

**EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (LOCAL HOUSING ALLOWANCE,
INFORMATION SHARING AND MISCELLANEOUS)
AMENDMENT REGULATIONS 2008
2008 No. 586**

**THE RENT OFFICERS (HOUSING BENEFIT FUNCTIONS)
AMENDMENT ORDER 2008
2008 No. 587**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 Taken as a whole, these instruments make a number of amendments to the Housing Benefit Regulations and Rent Officers Orders that provide for the national rollout of the Local Housing Allowance (LHA) on the 7th April 2008.
 - 2.2 The LHA is a reform of the Housing Benefit scheme that provides for a flat rate rent allowance depending on household size, composition and location. In most cases, benefit will be paid directly to the customer.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The purpose of **The Housing Benefit (Local Housing Allowance, Information Sharing and Miscellaneous) Amendment Regulations 2008** is to:
 - a. Ensure that local authorities cannot recover more overpaid benefit from a landlord than the amount that was paid to him in cases where the customer has received some of the benefit themselves;
 - b. Add certain types of former local authority property to the categories of cases to which the LHA arrangements do not apply such as those properties transferred under stock transfer arrangements;
 - c. Provide a mechanism whereby private tenancies transferred into the social sector can move off assessment under the LHA rules where there is a change in the status of the landlord or the property itself is transferred;

- d. Broadly replicate, in Regulation 5, the provisions in Regulation 4 with respect to customers of pensionable age and removes references to couples of pensionable age fulfilling the definition of care leavers; and
- e. Provide that changes in circumstances should take effect from the Monday if the change occurred on that date or the first day in the benefit week following the change rather than the previous week.

4.2 The Regulations also take the opportunity to correct some minor errors that have been identified since the original Regulations were made. These are listed at paragraph 7.

4.3 **The Rent Officers (Housing Benefit Functions) Amendment Order 2008** amends the Orders that relate to the functions of Rent Officers in England, Wales and in Scotland by providing that LHA rates to take effect on the first day of the month rather than the first working day. This will prevent a situation occurring whereby a previous month's LHA rate might be applied to a claim commencing around the start of a month.

5. Territorial Extent and Application

5.1 The Regulations and the Order apply to Great Britain.

6. European Convention on Human Rights

As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 LHA provides for a new way of calculating housing benefit for certain tenancy types. LHA will apply to customers living in the de-regulated private rented sector and receiving benefit towards their rent. LHA, unlike the current system which is based on property specific rent officer determinations, will pay similar amounts of benefit to customers with similar circumstance living in the same area. Customers will not be able to elect for payments to be made to their landlord; the intention is to make payments of benefit direct to tenants, subject to safeguards.

7.2 These Regulations, and the Rent Officers Amendment Order, make a number of amendments to Regulations that provide for the national rollout of the LHA.

7.3 The Regulations also make broadly similar provisions in respect of customers who have achieved the qualifying age for State Pension Credit. It also removes an unnecessary reference to couples of pensionable age satisfying the age criteria for being a care leaver.

Recovery of overpayments from landlords

- 7.4 Housing Benefit Regulations provide for the recovery of overpaid benefit from third parties, such as landlords, where they have received payment of benefit in respect of the customer. Under LHA rules, customers may themselves keep up to £15 per week of any excess benefit above their contractual rent even where the landlord is receiving payments of benefit themselves. Potentially, if an overpayment were to occur, the local authority could recover all of the overpaid benefit from the landlord even if some of the benefit was actually paid to the customer.
- 7.5 Regulations 2 and 3 amend these Regulations to limit the amount of benefit that may be recovered from a landlord to no more than he has received in benefit.

Former local authority properties

- 7.6 The LHA is intended to apply to customers renting their homes in the deregulated private sector only with the types of tenancy excluded from the LHA set out in Regulation 13C of the Housing Benefit Regulations 2006. This definition does not provide for former local authority properties that were subject to large scale voluntary transfer (LSVT) arrangements because it was believed that all of these properties were provided for by other exclusions. This has not proved to be the case.
- 7.7 Regulation 4 paragraph 4 specifically excludes LSVT properties from assessment under LHA rules.

Tenancies transferring into the social sector

- 7.8 The LHA is not intended to apply in the registered social housing sector but, once a customer becomes eligible for LHA, they will continue to be eligible until they move address or have a break in their claim. However, in cases where a landlord were to move his housing stock into the social sector, or sells his stock to a registered social landlord, there is presently no facility to move a tenant so effected off LHA assessment rules.
- 7.9 Regulation 4 paragraph 5 provides a mechanism to refer claims to the rent officer where a change occurs where the customer would be excluded from assessment under the LHA. This ensures that customers whose tenancy is transferred into the social sector will be able to move off LHA.

Effective date of LHA rates

- 7.10 LHA rates are set by rent officers and provided to local authorities on a monthly basis. As currently drafted, these rates will apply from the first working day of the appropriate month on which the determination is made. However, if a claim is received on a weekend or bank holiday

that coincides with the start of a month a situation could occur where the claim would be effective from the following Monday but the previous month's LHA would apply. For example, in June 2008, new LHA rates will apply from 2nd June 2008 but any claims received on the 1st June will have May's LHA rates applied.

- 7.11 The Rent Officers (Housing Benefit Functions) Amendment Order 2008 provides that LHA rates will apply from the first day of the month rather than the first working day ensuring that there is consistency between the effective date of a claim and the appropriate LHA rate that will be applied.

Other minor amendments:

Definition of "registered housing association"

- 7.12 The definition of "registered housing association" has been clarified to more accurately reflect the appropriate provisions in the Housing Act 1996 and the Housing (Scotland) Act 2001.

Effective date of change

- 7.13 Under current Housing Benefit rules, changes in circumstance take effect from the date of change, if that is the first day in the benefit week, or from the first day of the benefit week following the date of change. Due to a drafting error, changes in circumstances under LHA rules would have been effective, erroneously, from the first day in the benefit week preceding the change.
- 7.14 Regulation 6 corrects this error by reverting back to previous arrangements specifying the effective date of change.

Consultation

- 7.15 Formal consultation with the three local authority associations took place in January 2008. The associations themselves consulted with their advisory panel and provided a composite response which indicated that they were content with the amendments set out in these Regulations.

Guidance

- 7.16 Detailed guidance has been provided to all local authorities along with a Communications Toolkit. Guidance will be updated to reflect the amended Regulations and Rent Officers Order.

Consolidation

- 7.17 The DWP concluded an exercise to consolidate the Housing Benefit and the Council Tax Benefit Regulations in March 2006. The consolidated Regulations came into force on 6th March 2006. Therefore, there are no plans to carry out an exercise in the near future. However, an informal consolidated text will be available on the DWP website approximately three to four months after the Regulations and Order come into force.

8. Impact

- 8.1 A full Impact Assessment has not been prepared for these instruments as they have only a negligible impact on the costs of business, charities and the voluntary sector.
- 8.2 The impact on the public sector is negligible.

9. Contact

If you have any queries regarding the instrument, please contact Adrian Pateman at the Department of Work and Pensions on telephone number: 0207 712 2105 or e-mail: Adrian.Pateman@dwp.gsi.gov.uk