

Social Security Advisory Committee
New Court
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12 January 2009

The Housing Benefit Amendment Regulations (2009)

On 7 January 2008, the draft regulations were discussed at the Committee's meeting. Members agreed that the proposals should be formally referred and also requested further information on the options that had been considered before arriving at a model to cap LHA levels at the five bedroom rate. The supplement to the Explanatory Memorandum is attached at Annex One which gives a high level explanation of options considered.

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Date: 12 January 2009

Dear Gill,

The Housing Benefit Amendment Regulations (2009)

The Secretary of State proposes to amend existing regulations that legislated for the national rollout of the Local Housing Allowance (LHA). Under these proposals, levels of Housing Benefit will be capped at a maximum level of the five bedroom LHA rates from April 2009.

The proposed amendments would apply:

- To customers who make a new claim for Housing Benefit or move address in the private rented sector from 6 April 2009.
- Existing customers in receipt of Housing Benefit assessed according to LHA rates for more than five bedrooms will continue to receive the same amount until their cases are reviewed (usually at the anniversary point of their claim). Housing Benefit will then be assessed according the five bedroom LHA rate, although transitional protection will apply for up to 13 weeks at the higher rate of benefit.

The Committee is asked to consider the proposed amendments. A copy of the draft regulations is attached at Annex A, and these are explained in the Explanatory Memorandum attached at Annex B (much of the background material in this document is duplicated in the EIA).

A Keeling version of the relevant provisions in the existing regulations showing the effect of the proposed amendments for new customers is also attached at Annex C. In addition to these amendments, a new regulation, 12L, provides for the treatment of existing customers. (These represent the changes shown against the Housing Benefit (Local Housing Allowance and Information Sharing) Regulations 2007. Identical amendments are proposed for the Housing Benefit (State Pension Credit (Local Housing and Information Sharing) Amendment Regulations 2007)).

Equality Impact Assessment

An equality impact assessment of these proposals contained in these regulations is attached at Annex D. This is intended to be a stand-alone document which the Department intends to publish.

We welcome the opportunity to hear the Committee's views on these proposals at its January meeting.

Yours sincerely

Penny Higgins
Housing Benefit Strategy Division

Amendment to Local Housing Allowance regulations
Social Security Advisory Committee Explanatory Memorandum

Proposal

1. The Secretary of State for Work and Pensions proposes to amend the Local Housing Allowance (LHA) regulations so that Housing Benefit (HB) will be paid at the maximum level of the five bedroom LHA rates for customers in the private rented sector.
2. These proposals were announced by the Secretary of State, James Purnell, on 20 October 2008.

Description of Changes

Current position

3. The LHA was introduced for HB customers in the de-regulated private rented sector who make a new claim or move address from 7 April 2008. LHA is a new way of calculating maximum HB based on area and family size. Individual referrals to the rent officer are no longer required for any claims made since 7 April.
4. In LHA cases HB is paid to the tenant rather than the landlord in most circumstances. Customers are able to keep any excess benefit up to a maximum of £15 per week that is over and above the cost of their rent. As previously, if rent is higher than their LHA entitlement they must make up the difference from other sources of income.

Setting Local Housing Allowance rates

5. LHA rates are set by rent officers in the national rent services in England, Scotland and Wales. Rates are set within a series of Broad Rental Market Area (BRMAs) which are determined by rent officers and are intended to reflect the areas in which people live and enjoy services and the rental values within those areas. BRMAs are similar to 'localities' used for pre-LHA cases and the boundaries are currently identical for both.
6. A review of locality areas was undertaken by rent officers in part in preparation for the LHA and the number of localities have reduced due to changes in the way that people enjoy access to health and education services as well as retail and recreational facilities. The reason for such changes are many and

varied but improvements in public and private transport and the demand of consumers for improved products and greater choice are contributory factors.

7. Rent officers gather a range of lettings information for each BRMA and set LHA rates at the median rent level for each property size, which enables customers to rent accommodation in around 50% of the properties within a given area. Where rent officers are unable to collect sufficient lettings data within a BRMA to arrive at a reliable median, they can extrapolate information from other, similar, areas. There is no specific definition in legislation of what constitutes 'sufficient' data and this is a matter for the professional judgment of rent officers. However rent officers must have a range of rents from which to determine a median.
8. Rent officers automatically provide monthly LHA rates to local authorities for different sizes of properties up to and including 5 bedrooms. Rates for properties of 6 bedrooms or more are requested on an individual basis by local authorities. Local authorities then use these rates to assess maximum entitlement to HB for customers in the de-regulated private rented sector.

How is entitlement to bedroom size set?

9. The criteria used to determine the appropriate size of property is based on the number of bedrooms with the entitlement worked out as follows:

One bedroom for

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex
- Any two children regardless of sex, under the age of 10
- Any other child

10. There is no upper limit to the size of property that a customer may be entitled to under the current LHA design.

The proposed change

11. The proposal is to cap LHA levels at the rate of five bedroom properties.
12. The change will apply to all new claims from April 2009 and those who change dwelling. Those already in receipt of the LHA for more than five bedrooms will continue to receive the same amount until a new maximum rent (LHA) determination is made when they will have their case reviewed. We propose benefit will be set at the five bedroom LHA rate appropriate for their area. However, in order to ensure customers currently receiving a higher level of benefit are given adequate notice of potential changes in their benefit levels,

the Department proposes that customers will be given 13 weeks of transitional protection at their current rate of benefit prior to any reductions being made.

The Issue

13. This proposal has arisen following concerns raised by the three national rent services in England, Scotland and Wales who have reported difficulties in determining LHA rates for larger properties. This is because there are simply not the properties available to rent of this size to gather sufficient market data to arrive at a LHA rate that accurately reflects the availability of properties within a given BRMA.
14. The issues rent officers have experienced in setting LHA rates have been attributed to:
 - There is a dearth of evidence – rent officers have faced considerable difficulty in gathering evidence on lettings for 6 or more bedrooms. The rent services believe this is due to less availability of properties of this size for rent as well as a slower turnover of these properties in the market. In some BRMA's these properties simply may not exist.
 - For larger properties, the data is not only scant, but there is a high degree of variance. For example, The Rent Service gathered data which showed that 6 bedroom properties in London showed rents range from £277 to £9000 per week. This wide data range, coupled with limited data availability, means that median rates will be highly variable.
 - The nature of the property market for larger sized properties is such that rents often do not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider.
 - Often where larger properties do exist, they are aimed at the luxury end of the market – this impacts substantially on median levels and is not reflective of the properties that are usually available to most people, even those in well paid work. It also means that some tenants may be encouraged to take on very high rents which may impact on work incentives at the point where they move off HB.
15. This issue was highlighted in the media recently where one family was receiving around £12,000 per calendar month in HB to live in a luxury 7 bedroom property in London. This exceptional circumstance represents only a handful of cases where extremely high levels of benefit are in payment.
16. The impact of the LHA is subject to review over the first two years of its operation. Although we have no statistical evidence yet available, anecdotal evidence from the rent services and local authorities suggests that some landlords are raising rents to match LHA rates more generally. For the very high rates for larger properties in London in particular, this could result in unscrupulous landlords seeking to benefit from the scheme by setting rents far above the market value for their particular property.

Impact on customers

17. A small minority of customers will be impacted by the proposal to cap LHA levels at five bedroom rates. We estimate that less than 1% of the private rented sector caseload are entitled to benefit at rates for properties of more than five bedrooms and this is estimated to correspond to an LHA caseload of fewer than around 5,000 at the end of 2009/10. Of these, many are already living in properties of less than six bedrooms.
18. With the proposed changes, new customers will know in advance the level of benefit they are entitled to as rates of up to five bedrooms are published by The Rent Service and by local authorities. This change does not mean that customers with larger families will be unable to rent properties of more than five bedrooms. Rather, customers will be paid the level of benefit set for five bedroom properties and can choose how best to rent accommodation that is most suitable for their families.
19. For existing customers, they may see a drop in benefit when they reach the anniversary point in their claim when their claims will be reviewed and reassessed according to the five bedroom LHA rate within their BRMA. However, we propose that all customers will enjoy a period of 13 weeks transitional protection at the higher rate of benefit.
20. We have no evidence available on how customers living in larger properties have secured particular accommodation. This could, for example, have resulted from a private arrangement between landlord and tenant. We acknowledge that some families living in properties with six or more bedrooms are doing so following intervention from local authorities within their obligation to house homeless families and that these local authorities may still need to re-house these families should accommodation be withdrawn.
21. These proposals should still allow families to rent accommodation that is appropriate to their family size. An analysis of The Rent Service database of market rents for 2007/2008 suggested that in England overall, around 20% of the 6 plus bedroom properties should be accessible at the five bedroom LHA rate. This compares with 50% of six or more bedroom properties affordable at the current LHA rate set at the median market rent level.

Impact on local authorities

22. The Department will work closely with local authorities over the next few months to support them in implementing changes to the scheme. Early indications suggest that the vast majority of implementation activity for the Department and local authorities will need to centre around communications for local authorities and other key stakeholders. We are working with local authority association representatives to ensure we are providing support in the most appropriate way, but anticipate the most pressing activity will be working with local authorities to ensure customers currently living in larger properties are identified and contacted in advance of these changes. The Department will

develop a range of other communication products including a new set of leaflet templates for individual use by local authorities to advise customers that five bedroom rates will be the maximum; new guidance and training material for local authorities, changes to the DWP website, communications to key stakeholder groups including landlord representative bodies, voluntary sector groups such as CAB and Shelter and local authority housing departments.

23. The Department is undertaking a comprehensive consultation exercise with stakeholders in relation to these proposals, including local authority associations, voluntary sector groups, landlord associations, race relation groups. A full list of stakeholders consulted is attached at annex one.

Diversity and equality

24. The Department has considered these changes in light of its disability, race and gender equality duties. A full Equality Impact Assessment has been carried out.
25. Whilst these proposed changes will be applied to all customers, it is recognised that the impact for certain ethnic minority groups could be greater. This is because there is a disproportionately high percentage of customers living in larger properties who are from an ethnic minority background. We estimate that of the customers who may be affected by the change (fewer than 5,000) by the end of 2009/10, fewer than 2,000 will be non-white customers.
26. For disabled customers, whilst there is still a possibility that customers entitled to a property with more than five bedrooms also have a member of the household with severe disability that requires additional bedroom space is a possibility, this risk can be considered small.
27. There are a number of factors that help mitigate the risks of an adverse impact to customers who are currently entitled to benefit for properties with more than six bedrooms. For example, in some areas, there is little difference between the rates for five bedroom properties and larger sized properties. For existing customers, the Department proposes they will receive 13 weeks transitional protection at their current rate of benefit, following the new LHA determination. Where the determination is because a linked person in the customer's household has died, the current protection on death provisions will apply. In addition, the Department is working closely with local authorities to develop a programme of communications to ensure that customers, landlords and other key stakeholders are aware of these proposals in advance.

Impact on Operations

28. Overall, the impact on operations will be small as the proportion of the caseload affected will be very small.

National rent services

29. The Department anticipates this proposal will result in a positive operational impact for the rent services. This is because, currently, rent officers determine LHA rates for properties with more than five bedrooms on request by local authorities. This proposal will negate the need to assess rates for these larger properties. However, the impact will be small as we estimate this change affects less than 1% of the caseload.

Local authorities

30. The small number of customers affected will reduce the potential impact on local authority operations. Local Authority representatives have suggested that this proposal can be implemented with no essential IT changes.
31. The Department is working with a small group of local authority association representatives to progress the implementation activities that will be required, including the changes to communication products, training and guidance material and managing the impact for existing customers.

Child Poverty

32. Almost all of the HB households entitled to 5 or more bedroom properties (and hence by inference those entitled to 6 or more bedroom properties) have one or more children in them and more than half of these households are estimated already to be living below the poverty line (ie have net equivalised disposable household income before housing costs of less than 60% of the median household income). We estimate that of the households entitled to 6 or more bedroom properties under the local housing allowance by the end of 2009/10, under around 3,000¹ could have children living below the poverty line. However, non-dependents appear to be playing a fairly big part in determining entitlement to additional bedrooms for the group of HB households (at least one member of the household claiming HB) entitled to 6 or more bedrooms. The proportion of HB households entitled to 5 or more bedroom properties with children and no non-dependants make up only around a fifth of households entitled to 5 or more bedroom properties. From this we infer that the proportion of LHA households entitled to 6 or more bedrooms and with children but no non-dependents is likely to be similarly small. We are unable to quantify any *increase* in child poverty from this policy change, however, given the number of customers involved we anticipate any overall negative impact will be small.

¹ These are extremely tentative estimates and should be read accordingly

Complexity

33. Currently, local authorities request rates for six or more bedrooms if they have a relevant case to assess. These rates are not published and rent officers do not provide these as a matter of course. Therefore, capping rates at five bedrooms represents a simplification for local authorities who will no longer have to seek rates from the rent services on these cases. In addition, this should make the system simpler for customers to understand as all rates will be made available in advance.

Monitoring

34. The LHA is subject to a review over the first two years of its operation. The impact of this proposal will be monitored within the scope of this review subject to any limitations of the available data.

Timing

35. The Department proposes to bring these amendments into force from 6 April 2009.

Annex One – List of organisations consulted on proposed amendments

- Advice Services Alliance
- Advice UK
- Age Concern
- Association of Chief Executives of Voluntary Organisations (ACEVO)
- Barnardo's
- Chartered Institute of Housing
- Child Poverty Action Group
- Citizen's Advice
- Citizen's Advice Scotland
- Convention of Scottish Local Authorities
- Disability Action
- Disability Alliance
- Housing Corporation
- Housing Directorate Welsh Assembly Government
- Joseph Rowntree Foundation
- Local Government Association
- London Councils
- London Welfare Rights Group
- National Association of Welfare Rights Advisers (NAWRA)
- Oxfam
- Scottish Council of Voluntary Organisations (SCVO)
- Scottish Executive
- Shelter
- Welsh Local Government Association

Local Housing Allowance – Larger Properties
Equality Impact Assessment

Name of strategy/project/policy/process/function:

1. Amendments to Housing Benefit (HB) regulations which legislated for the national rollout of the Local Housing Allowance (LHA), introduced from 7 April 2008.

Name and contact details of the officer(s) responsible for the assessment:

2. Marie Savage - 01772 234056
Mohammed Yar (Analysis) - 020 7449 5372

Purpose and aim(s) of the proposal or change:

3. The Department proposes to cap benefit levels at the five bedroom LHA rate for all new claims and those who change dwelling, irrespective of bedroom entitlement. LHA customers already in receipt of HB for a property with 6 or more bedrooms will continue at the same rate until the first anniversary of their claim when they will have their case reviewed.

Background to the proposal/change:

4. The LHA was introduced for HB customers in the de-regulated private rented sector who make a new claim or move address from 7 April 2008. Essentially, the LHA is a new way of calculating HB based on the area in which a customer lives and household size and composition. LHA is designed to be fairer than HB, as it is based on set rates of benefit and ensures that tenants in similar circumstances in the same area receive the same amount of financial support for their housing costs.
5. There is no upper limit to the size of property that a customer may be entitled to under the current LHA design. The criteria used to determine the appropriate size of property is based on the number of bedrooms with the entitlement worked out as follows:

One bedroom for:

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex
- Any two children regardless of sex, under the age of 10
- Any other child

The number of living rooms, kitchen and bathrooms is ignored for the purpose of this calculation.

6. LHA rates are set by rent officers in the national rent services in England, Scotland and Wales. Rates are set within a series of Broad Rental Market Areas (BRMAs) which are also determined by rent officers and are intended to reflect the areas in which people live and enjoy services and the rental values within those areas. Rent officers gather a range of lettings information for each BRMA and set LHA rates at the median rent level for each property size, which should enable customers to afford the rent in around 50% of the properties within a given area. Where rent officers are unable to collect sufficient lettings data within a BRMA to arrive at a reliable median, they can extrapolate information from other, similar, areas.
7. Rent officers automatically provide monthly LHA rates to local authorities for different sizes of properties up to and including 5 bedrooms. Rates for properties of 6 bedrooms or more are requested on an individual basis by local authorities. However, the national rent services have reported that there is far less rental data available for larger properties and that, even allowing for extrapolation, rent officers have had real difficulties in arriving at LHA rates for larger sized properties.
8. The key issue for rent officers is that there is little reliable lettings evidence available for properties of this size, and where properties do exist they will often be in the top end of the property market. The degree of variance in rents is considerable for larger properties in London. This has led to exceptionally high LHA rates in some London BRMAs for the small number of cases entitled to larger properties.
9. The Department identified fairly early on in operation of the LHA scheme that there was an emerging issue with rates for properties with 6 or more bedrooms. The need for change was highlighted because of sudden media attention in the specific case in Ealing where an excessively high rent (around £12,000 pcm) was being paid for a 7 bedroom property. However, it is important to note that the availability of data for these types of property is limited nationally and the difficulties of arriving at median rates for these larger properties are not just restricted to London.
10. However, given that in a handful of cases the level of rents payable had reached proportions that the vast majority of people, even in well paid jobs, would not be able to afford, the Department recognised that urgent action was needed.

Who will benefit mainly from this proposal or change?

11. This proposal aims to ensure that benefit rates are paid at a level that provides a fair deal to both customers and to the taxpayer by ensuring that excessively

high rates of benefit cease for new claims and gradually phase out for existing claims. In keeping with a key objective of the LHA to promote fairness, it is not sustainable that some of our customers on benefits are able to live in properties at the luxury end of the market, which would not be affordable for the majority of people in work.

12. The changes may ultimately benefit HB customers living in the private rented sector as they may keep rents at more realistic and affordable levels thus easing the transition into work where applicable.
13. The changes should also go some way to preventing private landlords from charging excessive rents to larger families regardless of the size of the accommodation they are renting.

Impact of the proposal or change

14. Analysis of the possible impact of this proposed change on HB customers in the private rented sector and particular subgroups has been carried out using Family Resources Survey (FRS) data.
15. It should be noted that it has not been possible to isolate certain groups, such as households in receipt of HB in the private rented sector so that the estimates are necessarily only indicative. Please refer to annex one for further information about the data sources and methods used.

General Impact

16. Households entitled to properties of six or more bedrooms form a very small subgroup of all households. It can be expected that households entitled to 6 or more bedroom properties will be large households (minimum household size 6 for single adults) which often comprise large, extended families with children.
17. According to the FRS, the proportion of households entitled to different sized properties decreases as the number of bedrooms increase. Only a very small proportion (under 1%) are likely to be entitled to properties with 6 or more bedrooms and this is estimated to correspond to **an LHA caseload of fewer than c.5,000 at the end of 2009/10.**

Impact on equality legislation population subgroups

18. In this section, analysis has been carried out to assess the possible impact of this proposed change on vulnerable groups with emphasis on those related to the components of the Equality Duties. Mitigation factors are included in one separate section (from paragraph 30 below) as many of the mitigation steps apply to all of the equality components rather than specific areas.

Disability equality duty

19. The following components of the Disability Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Eliminate harassment.
- Promote equality of opportunity for disabled people.
- Promote participation in public life.

However, there is a possibility that the following component could be impacted:

- Eliminate unlawful disability discrimination.

Risk

20. Under the current system of calculating HB according to LHA rules, customers with a disability who may require an additional room to house specialist medical equipment or a live-in carer are not entitled to additional bedrooms as a result of their disability. In these cases, local authorities may choose to use discretionary housing payments (DHPs) to ensure that these customers can find decent accommodation that meets their needs.

21. Although very uncommon, capping LHA rates at the five bedroom rates, may mean that a household with a severely disabled family member **and** a bedroom entitlement over 5 bedrooms may feel they are further restricted to the type of property they can rent. They could regard this as discrimination on disability grounds.

22. Overall, the data showed that 14% of HB households had at least one person with severe disability (claiming the highest components of self care or mobility DLA). (Table A) But in general, there does not appear to be any significant association between bedroom size entitlement and severe disability to suggest that households with severe disability will be disproportionately impacted by the policy change.

Table A: Bedroom entitlement for housing benefit households by severe disability status of the household, Great Britain

Bedroom size entitlement	Severe disability		All (=100%)
	None with severe disability	Someone with severe disability	
	%	%	%
1	84	16	100
2	90	10	100
3	88	12	100

4	85	15	100
5+	89	11	100
All (%)	86	14	100

Notes:

- three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- Severe disability relates to any member of the household

23. In the Housing Benefit subgroup, the sample of households entitled to 6 or more bedrooms is too small to analyse. Therefore, we have looked at the percentage of households with entitlement to five or more bedroom properties to then estimate the characteristics of households with entitlement to 6 or more bedrooms. Under this assumption, it is broadly estimated that of the fewer than 5,000 LHA caseload entitled to larger properties at the end of 2009/10, only a few hundred (around 11%) households at most will be entitled to a property of this size and have someone with severe disability living with them. Of these, a smaller number still will have a disability that requires them to need either specialist medical equipment or a full time carer. Of those customers who do rely on a full time carer, the carer may already be a member of the household and accounted for within the bedroom entitlement calculation. Although specific data is not available on the exact number of customers who are likely to be affected, given the customers affected will need to be currently entitled to more than five bedrooms; *plus* be severely disabled, *plus* require either specialist equipment or a full time carer that does not actually live in the household, we consider the risk to be very small.

Gender equality duty

24. The following components of the Gender Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Eliminate unlawful discrimination.
- Eliminate harassment.
- Promote equality of opportunity between men and women.

25. This finding is supported by the evidence from the FRS data. Overall, around three-fifths of households were male and two-fifths female (head of household male or female) but for HB households, around three-fifths had female heads of household, apparently due to the relatively large number of lone parents on HB. A similar proportion of HB households entitled to more than five bedrooms were headed by females. (Table B). There is a larger percentage of female-headed households than male-headed households so that the impact will be greater on females, however, compared to the HB population as a whole there is not a disproportionate percentage of female-headed households entitled to larger properties.

Table B: Bedroom entitlement for housing benefit households by sex of head of household, Great Britain

Bedroom entitlement	Sex		
	Male	Female	All (=100%)
	%	%	%
1	50	50	100
2	23	77	100
3	25	75	100
4	25	75	100
5+	34	66	100
All (%)	39	61	100

Notes:

- (1) three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- (3) Gender relates to the head of the household.

26. Taking the percentage of households with entitlement to five or more bedrooms headed by females as a guide to the characteristics of households with 6 or more bedrooms, it is roughly estimated that of the fewer than 5,000 LHA caseload entitled to larger properties at the end of 2009/10, fewer than 3,000 affected households will be headed by females. These figures are broadly indicative due to data limitations.

Race Equality Duty

27. The following components of the Race Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Promote equality of opportunity.
- Promote good relations between persons of different racial groups.

However, there is potentially a possibility that the following component could be impacted:

- Eliminate unlawful discrimination.

Risk:

28. Overall, of all HB households (at least one member of the household claiming HB) around 10% can be classified as non-white households, which is broadly consistent with the ethnic composition of the general population (Table C). However, the proportion of non-white HB households entitled to different sized

properties increases progressively as the number of bedrooms increases, varying from around 7% for 1-bed property entitlement to around 37% for entitlements to 5 or more bedrooms.

Table C: Bedroom entitlement for HB households by ethnic group of head of household, Great Britain

Bedroom entitlement	Ethnic group		
	White	Non-white	All
	%	%	%
1	93	7	100
2	87	13	100
3	84	16	100
4	80	20	100
5+	63	37	100
All (%)	90	10	100

Notes:

- (1) three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- (3) Ethnicity relates to the head of household.

29. These figures demonstrate there is likely to be a disproportionate percentage of customers from minority ethnic groups entitled to six or more bedroom properties, raising concerns of indirect discrimination although the proportion of non-white households entitled to larger properties is still smaller than the proportion of white households. Taking 5 or more bedroom characteristics as a guide to 6 or more bedroom characteristics, it is roughly estimated that of the fewer than c.5,000 larger properties LHA caseload under about 2,000 will be non-white customers at the end of 2009/10. The Department recognises this disproportionate impact on ethnic minority groups, but considers this to be justified and proportionate due to the mitigation factors that are set out in the following section, including the small number of customers that will be affected and the size of properties that most families currently occupy.

Mitigation

30. Analysis in the preceding section has highlighted the potential customers that might be impacted by the policy change to cap LHA rates at 5 bedrooms. But in practice this will be alleviated by a number of factors and the number of customers actually affected by the change may be substantially lower than the maximum figures noted above.

31. In some areas there is little difference between the rates for 5 bedroom properties and larger sized properties. An analysis of The Rent Service database of market rents for 2007/08 showed that in England overall, around 20% of the 6 or more bedroom properties were accessible at the 5 bedroom LHA rate. This compares with the 50% of 6 or more bedroom properties that should be affordable at the current LHA rate set at the median market rent level. Most of the BRMAs on the dataset, however, had fewer than 10 tenancies on properties with 6 or more bedrooms suggesting that a wider issue may be the general lack of availability of larger properties. This leads to the national rent services to calculate LHA rates for larger properties by extrapolating from other BRMAs. However, anecdotal evidence suggests that some landlords are converting smaller properties into 6 or more bedroom dwellings by use of partitioning to take advantage of LHA rates.
32. Most households entitled to larger properties are therefore unlikely to be able to find suitably sized accommodation and are likely to live in smaller sized properties due to the scarcity and unavailability of larger sized properties. Others may simply choose to live in a smaller sized property. An analysis of the present property size living conditions of all households (regardless of benefit entitlement) suggests that **of those entitled to 6 or more bedroom properties, around 70 per cent may live in property sizes of less than 6 bedrooms** (Table D). This could imply that the cap at five bedroom rates may have little impact on the present property size living conditions of LHA households entitled to 6 or more bedrooms because of availability issues.

Table D: Distribution of bedroom entitlement by bedrooms occupied, Great Britain

Bedroom entitlement	Bedrooms occupied						All (=100%)
	1	2	3	4	5	6+	
	%	%	%	%	%	%	%
1	17	32	39	9	2	0	100
2	2	28	51	16	3	1	100
3	0	7	61	25	5	1	100
4	0	3	47	38	9	2	100
5	0	2	37	31	25	6	100
6+	1	2	22	30	16	29	100
All	11	27	45	14	3	1	100

Notes:

- (1) three years FRS data, 2004/05 to 2006/07, combined to derive percentages
 (2) All tenures combined and both HB and non-HB households included
 (3) Some anomalous results such as households entitled to 6 or more bedrooms living in only 1 bedroom may possibly occur due to survey recording error.

33. Furthermore, many 5 bed properties will have more than one reception/living area, which may open up the potential for the use of additional rooms as

bedrooms. An analysis of The Rent Service database of market rents shows that nearly 60% of 5 bedroom properties have more than one living room e.g. 7 or more bedrooms plus living rooms. (Table E) So although a family may be entitled to 6 or more bedrooms and have their LHA rate capped at the 5 bedroom rate, most of the 5 bedroom properties on the market will have six or more rooms available, possibly to be used as bedrooms even after allowing for one living room. It is possible that the properties with more living rooms may be the more expensive 5 bedroom properties, but this will not always be the case and some should be in reach of LHA customers.

Table E: Comparison of number of bedrooms to number of bedrooms plus living rooms in 4 and 5 bed properties

Bedrooms plus living rooms	Number of bedrooms	
	4	5
	%	%
4 or fewer	0	0
5	43	1
6	45	40
7	10	35
8	1	19
9 or more	0	5
All (=100%)	100	100

Source: Market

evidence data

Notes: Column percentages may not add to 100 due to rounding

34. Generally, the LHA bedroom allocation criteria are more generous than the room standard part of the statutory overcrowding criteria. An indicative simulation suggested that the vast majority of 6 or more bedroom entitlements may have 5 or fewer rooms allocated under statutory overcrowding criteria so that the proposal to cap rates at five bedroom levels could have almost nil impact on statutory overcrowding
35. Many of the households entitled to 6 or more bedroom properties have non-dependants living with them and the current LHA policy partially subsidises accommodation for the non-dependants as non-dependant deductions, if any, are generally smaller than the value of the additional bedrooms. Again the analysis of the FRS data shows that of HB households entitled to 5 or more bed properties, about four fifths have one or more non-dependants living with them. (Table F) It must be noted that this result relates both to HB tenants in the social sector and HB tenants in the private sector and there may be a slightly higher proportion of households with non-dependants in the social sector than in the private sector. However, it can be expected that the policy change overall may affect even fewer households than estimated if some non-dependants are able to play a greater role in paying for their accommodation.

Table F: Bedroom entitlement for HB households by non-dependant status of the household, Great Britain

Bedroom entitlement	Non-dependants in household		
	No Non-dependant	Non-dependant	All (=100%)
	%	%	%
1	100	0	100
2	75	25	100
3	70	30	100
4	43	57	100
5+	18	82	100
All	87	13	100

Notes:

- (1) three years FRS data, 2004/05 to 2006/07, combined to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector
- (3) Non-dependents refer to adult household members not related to head of household through 'spouse' or 'cohabitee' relationships. Note that this definition may differ slightly from the legal definition for the purposes of housing benefit claims

- 36. Existing customers will receive 13 weeks transitional protection to remain on their current rate of LHA, following the anniversary point of their claim. LAs will write out to customers prior to the implementation of the policy change to advise those in receipt of LHA rates for properties over 5 bedrooms and that transitional protection will apply for a fixed period.
- 37. To minimise these risks further local authorities may, in certain circumstances, choose to make a Discretionary Housing Payment (DHP) to customers, which are intended to provide extra financial assistance when help with housing costs is needed. They can be made where there is a shortfall between the customer's HB and their eligible rent. (Payments are made entirely at the discretion of the Local Authority concerned, and are subject to an annual cash limit).

Consultation and involvement

- 38. The Department is currently consulting with local authority associations, the devolved administrations and key voluntary sector groups. This consultation will conclude on 30 January 2009.

Changes made

39. No changes have been made to the policy since the initial assessment.

Next steps

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

Annex One - Data sources and methods

Although the FRS is a very large survey in general terms, the current sample sizes do not allow detailed analysis of very small subgroups such as households entitled to 6 or more bedroom properties, along with further breakdowns by disability and minority ethnic group. Consistent with the FRS publication practice for small subgroups, three years' FRS data (2004/05, 2005/06, 2006/07) were combined to attempt to address the issue of small sample sizes and the detailed FRS categories had to be aggregated into broader categories.

Specifically, instead of being able to focus on households renting in the private sector and claiming HB, we have had to consider the characteristics of reported HB customers in both the social and private rented sectors and use these to approximate what the impact of the policy might be on private sector HB customers alone. Given that housing benefit claimants in the social rented sector are more numerous than claimants in the private rented sector, their characteristics are likely to dominate the analysis. This will be particularly important where the characteristics of social and private tenants differ. We do know that social tenants tend to have larger proportions of those with disadvantages and those with overlapping disadvantages. Where this is the case, there is the possibility that conclusions from the analysis may be affected to some extent. In addition, we have had to group together households entitled to 5 bedrooms with those entitled to 6 or more bedrooms to approximate the characteristics of households entitled to the largest properties.

Further definitions of the variables used and the terminology adopted were:

- Ethnic group - two categories, white and non-white
- Household with severe disability– households where at least one member was receiving the highest care or mobility components of disability living allowance
- Bedroom entitlement – 5 categories, 1,2 ,3 ,4 ,5 and higher (as 6 or more bedroom entitlement sample sizes too small)
- HB household – households where at least one member receives HB, whether they are renting in the private or social sector.

The unit of analysis used was household and household classification by ethnic group and sex was defined according to the status of the head of the household. This contrasts with disability where we considered whether any member of the household may have a severe disability.

2009 No.

SOCIAL SECURITY

The Housing Benefit Amendment Regulations 2009

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - *6th April 2009*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2), (3), (5) and (6), 137(1) and 175(1), (3), (4) and (6) of the Contributions and Benefits Act 1992⁽²⁾.

[The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it⁽³⁾.]

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Housing Benefit Amendment Regulations 2009 and shall come into force on 6th April 2009.

Amendment of the Housing Benefit Regulations 2006

2.—1. The Housing Benefit Regulations 2006⁽⁴⁾ shall be amended as follows.

(1) Before regulation 13⁽⁵⁾ insert—

“12L.—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 6th April 2009;
- (b) the category of dwelling for which that maximum rent (LHA) was determined corresponded to a category of six or more bedrooms; and
- (c) on or after 6th April 2009 the relevant authority is required to determine a maximum rent (LHA) by virtue of—

⁽²⁾ 1992 c. 4. Section 130A was inserted by s. 30 of the Welfare Reform Act 2007 (c. 5). Section 137(1) is an interpretation provision and is cited for the meaning of “prescribed”. Sections 175(1) and (4) were amended by Schedule 3, paragraph 29 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

⁽³⁾ See sections 170 and 172(1)(b) of the Social Security Administration Act 1992.

⁽⁴⁾ S.I. 2006/213.

⁽⁵⁾ Regulation 13 was substituted by S.I. 2007/2868.

- (i) regulation 13C(2)(d)(i) (change of a category of dwelling), where it has not received notification of the death of a linked person; or
 - (ii) 13C(3) (anniversary of the LHA date).
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent that applied immediately before 6th April 2009; or
 - (b) the amount of the eligible rent which applied immediately before 6th April 2009.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before 6th April 2009, it will continue to apply until, on or after 6th April 2009, the first of the following events occurs—
- (a) the end of 13 weeks after the determination of the maximum rent (LHA) referred to in paragraph (1)(c) expires;
 - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined) because the claimant has become entitled to a smaller category of dwelling;
 - (c) the relevant authority is required to determine an eligible rent following a change of dwelling; or
 - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).
- (4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.
- (5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).
- (2) In regulation 13D⁽⁶⁾ (determination of a maximum rent (LHA))—
- (a) in paragraph (2)(c), at the end add “to a maximum of five bedrooms”; and
 - (b) omit paragraph (7).

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—2. The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽⁷⁾ shall be amended as follows.

(1) Before regulation 13⁽⁸⁾ insert—

“**12L.**—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 6th April 2009;
- (b) the category of dwelling for which that maximum rent (LHA) was determined corresponded to a category of six or more bedrooms; and
- (c) on or after 6th April 2009 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 13C(2)(d)(i) (change of a category of dwelling), where it has not received notification of the death of a linked person; or
 - (ii) 13C(3) (anniversary of the LHA date).

⁽⁶⁾ Regulation 13D was inserted by S.I. 2007/2868.

⁽⁷⁾ S.I. 2006/214.

⁽⁸⁾ Regulation 13 was substituted by S.I. 2007/2869.

- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent that applied immediately before 6th April 2009; or
 - (b) the amount of the eligible rent which applied immediately before 6th April 2009.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before 6th April 2009, it will continue to apply until, on or after 6th April 2009, the first of the following events occurs—

- (a) the end of 13 weeks after the determination of the maximum rent (LHA) referred to in paragraph (1)(c) expires;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined) because the claimant has become entitled to a smaller category of dwelling;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.

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

(2) In regulation 13D⁽⁹⁾ (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c), at the end add “to a maximum of five bedrooms”; and
- (b) omit paragraph (7).

Signed by authority of the Secretary of State for Work and Pensions

Name

Parliamentary Under Secretary of State

Department for Work and Pensions

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Regulation 2 amends the Housing Benefit Regulations 2006. Paragraph (3) amends regulation 13D so that the appropriate category of dwelling is limited to a maximum of five bedrooms.

Paragraph (2) provides transitional protection for some claimants whose housing benefit is calculate by reference to a local housing allowance rate for a property with six or more bedrooms.

Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

⁽⁹⁾ Regulation 13D was inserted by S.I. 2007/2869.

Restricted - policy

Keeling Version of Regulations as Amended

SOCIAL SECURITY

The Housing Benefit Amendment Regulations 2009

<i>Made</i> - - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> -	6 th April 2009

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130(2), 130A(2) to (6), 137(1) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992⁽¹⁰⁾ and sections 5(1)(p), (2A) to (2C) and (6), 189(4) to (6) and 191 of the Social Security Administration Act 1992⁽¹¹⁾.

This instrument contains only regulations made by virtue of, or consequential upon, sections 30 and 35 of the Welfare Reform Act 2007⁽¹²⁾ and is made before the end of the period of six months beginning with the coming into force of those sections.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

“Maximum rent

13.—(1) The maximum rent shall be determined in accordance with paragraphs (2) to (8) where—

- (a) a local authority has applied for a determination in accordance with regulation 14 (requirement to refer to rent officers), a redetermination in accordance with regulation 15 or 16, or a substitute determination or substitute redetermination in accordance with regulation 17 and a rent officer has made a determination, redetermination, substitute determination or substitute redetermination in exercise of the Housing Act functions; or
- (b) an authority is not required to apply to the rent officer for a determination because—
 - (i) regulation 14(2)(a) applies; or

-
- Deletions are shown in strikethrough
 - Insertions are shown **in bold italics**
 - Provisions within regulations that are unaffected by the amendments are omitted, unless needed to enable the effect of the amendments to be understood.
 - In addition to these amendments a new regulation, 12L, will provide for the transition protection of existing customers.
 - Identical amendments are proposed for the Housing Benefit (State Pension Credit (Local Housing and Information Sharing) Amendment Regulations 2007)).

(ii) regulation 14(2)(b) applies because paragraph 2(2) of Schedule 2 applies.

(2) In a case where the rent officer has determined a claim-related rent, but is not required to notify the relevant authority of a local reference rent or a single room rent, the maximum rent shall be that claim-related rent.

(3) Subject to the limit specified in paragraph (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the relevant authority and a claim-related rent, the maximum rent shall be the local reference rent.

(4) In a case to which paragraph 8 of Schedule 3 to the Consequential Provisions Regulations applies, where the rent officer has determined and is required to notify the relevant authority of a local reference rent the maximum rent shall not exceed twice that local reference rent.

(5) Subject to paragraph (6), in the case of a young individual—

(a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the relevant authority of it, the maximum rent shall not exceed that single room rent;

(b) where—

(i) the rent officer has determined a single room rent and a claim-related rent and is required to notify the authority of them;

(ii) the claim-related rent includes payment in respect of meals; and

(iii) the single room rent is greater than the claim-related rent less an amount in respect of meals determined in accordance with paragraph 2 of Part 1 of Schedule 1 (ineligible service charges),

the maximum rent shall not exceed the claim-related rent less that amount in respect of meals.

(6) Paragraph (5) shall not apply in the case of a claimant—

(a) to whom paragraph 4 of Schedule 3 to the Consequential Provisions Regulations (saving provision) applies;

(b) to whom paragraph 14 of Schedule 3 (severe disability premium) applies; or

(c) where a non-dependant resides with him.

(7) Where the maximum rent is derived from—

(a) a claim-related rent and the notification under paragraph 9(1)(c) of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that claim-related rent; or

(b) a local reference rent and the notification under paragraph 9(1)(da)⁽¹³⁾ of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that local reference rent,

in determining the maximum rent the relevant authority shall deduct an amount determined in accordance with paragraph 2 of Schedule 1 to these Regulations in respect of meals.

(8) This regulation is subject to regulations 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent).

(9) In this regulation—

“claim-related rent” means the rent notified by the rent officer under paragraph 9(1) of Schedule 1 to the Rent Officers Order;

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order.

⁽¹³⁾ Sub-paragraph (1)(da) of Schedule 1 is inserted by S.I. 2007/[].

Protection on death and 13 week protection

13ZA.—(1) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of a linked person, the maximum rent shall be either—

- (a) the maximum rent which applied before the death occurred; or
- (b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(2) For the purposes of paragraph (1), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose subparagraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(3) Subject to paragraph (4), where the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant's award of housing benefit.

(4) Paragraph (3) shall not apply where a claimant or the claimant's partner was previously entitled to benefit in respect of an award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of the claimant's current award of housing benefit.

Change in reckonable rent

13ZB.—(1) In a case where—

- (a) the authority has determined a maximum rent under regulation 13 or 13ZA; and
- (b) during the period for which that maximum rent applies the reckonable rent in respect of the dwelling by reference to which that maximum rent was determined is reduced to a sum which is less than that maximum rent,

the maximum rent shall be reduced to an amount equal to the reduced reckonable rent.

(2) This paragraph applies in a case where—

- (a) a rent officer has made a determination in exercise of the Housing Act functions pursuant to an application by an authority under regulation 14(1)(e) (pre-tenancy determination);
- (b) subsequent to that determination the reckonable rent for that dwelling is changed; and
- (c) a maximum rent is to be determined in relation to a claim for housing benefit by a claimant.

(3) In a case to which paragraph (2) applies, where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if the reckonable rent had not changed, the maximum rent shall be the reckonable rent as so reduced.

(4) In any other case to which paragraph (2) applies, the authority shall treat the reckonable rent to be that applicable to the determination by the rent officer referred to in paragraph (2)(a)."

Insertion of regulations 13C, 13D and 13E into the Housing Benefit Regulations 2006

4. After regulation 13ZB (change in reckonable rent) ⁽¹⁴⁾, as substituted by regulation 6, insert—

⁽¹⁴⁾ Regulations 13A and 13B were inserted into the Housing Benefit Regulations 2006, as they applied to pathfinder authorities, by regulation 122 of and Schedule 10 to those Regulations. A new Schedule 10 is substituted by regulation 20 of these Regulations. The new Schedule 10 does not include regulations 13A and 13B.

“When a maximum rent (LHA) is to be determined

13C.—(1) A relevant authority shall determine a maximum rent (LHA) in accordance with regulation 13D (determination of a maximum rent (LHA)) in any case where paragraphs (2) or (3) apply.

(2) This paragraph applies where a relevant authority has received—

- (a) a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;
- (b) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;
- (c) in relation to an award of housing benefit where the eligible rent was determined without reference to regulation 13A or 13D, a notification of a change of dwelling (as defined in regulation 2) where the change occurs on or after 7th April 2008; or
- (d) in relation to an award of housing benefit where a maximum rent (LHA) was determined in accordance with regulation 13D—
 - (i) notification of a change of a kind which affects the category of dwelling applicable to the claim;
 - (ii) notification of the death of a linked person, where the notification does not fall within head (i); or
 - (iii) notification of a change of dwelling.

(3) This paragraph applies on the anniversary of the LHA date.

(4) Where the LHA date is 29th February, the anniversary of the LHA date shall be 28th February.

(5) This regulation does not apply in a case where—

- (a) the landlord is a registered social landlord;
- (b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (savings provision) applies;
- (c) the tenancy is an excluded tenancy of a type falling within any of paragraphs 4 to 10 of Schedule 2;
- (d) the claim or award relates to—
 - (i) periodical payments of kind falling within regulation 12(1) (rent) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home; or
 - (ii) rent payable in relation to a hostel; or
- (e) rent under the tenancy is attributable to board and attendance, and—
 - (i) the relevant authority has made an application to the rent officer in accordance with regulation 13D(10) (board and attendance determination), regulation 15 (applications to the rent officer for determinations) or regulation 17 (substitute determinations or substitute redeterminations); and
 - (ii) the rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance and has notified the relevant authority of this in accordance with article 4C, 4D or 4E of the Rent Officers Order.

(6) In this regulation—

“the LHA date” means the date by reference to which the local housing allowance used to determine the maximum rent (LHA) was identified;

“registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996⁽¹⁵⁾ or, in Scotland, sections 57 and 59 of the Housing (Scotland) Act 2001⁽¹⁶⁾.

⁽¹⁵⁾ 1996 c. 52.

Determination of a maximum rent (LHA)

13D.—(1) Subject to paragraph (3) to (11), the maximum rent (LHA) shall be the local housing allowance determined by the rent officer by virtue of article 4B(2A)⁽¹⁷⁾ or (4) of the Rent Officers Order which is applicable to—

- (a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and
- (b) the category of dwelling which applies at the relevant date in accordance with paragraph (2).

(2) The category of dwelling which applies is—

- (a) the category specified in paragraph 1(1)(a) of Schedule 3B to the Rent Officers Order (one bedroom shared accommodation) where—
 - (i) the claimant is a young individual who has no non-dependant residing with him and to whom paragraph 14 of Schedule 3 (severe disability premium) does not apply; or
 - (ii) paragraph (b) does not apply because neither sub-paragraph (b)(i) nor (ii) are satisfied in the claimant's case and neither the claimant nor his partner (where he has one) is a person to whom paragraph 14 of Schedule 3 (severe disability premium) applies, or to whom the circumstances in any of paragraphs (b) to (f) of the definition of young individual applies (certain care leavers);
- (b) except where paragraph (a)(i) applies, the category specified in paragraph 1(1)(b) of Schedule 3B to the Rent Officers Order (one bedroom self-contained accommodation) where that applies in the claimant's case at the relevant date in accordance with the size criteria and—
 - (i) the claimant (together with his partner where he has one) has the exclusive use of two or more rooms; or
 - (ii) the claimant (together with his partner where he has one) has the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking, and in this sub-paragraph "room" means a bedroom or room suitable for living in except for a room which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
- (c) in any other case, the category which corresponds with the number of bedrooms to which the claimant is entitled in accordance with paragraph (3) **to a maximum of five bedrooms**.

(3) The claimant shall be entitled to one bedroom for each of the following categories of occupier (and each occupier shall come within the first category only which applies to him)—

- (a) a couple (within the meaning of Part 7 of the Act);
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child.

(4) The relevant authority shall determine —

- (a) the cap rent (in accordance with the definition in paragraph (12)); and
- (b) whether the cap rent exceeds the applicable local housing allowance.

⁽¹⁶⁾ 2001 asp 10.

⁽¹⁷⁾ Article 4B was inserted by S.I. 2003/2398 and paragraphs (2A) and (4) inserted by S.I. 2007/[].

(5) Where the applicable local housing allowance exceeds the cap rent, for the purpose of determining the appropriate maximum housing benefit, the amount of the claimant's liability shall be the amount of the applicable local housing allowance.

(6) Where paragraph (5) applies, the maximum rent (LHA) shall be the lower of—

- (a) the applicable local housing allowance; or
- (b) the amount equal to the cap rent determined in accordance with paragraph (4)(a) plus £15.

~~(7) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (2)(c) has been determined, the relevant authority shall—~~

- ~~(a) apply to the rent officer for local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market area falling within its area, in whole or in part, at the relevant date, which shall be specified in the application; and~~
- ~~(b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.~~

(8) Subject to paragraph (9), where—

- (a) the relevant authority receives a request from a person stating that—
 - (i) he is contemplating occupying as his home a dwelling within the area of the relevant authority which contains a specified number of bedrooms, exceeding five, and
 - (ii) that if he does so, he is likely to claim housing benefit; and
- (b) no local housing allowance determination is in effect for a broad rental market area falling within, in whole or in part, the area of the relevant authority for the category of dwelling containing the number of bedrooms specified in the request,

the relevant authority shall apply to the rent officer for local housing allowance determinations for each broad rental market area falling within its area, in whole or in part, for the category of dwelling containing the number of bedrooms specified in the request, and in this sub-paragraph "bedroom" means has the meaning specified in paragraph 1(2) of Schedule 3B to the Rent Officers Order.

(9) The request must—

- (a) be made on a form approved by the relevant authority for the purpose of making a request under paragraph (8);
- (b) be properly completed; and
- (c) contain the following matters—
 - (i) the signature of the prospective occupier;
 - (ii) the signature of the person to whom the prospective occupier would incur liability to make such payments;
 - (iii) a statement that the person in paragraph (ii) agrees to the application being made for that determination; and
 - (iv) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit.

(10) The relevant authority shall apply to the rent officer for a board and attendance determination to be made in accordance with article 4C of the Rent Officers Order where—

- (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C; and
- (b) part of the rent under the tenancy appears to the relevant authority to be likely to be attributable to board and attendance.

(11) Where an application to a rent officer is required in accordance with paragraph (10) it shall be made within the same period following the day on which the relevant authority becomes obliged to determine a maximum rent (LHA) by virtue of regulation 13C as would be required if the application were to be made under regulation 14(1).

(12) In this regulation—

“cap rent” means the aggregate of such payments specified in regulation 12(1) (rent) which the claimant is liable to pay, or is treated as liable to pay by virtue of regulation 8 (circumstances in which a person is treated as liable to make payments in respect of a dwelling), subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent);

“occupiers” means the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household;

“relevant date” means, as the case may require—

- (a) the date of the claim to which the claim or relevant information referred to in regulation 13C(2)(a) or (b) relates;
- (b) the date of the change of dwelling, change which affects the category of dwelling, or date of death, to which a notification referred to in regulation 13C(2)(c) or (d) relates; or
- (c) the date on which the anniversary of the LHA date referred to in regulation 13C(3) falls.

“tenancy” includes

- (a) in Scotland, any other right of occupancy; and
 - (b) in any other case, a licence to occupy premises,
- and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly.

Publication of local housing allowances

13E.—(1) A relevant authority shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas falling in whole or in part within its area, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the authority.”.

Appendix One

Gill Saunders
Social Security Advisory Committee
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London WC2A 2LS

Address: Housing Benefit Strategy Division
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SW1H 9HA

Telephone: 020 7449 5329

Date: 12 January 2009

Dear Gill,

The Housing Benefit Amendment Regulations (2009)

As you are aware, the Secretary of State proposes to amend existing regulations that legislated for the national rollout of the Local Housing Allowance (LHA). Under these proposals, levels of Housing Benefit will be capped at a maximum level of the five bedroom LHA rates from April 2009.

On 7 January 2008, the draft regulations were discussed at the Committee's meeting. Members agreed that the proposals should be formally referred and also requested further information on the options that had been considered before arriving at a model to cap LHA levels at the five bedroom rate.

I now enclose a short supplement to the Explanatory Memorandum which gives a high level explanation of options considered.

I hope this is helpful.

Yours sincerely

Penny Higgins
Housing Benefit Strategy Division

Amendment to Housing Benefit regulations
Proposal to cap Local Housing Allowance levels at five bedroom rate

Supplementary explanatory memorandum

Introduction

1. This memorandum is intended to supplement information already provided on the proposal to cap LHA levels at a maximum of the five bedroom rate for customers in the private rented sector. It addresses questions from the Social Security Advisory Committee members about what other policy options were considered to set LHA rates for properties with 6 or more bedrooms.
2. Prior to the issues of exceptionally high rates of LHA in payment for some large properties being highlighted in the media, the Department had considered alternative options for setting LHA rates for large properties in order to address difficulties in setting rates for such properties. The options considered are outlined here.

Options considered

Option 1: Capping all LHA rates at 5 bedroom rates

3. This option is the proposed amendment to LHA for larger properties that has been put forward in draft regulations and has been discussed in detail in the information already provided to the Social Security Advisory Committee.
4. The proposal supports the aims for a more transparent system, compared to the current system, as there will only be the set of rates up to and including 5 bedrooms which, as now, will be published on The Rent Service website and by local authorities. This option also retains the simplicity of the LHA system as there are no separate systems for larger properties. In addition, it would more accurately reflect the circumstances of low income workers who could not afford rents for properties with 6 or more bedrooms and it would recognise that few customers entitled to a larger property are able to access one in the market. It should also go some way towards preventing landlords from profiting by charging very high rents to larger families regardless of the size of accommodation they are renting.

Option 2: Capping LHA rates at 5 bedroom rates, with concession

5. This option is the same as option 1, but provides the concession that if the customer is able to find a property with 6 or more bedrooms a reasonable market rent will be determined by an individual referral to the rent officer.
6. The option was rejected because it lacks transparency as larger families may not know what element of support they would be entitled to in advance – a key aim of the LHA. It could also give benefit recipients access to properties that

could not be afforded by low income workers, potentially creating barriers to entering work.

Option 3: Technical derivations of additions for extra bedrooms

7. Under this option the applicable 5 bedroom rate would be used as the base for calculating LHA rates for properties with 6 or more bedrooms, but an additional amount would be added for each extra bedroom entitlement above 5 bedrooms. Various options were considered for deriving additional amounts of benefit for each extra bedroom by analysing the LHA rates for smaller properties.
8. This option was rejected as it would introduce extra complexity into the LHA system. It would constitute a different system for larger properties and the method of calculating these rates may not be transparent to customers. It should also be noted that property market for larger sized properties is such that rents may not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider. In addition, the derived rates would not reflect real market rents so that larger families still may not be able to access suitably large accommodation. It would also not recognise the scarcity of properties for rent with 6 or more bedrooms and, like option 2, would give benefit recipients advantages over low income workers potentially reducing incentives to return to work.

Conclusion

9. On balance it was determined that our proposed option had the most advantages in terms of ensuring fairness both to the customer and the taxpayer.
10. The Committee has decided to consult on the Department's proposals. This supplementary memorandum provides additional information in response to questions from the Committee in parallel to that consultation.