time, which may extend for many years. The co-operatives themselves will not be registered with the Housing Corporation and are not RSL's
- a) If the tenancy agreement is between the co-op (as the landlord) and the claimant, and the co-op is not registered with the Housing Corporation, then the tenancy will fall within the LHA scheme
  - b) If the tenancy agreement is with the RSL or local authority who is providing the property to the co-op or the tenancy agreement is with the co-op who is registered with the Housing Corporation, then the case is exempt from the LHA scheme
- 1.27 Your own Housing Department (or similar part of your organisation) should be able to assist with queries regarding Housing Co-operatives as they have records of the development of new properties in your areas, details of housing needs, developing agents etc. If in doubt, contact these departments when you need further advice.
- 1.28 **Please note** that it is possible that not all tenants within the co-op will have the same tenancy agreement. Each individual tenancy agreement should be checked to determine the type of tenancy. Exempt cases will have their HB calculated under the existing rules, see HB/CTB Guidance manual, Chapter A6 – Deciding and paying HB for more information.
- 1.29 LHA can exceed the rental liability of the claimant (up to £15.00). The LHA and the excess will not affect other benefits. LHA is a payment of HB and the receipt of HB does not normally affect the calculation of other benefits. LHA is disregarded as income in its entirety. The sole exception to this is in the case of discretionary housing payments which takes account of all income.

*Discretionary Financial Assistance Regulation 2001 (SI2001 No. 1167) Reg (2)*

1.30-1.39

### *Treatment of Crown tenants*

- 1.40 Crown tenants are excluded from entitlement to HB and instead receive help with their rent through IS, JSA or a rent rebate from their landlord. As they are excluded from current rent restrictions they are exempt from LHA.

*HB Reg 12, HB(SPC) Reg 12*

- 1.41 Former Crown tenants (Irregular Occupiers) may continue to occupy their home after the tenancy has expired and against the wishes of the landlord. If mesne profits (England) or violent profits (Scotland) are awarded and collected from the claimant (as long as the landlord wants payments to be made and a new tenancy or licence has not been granted, even for a limited period) the claimant will be entitled to HB as they are no longer a Crown tenant.

*HB Reg 12 & (SPC) 12*

- 1.42 Where the irregular occupier is waiting to be re-housed they will have an informal license arrangement, an unwritten tenancy or a tenancy at sufferance which means that no rent will be payable as the tenant remains a crown tenant and is not entitled to HB.

*HB/CTB Guidance Manual, Chapter A3*

- 1.43 Tenants or licensees of properties managed by the Crown Estate Commissioner, are not Crown tenants. Claims for HB should be treated in the normal way, ie pay on LHA where appropriate.

- 1.44 Tenants or licensees of properties belonging to the Duchess of Lancaster or Cornwall do not come within the definition of Crown tenant. Claims for HB should be treated in the normal way.

*HB/CTB Guidance Manual, Chapter A3*

1.45-1.49

## ***Definition of mobile home***

- 1.50 The legal definition of a mobile home is the same as that for a caravan. Broadly speaking, it covers any structure designed or adapted for people to live in which is capable of being moved from one place to another (whether by being towed or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. This does not include railway stock on a railway line which is in use, nor tents. It does include twin units separately constructed and designed for assembly on site, provided that the twin unit is physically capable of being moved when assembled (whether by being towed or by being transported on a motor vehicle or trailer). The twin unit must be no more than 60 feet (18.288 metres) long, 20 feet (6.096 metres) wide and the living accommodation no more than 10 feet (3.048 metres) high.

- 1.51 If the structure is a mobile home, even if supporting walls have been built (presumably with planning permission) and it has been connected to drains, utilities etc it is still exempt from LHA because it is essentially a mobile home. It is not the permanency of the structure that qualifies for LHA rather it is the type of dwelling.

*Caravan Sites & Control & Development Act 1960*

1.52-1.54

1.57-1.99

## *Movement on to LHA post go-live April...*

1.55 Claimants will go onto LHA on the earlier of the receipt of

- a new claim
- relevant information regarding a new claim, ie a Customer Management System (CMS) statement – only applicable in local authorities where CMS has gone live
- a notification of an existing claimant changing address
- where there is a break in entitlement of one week or more or where there is a change in claimant

**Note:** there are no linking rules for transitionally protected cases and as such any break in entitlement or change in claimant will transfer the claim onto the LHA scheme.

*HB Reg 13C(2)(a)(b)and (c)*  
*HB (SPC) Reg 13C(2)(a)(b)and (c)*

1.56 Where a tenancy is exempt from LHA as they fall within one of the exemption categories and that tenancy changes, for example a RSL de-registers with the Housing Corporation, the claim should continue to be treated under normal HB regulations and will not transfer onto the LHA scheme until one of the trigger events, outlined above, occurs.

1.57 If a claim has transferred onto LHA. Where that tenancy subsequently changes, for example if the landlord sells their stock to a RSL or the landlord registers with the Housing Corporation and their claim becomes an exempt tenancy, LHA arrangements will no longer apply. (they will now fall within regulation 14).

*HB Reg 14(1)(h), HB(SPC) Reg 14(1)(h)*

1.58-1.99

# *Establishing the maximum rent*

## *About this chapter*

2.00 This chapter explains

- the size criteria
- Broad Rental Market Areas (BRMAs)
- how LHAs will be set

2.01 A new regulation has been inserted into the Housing Benefit (General) Regulations, which sets out when and how local authorities must calculate a maximum rent (also known as maximum rent (LHA)). This manual will use the term *maximum rent* for ease of reading.

*HB Reg 13C and 13D*

2.02 A claimant's maximum rent (LHA) will be the lower of:

- the appropriate LHA rate
- or the customers cap rent plus £15.

This means that the maximum benefit that a tenant can receive before income and non-dependant deductions are applied will be the contractual rent plus £15.

**Note:** a definition of cap rent can be found in the glossary.

*HB Reg 13D(6) and (12), HB(SPC) Reg 13D(6) and (12)*

2.03 The maximum rent will normally become the claimant's eligible rent, which is the figure used in calculating the claimant's HB entitlement.

2.04-2.09

## *The size criteria*

- 2.10 The LHA that a tenant will qualify for will depend on the number of occupiers and the area in which they live. The size criteria determine the appropriate number of rooms that the occupiers qualify for, see *Fig 1* below.

*HB Reg 13D*

**One bedroom for**

- a** every adult couple
- b** any other adult aged 16 or over
- c** any two children of the same sex
- d** any two children regardless of sex under age 10
- e** any other child

The number of living rooms, kitchens and bathrooms is ignored for the purpose of this calculation, as it is assumed that all tenants are entitled to these.

**Note:** In cases when a child comes to stay with an absent parent, do not take the child into account when determining the number of rooms required by the claimant. Equally, if someone goes into hospital, do not consider reducing the number of rooms required.

*The Rent Officer (Housing Benefit Functions) Order 1997 Schedule 2 Size Criteria*

**Fig 1:** *Number of rooms occupiers qualify for*

**Note:** See *Single claimants aged 25 years and over, care leavers under 22 and couples with no dependent children.*

- 2.11 Using the categories shown at *Fig 1* above, the total number of bedrooms, will determine the rate of allowance that a claimant will qualify for. For example, a Mr and Mrs Smith and their 14 year old child Megan would be entitled to the rate for a two bedroom property.

Their contractual rent is £120.00 and the appropriate LHA rate is £150.00. As the cap rent (contractual rent plus £15) is lower than the LHA rate, the eligible rent (maximum LHA) to be used in the benefit calculation would be the cap rent of £120 plus £15 = £135 (Mr Smith is therefore entitled to benefit that is in excess of his contractual liability of £15).

If Mr Smith then starts work, once his earnings are taken into account and appropriate tapers have been applied, his entitlement is reduced and he is now entitled to £135.00 minus £12.50 = £122.50. As his benefit entitlement has reduced, the excess has reduced to £2.50.

**Note:** the cap rent is applied before income is taken into account and non-dependant deductions are applied. Therefore the amount of rent that Mr Smith is entitled to before deductions is his contractual rent £120 plus £15 = £135.

- 2.12 Students, ie aged between 14-17 years of age, placed with host families should not be treated as a boarder or sub-tenant with a commercial let. Neither would they be treated as a non-dependant, in view of the short time that the students stay in the property. As the money received to host the students is more of an 'incentive payment' to cover extra living costs of the student, it would be viewed as income rather than a rental payment in respect of a third party and could be counted in full or disregarded.

*HB Reg 3(1) & 3(2), 42(6)(c)*

- 2.13 When students stay for longer periods, a year or more, they could be treated as a boarder, sub-tenant or tenant and therefore included under the size criteria and the income received treated as rent, subject to consideration of commerciality.

- 2.14 Housing Benefit regulation 7(1) requires the claimant and their family to occupy the dwelling as their home. Their family is defined in section 137 (SSCB 1992) and includes those for whom the claimant is responsible. This term is defined in HB regulation 19 and HB regulation 20 determines those for whom the claimant cannot be held as being responsible. Foster children are included in HB regulation 21(3) as it is the local social services who are responsible for the child they have placed in the claimant's care. The foster child can not be a member of the claimant's family and so does not 'occupy' the dwelling for the purposes of HB regulation 7(1). Foster children should not be treated as being members of the claimants' household, therefore not treated as an occupier and consequently not included under the size criteria.

*HB Reg 7(1), 19, 20, 21(3) & 13D(3)  
137 (SSCB 1992)*

2.15-2.19

***Size criteria where tenants have a partner or household member who have no recourse to public funds, eg persons from abroad***

- 2.20 In the case of a couple where one party has no recourse to public funds and the other party does, the 'couple' rate is applied, provided that the person who has no recourse to public funds is **not** the claimant.
- 2.21 Similarly, where a person with no recourse to public funds is a member of the household of an LHA claimant they are included within the claimant's room entitlement under the size criteria.

2.22-2.25

***Cap rent and benefit on two homes***

2.22 In certain circumstances, for example when a customer has to flee their home because of domestic violence and intends to return to the original property, it is possible for Housing Benefit to be paid on two homes. Where this happens the £15.00 excess should be paid on both homes.

*HB Reg 7*

2.23-2.24

***Joint tenants***

2.25 Joint tenants will receive a rate of LHA based on the claimant's family, plus any non-dependants, sub-tenants or boarders of the claimant.

**Example**

Alice and Bob are joint tenants. They live with Charlie, Bob's non-dependant.

**Pre LHA**

The Rent Officer referral would have shown three occupiers and the total rent payable.

The rent for each joint tenant is the proportion each person is responsible for. As Bob has more of the property than Alice he may well be responsible for more of the rent. In this example the split is 30% for Alice and 70% for Bob.

*HB Reg 12(5)HB Reg 74(1)*

Bob's eligible rent would have been 70% of the relevant Rent Officer's decision less 100% of the non-dependant deduction.

Alice's eligible rent would have been 30% of the relevant Rent Officer's decision.

*HB Reg 12(5)*

continued

(2.25)

**Post LHA**

The maximum rent (LHA) is the lower of the applicable LHA rate or the cap rent plus £15.

This means that Bob will be entitled to either

- the two-bedroom rate LHA that is then reduced by 100% of the non-dependant deduction; or

*HB Reg 13D(3), HB Reg 74(1)*

- his £70% share of the rent plus £15 (taking account of the cap rent calculation)

*HB Reg12B(4), HB Reg13D(12)*

and Alice (a single person living in shared accommodation) is entitled to the lower of either:

- the shared rate LHA; or
- her 30% share of the rent plus £15 (taking account of the cap rent calculation)

*HB Reg 13D(2)(a)*

***Joint tenants with a shared non-dependent***

2.26 Joint tenants who have a **shared** non-dependent have the person counted for the size criteria, but only have an apportioned non-dependent deduction

*HB/CTB Guidance Manual, Calculating the amount of HB. HB Reg 74(5)*

2.27 Although this may be fairly rare, it is worth having an example (in addition to the example that is already quoted for other types of joint tenants) because of the double counting of the non-dependant for the size criteria.

**Example**

John and Alex are joint tenants whose friend, Peter, also lives with them.

**Pre LHA**

The Rent Officer referral would have been made showing three occupiers and the total rent payable.

Each of the claimants, John and Alex, would probably have had a maximum rent of 50% of the relevant Rent Officer decision. 50% of the appropriate non-dependant deduction would have been deducted to arrive at the eligible rent.

*HB Reg 12(5), HB Reg 74(5)*

continued

(2.27)-2.40

(2.27)

### **Post LHA**

John and Alex will each be entitled to a two-bedroom rate LHA. This is because their friend, Peter, is counted in each of the size criteria calculations. However the non-dependant deduction is still apportioned between them as the non-dependant is shared.

*HB Reg 13D(3), HB Reg 74(5)*

### **OR**

John could be entitled to his 50% share of the rent + £15 and Alex his 50% share of the rent + £15 (taking account of the cap rent calculation) whichever is the lower of the cap rent + £15 or the LHA rate. The non-dependant deduction would then be apportioned between them as the non-dependant is shared.

*HB Reg 12B(4), HB Reg 13D(12)*

2.28 The non-dependant will also be shared for the purposes of Council Tax Benefit.

*CTB Reg 57(3)*

2.29 A non-dependant is a person who

- resides with the claimant, and
- is not a
  - partner, or
  - dependant child of the claimant and/or their partner

(see Glossary for further definition of non-dependant)

*HB/CTB Guidance Manual, Non-dependant deductions*

2.30-2.39

## ***Single claimants aged under 25 years***

2.40 Single claimants aged under 25 years, ie young individuals, who do not have a non-dependant living or treated as living with them (see *Shared non-dependants*) will be entitled to the standard rate for a bedroom in shared accommodation. However, this will be based on a different definition than the existing Single Room Rent (SRR), which limits HB entitlement for this group of claimants to the rate for a room in shared accommodation.

*HB Reg 13D(2), Schedule 3B paragraph 1(1)(a) of the Rent Officers (HB Functions) Order 1997*

(2.40) **Note:**

- This does not apply to under 25s who have the severe disability premium included in their benefit assessment and certain people under the age of 25 are not classed as a 'young individual' e.g. certain care leavers less than 22 years of age. They will be entitled to the one-bedroom rate of LHA regardless of the size of accommodation (refer to paragraphs below).

*HB Reg 2*

- As with non-LHA cases, where the young individual has a non-dependant living with them, or treated as living with them, they would be entitled to the two room rate. Where they have any other person living with them, for example a boarder, then the shared room rate will still apply.

*HB Reg 13D(3), HB Reg 13D(2)(i)*

2.41 This shared rate will be based on properties where the tenant has the exclusive use of only one bedroom and where the tenancy provides for him to share the use of one or more of

*HB Reg 13D(2)*

- (i) a kitchen
- (ii) a bathroom
- (iii) a toilet, or
- (iv) a room suitable for living in

2.42-2.49

***Single claimants aged 25 years and over, and couples with no dependent children***

2.50 Single claimants aged 25 years and over and couples with no dependent children, will be entitled to the rate for a one-bedroom property, eg a one-bedroom flat or studio or other kind of self-contained accommodation, **provided they actually rent a property of at least this size** (see note at 2.52).

2.51 However, if people in this category choose to live in a property where they do not have either exclusive use of two or more rooms, or exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking, they will be entitled to **only** the shared LHA rate.

2.52-2.59

### 2.52 **Care Leavers under 22 years and Single Claimants (under 25 and over 25) with severe disability premium included in benefit assessment**

Care leavers under 22, or those who live with a care leaver under 22 who is their partner, and have no dependent children will have their benefit entitlement based on the one bedroom LHA rate whether or not they share accommodation and regardless of its size.

Severely disabled claimants or those living with a severely disabled partner (who have the Severe Disability Premium included in their benefit assessment), and have no dependent children, will also have their benefit entitlement based on the one bedroom LHA rate whether or not they share accommodation and regardless of its size.

**Note:** When Care Leavers reach the age of 22 they will fall within the definition for under 25's

*HB Reg 13(D)(2)*

2.53 When a claimant reaches the age of 25 the local authority should check to see if this affects the category of dwelling applicable to the claim.

2.54 Whether the claimant reaching the age of 25 affects the category of dwelling or not will depend on the type of accommodation they are living in

- if on turning 25 they do not have exclusive use of rooms as described above, the shared accommodation rate will continue to apply to them.
- If they are still subject to the shared accommodation rate then notification of them turning 25 will not be a notification of a change which affects the category of dwelling applicable to the claim, and the LA does not have to determine a new LHA rate.

**Note:** No notification of a change is needed where the change is a birthday. The claimant has a duty to report changes relating to their household under HB Reg 88(1) however 88(3) states that they are not required to report age changes, the LA should have procedures for identifying these.

2.55 **Note:** A change of address will result in the application of a new LHA rate even though this may take place before the next review date. Where the claimant is single and aged 25 years and over, or where they are couples with no dependant children, you will need to establish their accommodation details in order to determine if they are entitled to the shared bedroom rate or the one bedroom rate. If information provided on the claim form raises doubts about the accommodation, contact the claimant for more information. You may also find it helpful to liaise with the Rent Officer as they may hold information that would confirm whether the accommodation has shared facilities. A statement from the landlord confirming accommodation details, including the rent should be sufficient.

2.56-2.59

### *Child reaching the age of 10 or 16*

- 2.60 When a child reaches the age of 10 or 16 the local authority should check to see if this would affect the category of dwelling applicable to the award. Where the category of dwelling is affected the local authority should apply the new LHA rate applicable on the child's birthday which will be effective from the following Monday.

*HB Reg 13D(3), HB Reg 79(1)*

- 2.61 When a dependant of a boarder or sub-tenant reaches a relevant birthday, the local authority should check to see if this would affect the category of dwelling applicable to the award.

Dependants of boarders and sub-tenants do not fall within HB Regulations 88(3) where the claimant is not required to report age changes. This means that the LA will need to set up procedures for updating their records from which to establish the maximum rent (LHA).

- 2.62 If the change does not affect the category of dwelling applicable to the claim the local authority does not have to take any action.

2.63-2.69

### *Care Leavers under 22*

- 2.70 A care leaver under 22 is not a "young individual". Only a young individual is subject to the shared bedroom rate restriction. Care leavers under 22 will be entitled to the rate for a one-bedroom property, eg a one-bedroom flat or studio or other kind of self-contained accommodation. Once the care leaver reaches age 22 this is a change that affects the category of dwelling. If they have a partner, child or a non-dependant then they come under the normal size criteria.

*HB Reg 2(1), HB Reg 13D(3)*

2.71-2.79

## *Broad Rental Market Areas*

### *What is a BRMA?*

2.80 An area

- a** made up of two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area
- b** within which a person could reasonably be expected to live, having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel (by public and private transport) to and from facilities and services of the same type and similar standard, and
- c** containing residential premises of a variety of types, and including such premises held on a variety of tenancies

*Rent Officers (Housing Benefit Functions) Amendment Order 2007 Sch 3B*

2.81 Rent officers will be required to define the BRMA that an LHA will cover. The BRMA is based on the current concept of locality, which is used to determine LRRs and SRRs. BRMAs will be published by the local authorities.

2.82 Both localities and BRMAs are areas containing a mixture of different types of residential accommodation within which someone could be expected to move and still have access to similar services of a similar standard.

2.83 The term 'Broad Rental Market Area' will be used in place of locality, partly to avoid confusion between the two concepts, but also to give a more accurate impression of what they actually are.

2.84-2.89

### *Conditions for setting a BRMA*

2.90 The conditions for setting a BRMA are

- there must be one or more BRMAs covering every part of the local authority, but they must **not** overlap at all
- the areas must be postcode-definable. This may go down to a detailed level, eg the level 4 postcode (WC2N 6YM). In exceptional circumstances, BRMA's may split 'level 4' postcodes
- if a BRMA extends beyond the pathfinder authority's boundary, the Rent Officer must identify which parts are in each local authority area

*Rent Officers (Housing Benefit Functions) Amendment Order 2007 Sch 3B*

- 2.91 The Rent Officer can take account of rents in other similar areas where they believe a comparable market exists if
- there is an insufficient number of a particular category of properties in an area, or
  - the Rent Officer does not have enough information about the market to make an LHA determination
- 2.92 BRMAs are fixed independently of any individual property and so, once defined, will apply to all properties falling within that area.
- 2.93 As a result, it is possible that some claimants have their rent restricted by an LRR on the basis of a locality that differs from the BRMA across which the LHA is calculated. For example someone who was previously in receipt of HB coming onto the scheme for the first time may query why their locality is now different.

2.94-2.99

## *Setting the LHA*

- 2.100 When they have set the BRMAs, rent officers would then be responsible for setting the LHAs for different sizes of property in the area.  
*Rent Officers (Housing Benefit Functions) Amendment Order 2007 Sch 3B*
- 2.101 The LHA is a standard rate calculated by reference to the median value from a range of rents for properties of a given size, in an area known as the Broad Rental Market Area.
- 2.102 Between 8-10 working days before the end of each month the Rent Officer will send each local authority a list of LHAs for the following month for each BRMA falling totally, or partially, within the area of that local authority. These figures must then be published, and all claims made within a month would be based on the same figures.  
*Rent Officers (Housing Benefit Functions) Amendment Order 2007 Article 4B (2A)*
- 2.103 Rent officers will routinely provide rates for all property sizes up to five bedrooms, but will be required to provide rates for larger properties if they
- are asked to do so by an authority because that authority has received a claim or an LHA pre-tenancy request for a larger property
  - consider that larger house sizes are likely to be needed by benefit claimants in the area  
*HB Reg 13D(7)*

## **Establishing the maximum rent**

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2.104-2.999

- 2.104 These figures should be published in the normal way, and the rate would be valid for all claims relating to that size property in that month. The rates and BRMAs on which they are based should be made available to those members of the public who need to see them.

*HB Reg 13E*

2.105-2.109

### ***Reviewing the BRMAs and LHAs***

- 2.110 Rent officers will be required to review the BRMA as often as it is thought appropriate, but will be required to review the LHAs each month. This follows the current practice of reviewing LRRs on a monthly basis. It will also give more certainty to claimants – the LHAs will remain valid until a known expiry date, rather than change at arbitrary times.

*Rent Officers (Housing Benefit Functions) Amendment Order 2007  
Article 4B1A) and (2A)*

- 2.111 Providing a monthly review of LHAs is also expected to give a more accurate reflection of any market variation than if the rates were updated annually or six-monthly. Longer review periods might result in steeper changes to the LHAs, which could risk prompting unusual behaviour from tenants and landlords. For example, tenants may delay making a claim if they know that large increases to the LHAs would be likely at the end of the year.

2.111-2.999

## *Length of LHA award*

### *About this chapter*

- 3.00 This chapter
- explains how long LHA awards normally last
  - gives the three circumstances in which the eligible rent might be updated with a new LHA mid-year
  - gives guidance on the date of claim

3.01-3.09

### *Length of LHA awards*

- 3.10 Once an LHA has been used to establish a claimant's maximum rent, it will apply from the date of claim and continue to apply for a year unless an update is triggered by a change of circumstances, see *Changes of circumstance* later in this section. Currently Rent Officer decisions are in use for at least 52 weeks.

**Example**

Claim made 7 October 2008.

Benefit paid on October LHA from 13 October 2008.

Anniversary falls 7 October 2009 and benefit is superseded from 12 October 2009 using the October 2009 LHA.

- 3.11 If an LHA has reached its anniversary date (one year hence) without change, the award will come to an end, except when the award is superseded in accordance with the new provision. This means that the anniversary date must be used to generate the new LHA. If the anniversary date falls on a Monday the effective date for the new rate will be the same day, if it falls on any other day of the week the effective date is the following Monday. If that benefit week falls in the following month, the LHA rate will still be that of the previous month, ie the month in which the anniversary fell.

*HB Reg 12D(2)(b)(ii)*

*HB Reg 13C(3)*

continued

## Length of LHA award

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(3.11)-3.30

(3.11)

### Example 1

Claim received 28 October 2008. Benefit paid from 3 November 2008 using the October LHA. Anniversary falls on 28 October 2009. LHA reassessed using the October 2009 rate and paid from the week following the anniversary, 2 November 2009.

### Example 2

Claim received 6 September 2008. Benefit paid from 8 September 2008 using the September LHA. Anniversary falls on 6 September 2009. LHA reassessed using the September 2009 rate and paid from 7 September 2009.

3.12-3.19

## Leap Years

3.20 The anniversary date is for a particular date which means that a leap year will not affect the anniversary date. This means that where the LHA rate is 29 February the anniversary date will be 28 February.

*HB Reg 13C(4)*

3.21-3.29

## Changes of circumstance

3.30 Under the new LHA scheme, there are three circumstances in which the eligible rent might be updated with a new LHA mid-year

- a** If a change occurs which might entitle the claimant to a different category of dwelling, e.g. if there was a change in the number of occupiers, a relevant birthday which changes the room entitlement

*HB Reg 12D, 13C(2)(d)(ii)*

In this case, the new LHA for the month when the change happens (which may, or may not differ from the existing allowance) would be applied.

- b** if there is a death in the household which is not captured by **a** because it does not trigger a change in the number of rooms the claimant is entitled to, eg the claimant's spouse dies, see Protection following death later in this manual

*HB Reg 12D, 13C(2)(d)(ii)*

- c** A change of address might result in a new LHA mid year

*HB Reg 12D(2), 13C(2)(D)(III)*

***Rent increase/decrease***

- 3.31 New LHA rates will not be applied where there is a change within the year, even where, for example, there is a mid-year change in contractual rent.

This means that once an LHA rate has been determined it will continue to apply until the next anniversary date unless there is another relevant change. A rent increase/decrease is not a relevant change and so would not change the maximum rent (LHA) rate.

However, if some of the claimant's benefit is paid direct to the landlord, you may re-apportion the payments paid to the landlord and the claimant.

**Example**

Mr Jones applies for benefit in June 2008. His rent is £70.00, LHA £90.00.

This means that his maximum rent (LHA) is the cap rent of £85.00. He is entitled to full benefit but payments are made direct to the landlord as the LA considers that he is likely to have difficulty managing his financial affairs. The landlord receives £70.00 and Mr Jones receives the excess benefit of £15.00.

His rent increases to £80.00 in August 2008. His benefit entitlement will not change because of the change in rent but the LA will re-apportion payment so that his landlord now receives £80.00 and Mr Jones now receives £5.00.

**Note:** for joint tenants with a change to their rental liability please see paragraph 3.32.  
*HB reg 13C(2)(d)(i) (ii) and (iii)*

### *Joint tenants with a change in rental liability*

- 3.32 Rent increase/decreases are not a relevant change that will result in an immediate change in entitlement. When there is a change in liability you should re-calculate the cap (where applicable) as you are not required to determine a new maximum rent (LHA).

#### **Example**

Two joint-tenants pay £75 each; Mr Smith claims in March 2008 and his entitlement is based on existing HB rules. Mr Jones claims in April 2008 and is an LHA claimant, the LHA is £75. Both are entitled to full benefit.

In May 2008 a third joint-tenant moved into the property which means that all joint-tenants are now liable to pay £50 per week.

Mr Smith – the LA revises his entitlement, creates an overpayment.

Mr Jones – the LA revises his entitlement to £65 (i.e. £50 plus £15) until April 2009.

In this case regulation 88 is relevant. There is a change of circumstances that will affect the claimant's amount of HB. This is so, whether the claimant is a maximum rent (LHA) case or not.

Here there is a change in the number of people living in the claimant's dwelling, but it does not affect the size criteria. It will affect the way in which the claimant's cap rent is determined because of apportionment. The LA is not required to apply a new LHA rate unless the size criteria changes, but there has been a change of circumstances affecting the amount of the claimant's benefit so the LA can (and should) supersede the original decision under reg 7 of the D&A Regs.

In this example, the rent hasn't changed but it is being apportioned differently between the joint tenants. This means that the cap needs to be re-calculated to take account of this and would therefore entitle Mr Smith to £50 and Mr Jones to £65.

### *Date of claim*

- 3.40 Claimants will get the LHA that was in effect on their date of claim. For example, where a claim is made in April but not processed until June, the April LHA would be used when the award is decided. Local authorities will hold a complete list of LHA rates for previous months since the start of the Local Housing Allowance Scheme. The new scheme will not apply where the date of claim or change pre-dates the beginning of the start date, ie 7 April 2008. The change should ensure that claimants have their benefit based on a figure that more accurately matches the state of the housing market at the date of their claim or change or circumstances.

*HB Reg 2, HB reg 13C(3), HB Reg 83 (10)*

3.41-3.49

### *Claim backdated after LHA scheme starts*

- 3.50 If a claim is backdated to a point before the LHA National Rollout, ie 7 April 2008, the claim will be assessed under the rules in force on that deemed date. For backdating to occur HB Reg 83(12) or 64 (13)SPC must be satisfied.

*HB Reg 13C(2)*

#### **Example**

LHA start date 7 April 2008.

Claim received 9 May 2008 with a request to backdate the claim. The request is successful and the claim is backdated to 2 February 2008.

The local authority should process the claim using the rules in force on 2 February 2008.

**Note:** the same rule will apply for pensioner claims which fall within regulation HB(SPC) Reg 64(1)

- 3.51 The claim converts to LHA when there is a break in claim, a change in claimant or change of address as if the claim were made at the deemed date of claim.
- 3.52 If the claim had been paid as LHA before the backdate decision is made replace the original decision using Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, Reg 4(1)(a)(i) or Reg 7(2)(a).
- 3.53 If the overpayment occurs as a result of the revision or supersession consider whether it is the result of an official error and if so, is it recoverable.

*Housing Benefit and Council Tax Benefit Overpayments Guide, Chapter 2*

## Length of LHA award

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3.54-3.61

- 3.54 If a claim is backdated to a date after LHA started, apply the LHA which was in force on the date of claim.

**Example 1**

Claimant makes a claim in June 2008, and successfully asks for it to be backdated to May 2008. National Rollout date for LHA is April 2008, so claim is assessed and LHA rate applicable in May awarded. The anniversary date is changed to May.

**Example 2**

Claimant makes a claim in June, and in July successfully asks for it to be backdated to April. National Rollout date is 7 April 2008, so claim is assessed and LHA rate applicable in April awarded. Any over/underpayment resulting from initial payment at the June rate will need to be recovered/reimbursed. The anniversary date is changed to April.

- 3.55 The date of claim means the date the claim is made or treated as made under existing regulation 83, 84 & 85. You should use the treated as made date when calculating the claimant's allowance.

*HB Reg 2*

- 3.56 The LHA rate is decided by the date the claim is made. When a claim is backdated the date of claim is changed. Use this changed date (deemed date) to decide which months LHA rate to use, eg claim made 2 August 2008 but successfully backdated to 30 June 2008. The June LHA would be used in the calculation of benefit but the commencement date may be 7 July 2008 when HB Reg 76(1) is applied.

*HB Reg 83(12), HB Reg 76(1)*

3.57-3.59

### *Changes of circumstance*

- 3.60 Where a new LHA rate is determined because it is the anniversary of the LHA date (ie the annual update) then the effective date of the supersession is the beginning of the next benefit week unless the anniversary falls on a Monday, in which case the effective date for the new rate will be the same day.

Any other change of circumstances affecting the LHA rate will be treated in the same way as non-LHA claims.

- 3.61 This means that where the local authority receives notification of a change of a kind which affects the category of dwelling applicable to the claim, it must determine a new LHA rate and the anniversary date should be amended to reflect this change.

*HB Reg 12D(2) & 13C(2)(d)(i)*

- 3.62 If there is a change of circumstances, which results in the calculation of a new LHA, reassess the new LHA and change the anniversary date.

**Example**

The date the claim was received was 6 October 2008. The next review is 6 October 2009.

However, the claimant notifies a change of circumstances that occurred on 8 December 2008, and a new LHA figure has to be determined. The next review is now 8 December 2009, **not** 6 October 2009.

- 3.63 If there has been a change of circumstances that will affect the category of dwelling, a new LHA and anniversary date should be determined. For example: if a single person reaches the age of 25 the local authority should make a decision if this will affect the category of the dwelling. If it does then the LHA rate applicable to the month the change occurred should be applied to the award. This rate in monetary terms may or may not differ to the one already in use. The anniversary date will be set as one year from the date that was used to decide the new LHA rate, eg if a birthday prompted the change then the new anniversary is the birthday in the following year.

*HB Reg 13C(2)(d)(i), (ii) & (iii)*

- 3.64 If the change in the number of occupiers or household makeup does not affect the category of the dwelling then the local authority need do nothing further and the LHA rate remains in use as does the anniversary date that had already been set (see para 3.66 for death of a linked person).

- 3.65 However, a change of address will require the local authority to apply a new LHA rate and this change will also reset the anniversary date. Even if the change of address does not affect the category of dwelling the local authority should amend the anniversary date.

- 3.66 The death of a linked person will require the local authority to apply a new LHA rate, however, if this reduces the eligible rent then refer to protection rules.

*HB Reg 2(1), HB Reg 12D(3)*

- 3.67 A change of address will require the local authority to apply a new LHA thus changing the anniversary date.

*HB Reg 12D(2) & 13C(2)(d)(iii)*

- 3.68 When the LHA has been recalculated, it takes effect from the benefit week that starts on or after the date the change of circumstances occurred. If that benefit week falls in the following month, the LHA rate used will still be that for the previous month, ie the month in which the change occurred.

## Length of LHA award

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3.69-3.81

3.69 The rules on applying the new rate when notification is late are unchanged. If the claimant has good reason for the late notification, the new eligible rent will apply from the date of change of circumstances. If there was no good reason and the change was

*HB Reg 79*

- favorable, it will apply from the date of notification
- unfavorable, it will apply from the date of change of circumstances

3.70 If the claimant does not report a change of circumstances on time, the new maximum rent is based on the LHA applicable at the time of the change, not when the change was notified.

### **Example**

Claimant circumstances change on 1 October, but the local authority is not notified until 3 November. The claimant's new maximum rent is based on the October LHA, not the November LHA.

**Note:** The anniversary date will still be counted from the date the change occurred even if the notification was received late and benefit is superseded from a later date.

3.71-3.79

## *Rapid reclaims*

3.80 Rapid reclaim is a means for quick entry back into HB/CTB when a claimant leaves Income Support (IS) or Jobseeker's Allowance (Income-based) (JSA(IB)) for work, but the employment does not last for a full 12 week period. The rapid reclaim form confirms that there has been no change in their circumstances since their last claim so that the HB/CTB can be reinstated with minimal delay (this must be within 12 weeks otherwise it is not valid).

3.81 The rapid reclaim is treated as a new claim if there is a break in entitlement and this will trigger conversion to LHA or if already on LHA a new rate because it is a different claim.

- 3.82 If the claimant qualifies for HB/CTB for the in-work period then the in-work claim would be a change of circumstances and so conversion to LHA would not be necessary. If the claimant subsequently goes back onto IS or JSA within the 12 week period and completes a rapid reclaim form then this would be a change of circumstances (there would be no uprating unless the household had changed).

*HB/CTB Guidance Manual, Rapid Reclaim A2.*

#### **Example 1**

Tenant A leaves IS on 9 June 2008 as they have gone into full-time employment. Their claim is cancelled with effect from 16 June 2008. As their employment did not last they re-apply for benefit and a rapid reclaim form is received on 11 July 2008. Their claim is put back into payment with effect from 14 July 2008. As there is a break in their entitlement the rapid reclaim is treated as a new claim and as such is converted to LHA.

#### **Example 2**

Tenant B leaves IS on 11 June 2008 as they have gone into full-time employment. The claim is superseded for an in work period and qualify for HB/CTB with effect from 16 June 2008. As their employment did not last they reapply for benefit based on IS and a rapid reclaim form is received on 15 July 2008. Their claim is superseded with effect from 21 July 2008. As there is no break in their entitlement the rapid reclaim is treated as a change of circumstances and their claim would not be converted to LHA.

## *Extended Payments*

- 3.83 If a claimant is entitled to an Extended Payment following the end of entitlement to Income Support, Jobseekers(IB), Incapacity or Severe Disability Allowance, then the award of HB comes to an end at the end of the 4 week Extended Payment period. Benefit during the EP period is paid at the rate applicable to the past period, and no further changes are taken into account. There are special rules for claimants who move house during this period. The claimant must make a new claim if HB is to continue on their changed income at the end of the 4 week EP period. This new claim would trigger a conversion to LHA after the national roll-out. See *HB/CTB Guidance Manual C5.100* onward for the EP rules.

If a claimant is **not** entitled to an EP following the end of entitlement to IS, JSA(IB), Incap or SDA then the in-work calculation is a change of circumstance and this is not a trigger into LHA.

**Note:** the rules for extended payments will be changing in October 2008. Extended payments from this date will not be classed as a new claim and will therefore not transfer claimants onto the LHA scheme.

3.84-3.99



# *Paying Local Housing Allowance*

## *About this chapter*

- 4.00 The Local Housing Allowance (LHA), in line with the aims of the scheme, will normally be paid to the claimant rather than to the landlord. The provision in existing Regulation 96 for claimants to choose to have their rent paid to the landlord will be removed.

*HB Reg 96(3A)*

- 4.01 This chapter explains the circumstances when it can be paid to landlords.

4.02-4.09

## *Paying the LHA to landlords instead of tenants*

- 4.10 In recognition of the risk that some tenants may struggle with the responsibility of budgeting for, and paying, their rent, safeguards will be put in place. Local authorities will have discretion to make payment to the landlord if they consider

**a** that the tenant is likely to have difficulty managing their financial affairs. For example, if tenant is known to have a learning disorder or a drug/alcohol problem that would mean they are likely to have difficulty handling a budget, payment could be made to the landlord

*HB Reg 96(3A)(b)(i)*

**b** it is improbable that the claimant will pay their rent. For example, if the local authority is aware that the tenant has consistently failed to pay the rent on past occasions without good reason, payment might be made to the landlord

*HB Reg 96(3A)(b)(ii)*

See *Safeguard Criterion* later in this manual.

- 4.11 Allowing the local authority to use their discretion in identifying cases where payment should be made to the landlord was thought to be more effective than attempting to define a precise list of circumstances when direct payment would be necessary. Given the different circumstances of individual tenants, it would be extremely difficult to identify only and all those claimants who would have difficulty handling a budget or who would be unlikely to pay their rent.

## **Paying Local Housing Allowance**

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4.12-4.29

4.12 As now, payment to the landlord will be required if a tenant

*HB Reg 95(1)*

- has built up rent arrears of eight weeks or more, or
- is having deductions from their Income Support (IS) or Jobseeker's Allowance (JSA) to pay off rent arrears

4.13 If this occurs, the local authority will have discretion to continue paying direct to the landlord when the level of arrears drops to below eight weeks. The use of an eight-week period ties in with the period of eight weeks in which a tenant can fail to pay the rent without facing eviction action.

4.14 You should regularly review cases where direct payment has been made under paragraph **4.10 a** or **b** above, or where arrears have been cleared. Rarely should direct payment be made in perpetuity. Vulnerable tenants, or those with rent arrears, should be encouraged to seek budgeting advice.

4.15 In cases when payment is made direct to the landlord and

*HB Reg 95(2A)*

- **there are no arrears**, the amount payable to the landlord will be limited to the amount due in rent and any excess will be paid to the tenant
- **it has been established that the tenant is in arrears with the rent**, you may pay any excess LHA (over and above the weekly or monthly rent due) to the landlord, until such time as the arrears have been cleared

**Note:** You cannot use the excess to pay the landlord more than the tenant owes in rent and arrears of rent, eg it cannot be used to pay for repairs due to damage to the property caused by the tenant.

4.16 Excess benefit is benefit which the tenant may use as they see fit. Where they have moved to a new address leaving rent arrears, their benefit at their new address may be made direct to their landlord, as it will be seen that it is improbable that they will pay their rent. Their previous landlord cannot be paid the excess to reduce the rent arrears. However, where the landlord is the same for both the previous and the current address and arrears are still outstanding, excess benefit can continue to be paid to the landlord until such time as the arrears are cleared

4.17-4.29

## *Split overpayments*

- 4.30 After an overpayment has been calculated, decisions need to be made on whether it is recoverable and who it is recoverable from, for example from the claimant or the person to whom the benefit was paid, eg the claimant's deputy, agent or landlord, or both. If it has been paid to the landlord, it could either be recoverable from the landlord or the claimant, depending on what or who has caused the overpayment, eg who has misrepresented or failed to disclose information. Where the overpayment was paid direct to the claimant, it will only be recoverable from the claimant.

*Social Security Administration Act 1992, Section 75(3),  
HB Reg 100 and Reg 101(1) and (2)*

- 4.31 When a decision has been made that an overpayment is recoverable from the landlord, the local authority cannot recover more than was originally paid to the landlord in benefit, eg when the LHA has been paid to both the landlord and claimant, and you decide that the overpayment is recoverable from the landlord, you cannot recover the excess that the tenant has received from the landlord. The excess LHA that was paid to the claimant is only recoverable from the claimant.

*HB Reg 101(2).*

- 4.32 When there is split liability for an overpayment the local authority must decide who they are actually going to recover the overpayment from, eg from either or both the landlord and tenant.

*HB/CTB Overpayments Guide, Who are you going to recover from?*

4.33-4.39

## *Recovery of overpayments*

- 4.40 Anyone paid under regulations 95 and 96 could be responsible for repaying an overpayment, depending on whether they have misrepresented or failed to disclose information, or could reasonably have been expected to realise they were being overpaid an official error overpayment.

*HB Reg 101(1) and (2)*

4.41-4.49

4.50-4.99

## *Payment on account*

- 4.50 The same rules apply to LHA claimants as to non-LHA claimants, ie the local authority's duty to make payment on account arises at the latest on the 14th day after the claim is made. If no request for further information etc has been made by that date or a request has been made, but the claimant has good cause for failing to supply the material requested, the local authority must make a payment on account.

*HB Reg 93*

4.51-4.59

## *DWP deductions to cover rent arrears*

- 4.60 Any landlord can ask the DWP for deductions from IS, JSA or Pension Credit guarantee credit to cover rent arrears. However, deductions can only be made for existing tenants, therefore no assistance can be rendered to previous landlords of a tenant where the tenant has vacated leaving rent arrears and has moved to another privately rented accommodation. This provision is for their current landlord only. Third party deductions from benefits are there to help vulnerable individuals deal with debt – deductions are only made where a failure to do so would place an individual at risk. They are only made to prevent evictions, imprisonment or to maintain essential supplies, e.g. heating and water.

4.61-4.99

# *Identifying tenants who are likely to have difficulty paying their rent*

## *About this chapter*

- 5.00 This chapter deals with
- When to consider making payments to a landlord
  - People who do not meet the safeguard criteria
  - Identifying tenants who may meet the safeguard criteria
  - Evaluating evidence
  - Possible indicators of tenants who may have difficulty paying their rent
  - Making a decision
  - Reviewing decisions
  - Referrals to advice services

5.01-5.09

## *Data Protection*

- 5.10 You must ensure you have the claimant's consent to approach individuals or organisations for information, unless there is an established legislative gateway permitting the information to be disclosed to you. You should also ensure that you obtain, or retain, only such information as is necessary for you to make your decision.

5.11-5.19

## *When may a local authority make payments to the landlord*

- 5.20 Payment may be made direct to the landlord where the '*relevant authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs*'. The local authority should consider whether the extent to which they have difficulty managing their affairs means that they are unable to pay rent to their landlord on time. Most claimants are capable of managing their own financial affairs and you should assume that they are making payments of rent to their landlord unless there is evidence to the contrary. Where there is evidence that the claimant is not, or is no longer, paying their rent you may make payments direct to the landlord unless it is in the overriding interests of the claimant or his family not to do so. That is, direct payment will serve as a safeguard to ensure that rent is paid on time and the claimant and his family can continue to maintain their home.

## **Identifying tenants who are likely to have difficulty paying their rent**

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5.21-5.40

- 5.21 The term 'Safeguard' is used where direct payments to the landlord helps claimants who might not otherwise be able to pay their rent themselves. It replaces the concept of 'vulnerability' used in previous guidance.
- 5.22 Statute does not set out conditions that must be satisfied in order for a local authority to apply the safeguards in this section. However, the overriding consideration should be to act in a way that is in the best interests of the claimant. Therefore, local authorities may make payments to the landlord where they consider that the claimant is likely to have difficulty in paying their rent and it is in the interest of the claimant to do so.
- 5.23 In addition, you should also consider whether the landlord is a 'fit and proper person' to receive direct payments. Even if the landlord is not considered to be 'fit and proper', you **may** still make payments direct if it is in the claimant's interests to do so.

5.24-5.29

### ***When may a local authority make payments to the landlord?***

- 5.30 Do **not** make direct payments, on safeguard grounds, in respect of
- people who have been appointed to act on behalf of a claimant who is 'unable for the time being to act' **and**
  - The claimants they act for, until such time as they cease to have a deputy acting for them
  - where this would supersede the support being given to tenants to help them take responsibility in managing their own affairs
  - where it is the landlord who is the person likely to have difficulty managing his affairs. For example direct payments should not be considered where the landlord is unable to leave the house to collect the rent

5.31-5.39

### ***Identifying potential claimants who are likely to have difficulty paying their rent***

- 5.40 Claimants, or persons acting on their behalf, may make representations to the local authority that they are having difficulty paying their rent. You may also take into account information that is already held within the local authority without the need for a formal representation by the claimant. This may, for example, include information passed on by social services departments, which suggests that a claimant is having difficulty in paying their rent. You may also identify claimants potentially in need of safeguard action from your own face to face contact, for example, when carrying out home visits.

- 5.41 Consider representations and evidence from the following sources
- the claimant (however, you should remember that claimants who have difficulty in managing their own affairs may also need assistance in making representations to the authority)
  - the claimant's
    - family and/or friends
    - landlord
    - General Practitioner
    - Probation Officer

- 5.42 You may also consider evidence from
- Local/council rent deposit scheme administrators, homelessness or housing advice officers
  - welfare organisations, including money advisors
  - Social Services departments
  - Department for Work and Pensions, ie Jobcentre Plus, The Pension Service
  - Homeless charities/organisations
  - Supporting People Teams

**Note:** This list is not exhaustive

- 5.43 There are three main factors to consider when reaching a decision
- Is the claimant likely to have difficulty in paying their rent? If they are, you may decide that it is appropriate to make direct payments
  - Is it in the interests of the claimant to make direct payments? In most cases, it is in the long-term interests of the claimant to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably
  - Could the claimant pay their rent themselves with appropriate help and support? Many claimants, who might otherwise have difficulty in managing their own financial affairs, may be able to do so if given initial help. In these cases, you should consider referring the claimant to advice agencies, whether internal or external, for help. However, you should not automatically decide against direct payments simply because help or advice has been suggested

5.44-5.53

5.44 Wherever possible, this evidence should be in writing. However, a written declaration is not necessarily evidence that the criteria should be applied, just as its absence is not evidence that it should not. Claimants most in need of safeguard action might have difficulty in making representation on their own behalf and be less able to produce evidence to support that need. You should consider the evidence provided and make further enquiries when and where necessary. Where representation is received from the claimant without the support of an agency or representative it may be appropriate to offer further help or assistance with their application.

5.45-5.49

### *Evaluating evidence*

5.50 You should seek and evaluate evidence about the claimant's circumstances that will allow you to make an informed decision on whether the safeguard criteria should be applied. The local authority should always aim to interview the claimant, unless it already has satisfactory written evidence to make a decision. Where possible you should liaise with other HB visiting officers so that they are able to obtain the required information as part of their planned visit. If the claimant has language difficulties and/or possible physical or mental impairment that prevent them from providing answers to your questions, you may want to refer to existing council procedures in dealing with those claimants. You may also want to refer claimant to other areas of the local authority such as social services, if you feel the claimant would benefit from such a referral.

5.51 You should also obtain, where practicable, written evidence from any relevant third party including, but not limited to, the persons described above. The written evidence does not have to be addressed to the local authority but if it is not, you should consider the data protection implications if it contains information not relevant to your decision. In these cases alternative evidence should be obtained. Also, the older the evidence, the less reliable it is likely to be.

5.52 You should attach degrees of weight to each source of information.

5.53 Accept without question evidence from

- Social Services
- GP (some GPs charge for providing this information and so claimants should not be expected to obtain and provide evidence that they do not already have)
- DWP, and
- Banks and Building Societies

- 5.54 You should **normally** take evidence from welfare organisations, such as the Citizens Advice Bureaux and recognised charities, at face value. If the claimant is in receipt of a rent deposit guarantee, consider evidence from the rent deposit scheme administrators.
- 5.55 Evidence from the claimant, their friends and family is important but should be carefully evaluated. However, some claimants may be pressured into presenting evidence in a way calculated to secure direct payment to their landlord and this should be borne in mind when examining evidence from them. Ultimately, you must consider whether payments direct to the landlord are genuinely in the best interests of the claimant.
- 5.56 You should be cautious when considering evidence from a landlord, given their direct financial interest in the outcome. Landlords do however have a valid role to play, but their evidence alone (or together with the claimant's) should not be regarded as sufficient to decide that the safeguard criteria have been satisfied and further evidence should be sought.

5.57-5.59

### *Indicators that a claimant may have difficulty paying their rent*

- 5.60 There are no indicators that will determine definitively that a person may have difficulty in paying their rent. Therefore, you should examine each case on its own merits having given consideration to the facts in the case. A claimant who is unable to pay their rent may have certain conditions that make handling financial affairs more difficult for them but you must never decide that a claimant has satisfied the safeguard criteria simply because they match one or more of these indicators. For instance, a person recovering from a gambling addiction may have difficulty in managing their financial affairs but attempting to do so may be an important part of their rehabilitation process.
- 5.61 The following list contains some of the characteristics that may indicate that a customer is likely to have difficulty in paying their rent. When considering these characteristics, it is important to ask for, and evaluate, evidence of the effect of these characteristics on the ability to pay rent and then to consider whether direct payments are likely to be in the customer's interests.
- People with **learning disabilities** – people with more severe learning difficulties will normally have deputies to help manage their financial affairs. In cases of less severe learning difficulties, consider evidence from
    - care workers
    - GPs (some GPs charge for providing this information and so claimants should not be asked for evidence that they do not already have)
    - Social Services departments
    - Other qualified medical practitioners
    - Government departments
    - Supporting People Teams

(continued)

## **Identifying tenants who are likely to have difficulty paying their rent**

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(5.61)-5.69

- (5.61)
- People with **medical conditions** – consider medical conditions that seriously impair a person’s ability to manage on a day to day basis, eg mental illness (schizophrenia, depression, age-related mental deterioration such as early stages of Alzheimer’s disease or senile dementia). Consider evidence from
    - care workers
    - GPs
    - other qualified medical practitioners
    - Social Services departments
    - Supporting People Teams
  - **Illiteracy, or an inability to speak English** – people unable to read, write or speak English **may** have greater difficulty in paying their rent. Consider the effect that this inability has rather than the inability itself. Consider evidence from welfare organisations, ethnic minority link groups etc
  - **Addiction to drugs, alcohol or gambling** – consider evidence from
    - GPs
    - other qualified medical practitioners
    - care workers
    - Social Services departments
    - support organisations for people with addictions
    - Supporting People Teams
    - Probation Services
  - **People fleeing domestic violence/single homeless (care leavers)/people leaving prison** – consider evidence from
    - Social Services departments
    - probation officers
    - womens refuges
    - Support organisations
    - Supporting People Teams

**Note:** the above list is not exhaustive.

5.62-5.69

## *Effects*

- 5.70 People unable to pay their own rent will often have difficulty managing financial affairs more generally. This inability to manage financial affairs may be demonstrated by
- **Severe debt problems/recent County Court Judgements** – consider evidence from financial help groups, creditors, courts, solicitors, etc
  - **Undischarged bankruptcy** – consider evidence from court documents
  - **An inability to obtain a bank account** – consider evidence from banks and money advisers
  - **DWP is making deductions from Income Support (IS) or income-based Jobseeker's Allowance (JSA(IB)) in respect of housing costs** – housing costs include service charge, utility bills which are part of the rent. You should only consider this as being an indicator if part of the debt is still outstanding
  - **The claimant is in receipt of Supporting People (SP) help** – consider information that is already available from benefit systems as well as evidence from social services departments and support providers
  - **The claimant is in receipt of help from a homeless charity** – consider evidence from the charity or the homelessness section of the LA
- 5.71 An inability to provide supporting evidence will need careful evaluation. On the one hand, it might indicate that the need for direct payments does not, in fact, exist. On the other, it could of itself provide the evidence that the claimant has difficulty managing their own affairs. When evaluating a lack of supporting evidence, you should consider what information the claimant has been asked to produce and the efforts that they have made to produce it. If you are in any doubt, you should consider referring the claimant to an independent adviser for further help.

5.72-5.79

## *Making a decision*

- 5.80 You must decide, when you have gathered sufficient information and evidence, whether to make payments direct to the landlord.
- 5.81 Do not delay making payment of HB in order to await the outcome of your decision. Where you decide to make payment to the landlord, you should set a firm deadline of no more than eight weeks for concluding your enquiries and make a decision having regard to all the available evidence. Where the landlord is already being paid, this should continue for a maximum of eight weeks, pending a decision being made. You may wish to consider making initial payments to the claimant whilst gathering any available information/evidence. How the claimant handles these initial payments may, in fact, help you to reach a decision.

## Identifying tenants who are likely to have difficulty paying their rent

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5.82-5.99

- 5.82 If you have been unable to establish the facts to your satisfaction because the claimant has failed to co-operate in your investigation, you must decide what weight you attach to this failure. Just because someone has failed to provide evidence you should not necessarily decide that direct payments should not be made. However, where evidence of this has been requested, it is reasonable to expect a response. Where no response is received, even after referral to a welfare organisation, this evidence should be considered in the context of the other information before you.
- 5.83 In some cases it will be obvious that the person is likely to have difficulty in managing their affairs, in others you will need to reach a decision by carefully balancing the facts. Ultimately, your decision should rest on an assessment of what is in the best interests of the claimant.
- 5.84 Make a record of your conclusion and issue a letter to the claimant, landlord (if applicable) or any relevant person explaining your decision and rights of appeal against the decision.
- 5.85 If you decide to pay the landlord because the tenant has satisfied the safeguard criteria, and there is excess entitlement due to the LHA award, pay the landlord the full contractual rent. Ineligible charges such as fuel and water would not be deducted as they are a condition of the tenancy agreement, and have to be paid as a condition of occupation of the dwelling. If, however, the service charges are 'not a condition of occupation of the dwelling', eg optional laundries charge, deduct these from the LHA amount, and
- Pay the difference to the landlord
  - Any excess to the claimant
- 5.86 Where direct payments are being made, the local authority has the discretion to make payment of any excess (i.e. the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord in order to assist with the repayment of the arrears. LAs should estimate the length of time it would take to clear any arrears by this method and to review the case when it is estimated that arrears should have been repaid.
- 5.87 You may decide a claimant does not satisfy the safeguard criteria but nevertheless it is likely that they will not pay their rent. You should then consider making direct payments as an 'unlikely payers', see section '*Identifying people who are unlikely to pay their rent*'.

**Note:** where the claimant has been unable to open a bank account and there is an excess payment, it will be important that arrangements are in place to provide cheque cashing facilities, or to pay the claimant by an accessible means such as a counter payment. Alternatively the customer may nominate a third person to receive this excess payment (this cannot be their landlord).

5.88-5.99

## *Payment to a third party where the third party is their landlord*

- 5.100 Local authorities have the discretion to pay someone other than the claimant where the competent claimant requests them to do so. This is subject to *Regulations 95-97*.
- 5.101 *Regulation 95* and *96* set down the circumstances in which payment must or may be made to a landlord. This means that the local authority must decline to use its discretion under *Regulation 94* to pay the landlord where the claimant has appointed their landlord as their agent, on the basis that this regulation is subject to *Regulation 95* and *96*. Any decision whether or not to make direct payments to landlords must therefore be under the provisions in *Regulations 95* and *96*. This decision can be appealed to the appeal tribunal.
- 5.102 The procedures relating to *Appeals and redeterminations* is outlined later in this manual. The 'person affected' rules will not change as a result of the LHA so a claimant or landlord may appeal against a decision regarding direct payments.
- 5.103 If you decide that safeguard action is appropriate, you should also consider setting a diary date in order to conduct a review of your decision. If you feel that the conditions experienced by the claimant are likely to be of a short-term nature, you should set an appropriate review date (not exceeding 12 months) to look again at the decision. Where the condition is likely to be of a long-term nature, you may decide that it is not appropriate to set a review date. You may also wish to set a review date where a claimant has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the claimant.

**Note:** Where payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the claimant requests a review.

5.104-5.109

## *Referrals to advice services*

- 5.110 Direct payments to the landlord are not the only way in which practical help may be provided. Advice agencies can provide practical advice and support for claimants that may allow them to pay their rent. Claimants may initially have difficulty in paying their rent themselves but may be capable of doing so after having received appropriate help and advice such as understanding their liability to pay rent or opening a bank account. Advice agencies may also have a role in helping, and referring to the local authority, claimants who may have intractable difficulty in paying their rent. For instance, they may help the claimant to prepare a package of relevant information and documentation in support of an application for direct payment. Having this information ready collated should make decision making more straightforward.

## **Identifying tenants who are likely to have difficulty paying their rent**

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5.111-5.199

5.111 It is recommended that all local authorities have formal procedures in place to refer claimants to advice agencies, whether internal or external, for money advice or help in managing their financial affairs.

5.112 Referrals may be made regardless of the outcome of the decision on making direct payments. Where it has been decided not to make direct payments, the claimant may still benefit from the provision of money advice. Alternatively, where direct payments are being made, money advice might help a claimant towards eventually managing their own financial affairs.

5.113-5.199

# *Identifying people who are unlikely to pay their rent*

## *About this chapter*

- 6.00 This chapter deals with
- Making direct payments in respect of people who are unlikely to pay their rent
  - People who should not be considered as falling within this category
  - Identifying possible non-payment cases
  - Evaluating evidence
  - The eight week rule
  - Fit and proper landlords
  - Making a decision
  - Reviewing decisions
  - Referrals to advice services

6.01-6.09

## *Data Protection*

- 6.10 You must ensure you have the claimant's consent to approach individuals or organisations for information, unless there is an established legislative gateway permitting the information to be disclosed to you. You should also ensure that you obtain, or retain, only such information as is necessary for you to make your decision.

6.11-6.19

## *Making direct payments when a claimant is an 'unlikely payer'*

- 6.20 Direct payments to the landlord may be made where *'the relevant authority considers that it is improbable that the claimant will pay his rent'*. Most claimants are capable of managing their own affairs and you should assume that they will make payments of rent to their landlord unless there is evidence to the contrary. Where there is evidence that the claimant is not, or is no longer, paying their rent you may make payments direct to the landlord unless it is in the overriding interests of the claimant or his family not to do so – for example where the tenant is in dispute with the landlord over repairs.

*HB Reg 96(3A)(b)(ii)*

6.21-6.40

6.21 Statute does not set out conditions that must be satisfied in order to consider that a claimant is unlikely to pay their rent. However, the overriding consideration should be to act in a way that is in the best interests of the claimant. If the claimant builds up rent arrears of eight weeks or more, the landlord may commence action to evict the claimant. Once arrears have reached eight weeks, the local authority will, in most cases, need to make direct payments and it is important that informed decisions on direct payments are made as soon as they become appropriate.

6.22 Therefore, local authorities may make payments to the landlord where they consider that the claimant is unlikely to pay their rent and it is in the interest of the claimant to do so.

6.23 In addition, you should also consider whether the landlord is a 'fit and proper person' to receive direct payments. However, even if the landlord is not considered to be 'fit and proper', you **may** still make payments direct if it is in the claimant's interests to do so.

6.24-6.29

### *People who should not be considered as falling within this category*

6.30 Do **not** consider as being unlikely payers

- people who have been appointed to act on behalf of a claimant who is 'unable for the time being to act' **and**
- the claimants they act for, until such time as they cease to have a deputy acting for them
- where it is the landlord who is the person likely to have difficulty managing his affairs. For example direct payments should not be considered where the landlord is unable to leave the house to collect the rent

6.31-6.39

### *Identifying potential unlikely payers*

6.40 Claimants, or persons acting on their behalf, may make representations to the local authority that they are unlikely to pay their rent. You may also take into account information that is already held within the authority without the need for a formal representation by the claimant. This may, for example, include information passed on by social services or Housing departments which suggests that a claimant is unlikely to pay their rent.

- 6.41 In most cases, you will identify potential cases through representation, either in person, on the phone or in writing, by one or several of the following sources
- the claimant
  - the claimant's
    - landlord
    - family and/or friends
    - probation officer
    - local/council rent deposit schemes, homelessness or housing advice officers.
  - welfare organisation, including money advisors
  - Social Services departments
  - Department for Work and Pensions, ie Jobcentre Plus, The Pension Service
  - homeless charities/organisations
  - Supporting People teams
- Note:** This list is not exhaustive. You should always aim to seek written representation from any of the sources listed above.

6.42-6.49

## *Evaluating evidence*

- 6.50 You should seek and evaluate evidence about the claimant's circumstances that will allow you to make an informed decision on whether they are unlikely to pay their rent. There are three main factors to consider when reaching a decision.
- Is the claimant unlikely to pay their rent? If they are, you may decide that it is appropriate to make direct payments
  - Is it in the interests of the claimant to make direct payments? In most cases, it is in the long term interests of the claimant to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably
  - Would the claimant be likely to pay their rent themselves with appropriate help and support? Many claimants, who might otherwise be unlikely to pay, may be able to do so, if given initial help. In these cases, you should consider referring the claimant to advice agencies, whether internal or external, for help
- 6.51 When you are given reason to believe that the claimant will not pay their rent, you should seek to substantiate this belief. One of the key considerations will be past behaviour. If a claimant has a history of not paying their rent, this may indicate to you that they may not do so in the future (although past behaviour does not necessarily determine future actions).

## Identifying people who are unlikely to pay their rent

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6.52-6.59

- 6.52 You should endeavour to interview the person and obtain past evidence of 'bad debts', which may or may not include rent arrears, (for details of deductions from benefit in respect of non payment of rent see *Paying Local Housing Allowance*).
- 6.53 It will **not** be sufficient to make direct payments simply because the claimant has said that he will not pay his rent. You will need to consider factors such as
- Why they say they will not pay their rent
  - Whether they have paid rent in the past to the same landlord or more generally
  - How they would pay rent if they were working
  - Whether rent arrears have built up and what action has been taken by the claimant or landlord
  - Whether payment by ACT and then standing order would provide a solution
  - Whether the landlord is likely to have exerted pressure on the claimant
  - Whether other tenants renting from the same landlord have made similar representations
- 6.54 You should be cautious when considering evidence from a landlord, given their direct financial interest in the outcome. Landlords do however have a valid role to play, but their evidence alone (or together with the claimant's) should not be regarded as sufficient to decide that the safeguard criteria have been satisfied and further evidence should be sought.
- 6.55 When considering past behaviour evidence must be compelling; occasional missed payments do not demonstrate that the claimant is unlikely to pay their rent in the future. Evidence must show a sustained period of non-payment. Consider the following
- Look for early evidence where it appears that the tenant is unlikely to pay their rent
  - How far back are the missed payments? More recent and persistent non-payment will carry greater weight. For instance, one payment missed 18 months ago is not sufficient evidence that the claimant will not presently pay their rent
  - Is the tenant experiencing wider cash flow or debt problems and making payment to non priority creditors rather than prioritising payment of rent? If so financial literacy or budgeting advice may be more appropriate
- 6.56 Ultimately, you should make a decision based on what is in the best interests of the claimant, not the landlord, and that most claimants will benefit from paying rent for themselves. When evaluating evidence, you should consider factors such as
- Does the individual landlord already receive direct payments in respect of other tenants?
  - Has the landlord shown that he has tried to recover the missing payments from the claimant?
  - Does it appear that pressure has been brought to bear on the claimant to present their circumstances in a particular light?

6.57-6.59

## *Eight week rule*

- 6.60 When rent arrears have reached the equivalent of eight weeks or more, in most cases, you should arrange to make payments direct to the landlord. However, landlords should be encouraged not to wait for the eight week period to be reached before contacting the local authority. If the landlord informs you that a tenant is in arrears with their rent, but that the arrears have not yet reached the equivalent of eight weeks, you should consider interviewing the claimant to discuss the non-payment of rent. After interview, you may consider making direct payments immediately or making a referral to help or advice services before the arrears reach the eight week point.

*HB Reg 95(1)(b)*

- 6.61 However, even where eight weeks or more arrears are owed, direct payments are not mandatory if it is not in the customer's overriding interests to make them or if the landlord is not a 'fit and proper person'. For example, a tenant may be withholding their rent where there is a dispute with the landlord over repairs or maintenance. In these cases, it is not mandatory to pay the landlord even where the equivalent of eight weeks arrears is owed. Whilst local authorities should never advise claimants to withhold their rent regardless of the circumstances, if the claimant states that they are doing so due to a dispute, you should check whether they have sought legal advice and are keeping the rent to one side such as in a separate bank account or with an independent third party.

6.62-6.69

## *Fit and proper test*

- 6.70 Local authorities are not obliged to make direct payments where they are not satisfied that the landlord is a 'fit and proper person to be the recipient of a payment of rent allowance'. This will apply even when the criteria for a direct payment would otherwise have been met.
- 6.71 A landlord may not be a 'fit and proper person' where it is proven that they have engaged in financial impropriety. This should normally include an element of impropriety relating to Housing Benefit such as fraud or knowingly failing to declare changes in circumstances affecting the payment of benefit. Local authorities may choose to consider other areas, such as failure to pay Council Tax or business rates, but generally the lesser connection that the offence or impropriety has with Housing Benefit, the less relevant it will be.
- 6.72 If you believe that a landlord is not a 'fit and proper person' you may still make direct payments to them if you believe that it is in the overwhelming interest of the claimant to do so and that they risk eviction if direct payments are not made.

6.73-6.79

6.80-6.89

### *Making a decision*

- 6.80 When you have gathered sufficient information and evidence, you must make a decision on whether the claimant is an unlikely payer and whether direct payments are appropriate.
- 6.81 Do not delay making payment of HB in order to await the outcome of your decision. Where you make initial payments to the claimant, how they manage initial rent payments should contribute to your ultimate decision. Where you decide to make payment to the landlord, you should set a firm deadline for concluding your enquiries and make a decision having regard to all the available evidence. Where the landlord is already being paid, this should continue for a maximum of eight weeks, pending a decision being made.
- 6.82 If you have been unable to establish the facts to your satisfaction because the claimant has failed to co-operate in your investigation, you must decide what weight you attach to this failure. However, where evidence of this has been requested, it is reasonable to expect a response. Where no response is received, this evidence should be considered in the context of the other information before you.
- 6.83 Where it is the claimant who has requested direct payments and they then fail to co-operate, such payments should not be granted until such time as the claimant complies, unless their attitude constitutes sufficient evidence of itself that they would be unlikely to pay their rent.
- 6.84 Make a record of your conclusion and issue a letter to the claimant, landlord (if applicable) or any relevant person explaining your decision and rights of appeal against the decision.
- 6.85 The existence of rent arrears can be considered when making a decision on 'identifying people who are unlikely to pay their rent'. Rent arrears are defined as a sum that has become due and has not been paid. Be careful that the landlord has not included as arrears any rent to be paid in advance of any HB payments due. In addition, also consider periods where payment has been made direct to the landlord, there has been a shortfall between the amount of HB paid and the rent charged, which has not been paid, and to which the landlord has not made any attempt to collect. It may be that the landlord, by lack of action, has contributed to the level of arrears. More recent history of non-payment may therefore be a more reliable indicator than that of past history.

**Note:** DWP takes the view that a person cannot be in rent arrears in respect of a period that has not yet been served.

6.86-6.89

## *Reviewing a decision*

- 6.90 There are two types of review that you may undertake
- a** on appeal from a relevant person, ie the normal DMA process
  - b** a review of circumstances some time after your decision, to establish whether it is still appropriate
- 6.91 The procedures relating to *Appeals and redeterminations* are outlined later in this manual. The 'person affected' rules will not change as a result of the LHA so a claimant or landlord may appeal against a decision regarding direct payments.
- 6.92 If you decide that direct payments are appropriate, you should set a diary date in order to conduct a review of your decision, not exceeding 12 months, to look again at the decision again. You may also wish to set a review date where a claimant has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the claimant.
- 6.93 Where direct payments are being made due to rent arrears, the local authority has the discretion to make payment of any excess (ie the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord in order to assist with the repayment of the arrears. Local authorities should estimate the length of time it would take to clear any arrears by this method and to review the case when it is estimated that arrears should have been repaid.
- 6.94 There may be instances where, due to the level of arrears, repayments may take longer than 12 months. Local authorities should still review the case within or at the 12 month maximum time limit allowed, and request up to date information on the level of arrears. These should be checked to establish if the tenant is taking appropriate measures to reduce the arrears. Also lump sum or additional payments could have been made by the tenant, and therefore the arrears repaid at a date earlier than expected by the LA.
- Note:** where payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the claimant requests a review.

6.95-6.99

6.100-6.999

## *Referrals to advice services*

- 6.100 Claimants who are considered unlikely to pay their rent should be encouraged to seek money advice. In many cases, effective advice on handling money and everyday expenses may remove or reduce the need for direct payments to be made.
- 6.101 It is recommended that all local authorities have formal procedures in place to refer claimants to advice agencies, whether internal or external, for money advice or help in managing their financial affairs.
- 6.102 Referrals may be made regardless of the outcome of the decision on making direct payments. Even where it has been decided not to make direct payments, the claimant may benefit from the provision of money advice. Alternatively, where direct payments are being made, money advice might help a claimant towards eventually managing their own financial affairs.

6.103-6.999

# *Protection rules*

## *About this chapter*

- 7.00 This chapter explains the rules on protection covering the circumstances when a claimant can have their eligible rent protected at a higher rate. These circumstances are
- for the first 13 weeks of their claim if they were previously able to pay the rent without the help of Housing Benefit (HB)
 

*HB Reg 12D(5)*
  - for a year following the death of a relevant person
 

*HB Reg 12D(3)*
  - at the point of National Rollout for claims in Pathfinder and Second Wave Group authorities (this will apply **only** to those 18 local authorities)
 

*Schedule 10, 12E*

7.01-7.09

## *13-week protection*

- 7.10 The claimant can have their eligible rent protected for 13 weeks where a relevant authority is satisfied that the claimant
- was able to pay the rent on their accommodation when their tenancy began, and
  - had not previously been entitled to HB in the 52 week period before their claim
 

*HB Reg 12D(5) and 12B(2), HB(SPC) Reg 12D(5) and 12B(2)*
- 7.11 This protection aims to help those who are ordinarily able to pay their rent but have fallen into difficulties, for example from losing a job. This provides time to either find another job or to find cheaper accommodation
- 7.12 The protected rent will be the higher of
- their actual rent (gross rent less ineligible services); or
  - their maximum rent (LHA). The maximum rent (LHA) is the lower of the applicable local housing allowance rate the claimant is entitled to or the amount equal to the cap rent plus £15
- 7.13 The protection will continue until
- HB Reg 12D(7)(b)*
- the end of the 13 weeks period
  - there is a change that would result in a new LHA being applied and that LHA rate exceeds the current eligible rent
  - there is a bereavement in the family that requires Reg 12D (2) is applied

## Protection rules

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7.14-7.23

7.14 At the end of the 13-week period the claim is paid at the LHA rate for the month that would have applied had there been no protection. You will also need to take account of any other changes that would have affected the LHA rate during the time of protection, eg the birth of a child that would change the size criteria but the protection remained, this would mean that at the end of the protection period the LHA applicable on the date of the child's birth would be used.

*HB Reg 12D(8)*

7.15-7.19

### *Protection on death*

7.20 Where there is a death of a relevant person the claimant can be protected for a year from any decrease in their eligible rent.

7.21 A relevant person is

*HB Reg 12D(3)*

- a member of the claimants family
- if the claimant is a member of a polygamous marriage, any partner of his and any child or young person for whom he or a partner is responsible and who is a member of the same household
- any relative of the claimant or partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if a claimant ceased his occupation of it

7.22 The claimant can for the purpose of the bereavement protection continue to be treated as occupying the dwelling if they are temporarily absent from home even if they have let or sub-let the property

7.23 The eligible rent will be

- the eligible rent that applied on the day before the death occurred
- if it is a new claim and no eligible rent existed then the eligible rent will be the gross rent less services, taking into account the number of persons liable and proportion applicable to residential/commercial accommodation

or

- the maximum rent (LHA) which is the lower of the applicable local housing allowance rate the claimant is entitled to or the amount equal to the cap rent plus £15 if this is more than the eligible rent on the above two options

- 7.24 The eligible rent based on the bereavement protection will continue until  
*HB Reg 12D(7)(a)*
- 12 months have elapsed from the date of death
  - the relevant local authority determines a new LHA rate which is equal to or exceeds it (this could be the result of a change of circumstance that would require a new LHA rate to be applied)
  - the claimant moves address
  - there is a subsequent death and a further comparison is done to establish the protected amount. The LHA rate applicable following the subsequent death is compared to the one currently used. The eligible rent is whichever the highest amount is. If this rule is applied the 12-month count starts from the date of the subsequent death
- 7.25 The eligible rent is protected from a reduction during the 12 month period unless there is a change of address.
- 7.26 If the protected rate is substituted by an increased one, then the protection is seen to have ended.
- 7.27 At the end of the 12-month period the claim is paid at the LHA rate for the month that would have applied had there been no protection. You will also need to take account of any other changes that would have affected the LHA rate during the time of protection, e.g. the birth of a child that would change the size criteria but the protection remained, this would mean that at the end of the protection period the LHA applicable on the date of the child's birth would be used.

*HB Reg 12D(8)*

7.28-7.99



# *Appeals and redeterminations*

## *About this chapter*

8.00 There is no right of appeal or redetermination about the levels of LHA, or the Broad Rental Market Areas (BRMA) on which they are based. Appeals cannot be made to the appeal tribunal in relation to any part of a decision that adopts the decision of the Rent Officer.

8.01 This is because any decision would have to be implemented to all tenants receiving that Broad Market Rental Area LHA rate and any appeal could potentially change the LHA rate for tenants who have not appealed and are content with their allowance.

8.02-8.09

## *When a redetermination decision can be requested*

8.10 Local authorities can ask for a redetermination of a Rent Officer's decision on a board and attendance case. The normal rules relating to redeterminations or substitute determinations apply, including those in relation to written representations by a person affected.

*Sched 7 CSP&SSA 2000, para 6(2)(c)*

8.11-8.19

## *Accidental (slip of the pen) errors*

8.20 If the Rent Officer makes an accidental or arithmetical error, they will make a substitute determination and notify the local authority affected. This will trigger an adjustment of the LHA that applies to affected claimants.

*Rent Officers (Housing Benefit Functions) Amendment Order 2007 Article 7A(4)*

8.21 As with Rent Officer redeterminations, substitute determinations and substitute redeterminations about existing case specific determinations, the rules are designed to be favourable to the claimant. If the claimant's benefit would

*HB Reg 18A*

- increase as the result of a change, the change is backdated to the time in relation to which the claimant's LHA was calculated
- reduce, the cut only takes effect from the point that the Rent Officer makes the amended determination

8.22 However, if a Rent Officer makes a redetermination following the identification of a 'slip of the pen' error, and you have not yet made a payment, you should apply the re-determined rate from the first payment made.

8.23-8.29

8.30-8.99

### *Appeal rights of persons affected by a decision of LHA*

8.30 As is currently the case, any person affected by a decision relating to the direct payment of HB may appeal against that decision. Persons affected may include the claimant or the landlord.

*HB Reg 96(3A)*

8.31 There is a standard format for written submissions to the Appeals Service that must be adhered to. The Decision Maker may use the following explanation of the policy intention concerning the direct payment rule in their submission.

8.32 Tenants in the Private Rented Sector who claim Housing Benefit in a local authority operating the Local Housing Allowance (LHA), will normally have their LHA paid to them rather than their landlord. This is because the aims of the LHA are to extend choice and encourage responsibility among tenants, enabling them to trade between the quality and price of property by deciding how much of their LHA to spend on the rent. This in turn will equip tenants of working age with the necessary skills for the transition from benefit to work, a key Housing Benefit Reform objective. To do this effectively, tenants need to take responsibility for their rent payments to their landlord. Tenants in non-LHA areas are not affected by this change.

8.33 It is recognised that some tenants may not be capable of managing their affairs leading to them falling behind with their rent payments. There will also be a small percentage who will refuse to make their rent payments or who will have already accumulated at least eight weeks' of rent arrears. In these cases, local authorities will still be able to make payments direct to the landlord as a safeguard to avoid eviction.

8.34-8.39

### *Discretionary housing payments*

8.40 When a claim is received for a discretionary housing payment, the award cannot exceed those elements in the contractual rental figure that would form part of the eligible rent for HB purposes, even when the LHA is higher than this amount. The normal rules for discretionary housing payments apply. The discretionary award is to provide financial assistance to those who, in the local authority's opinion, require further financial assistance with their housing costs arising from their liability to make payments in respect of the dwelling, which they occupy as their home. Child Support, Pensions & Social Security Act 2000 69 (1) Discretionary Financial Assistance Regulations 2001 2 and 6.

*Discretionary Financial Assistance Regulationis 2001 Reg 4*

8.41-8.99