

# Explanatory Memorandum for the Social Security Advisory Committee

The Housing Benefit (Benefit Cap) Regulations 2012

For the meeting of the Social Security Advisory Committee on  
Wednesday 13 June 2012

# Introduction

1. These regulations will implement a cap on working age benefits as set out in Sections 96 and 97 of the Welfare Reform Act 2012 (see Annex A). In April 2013 a cap will be introduced on the total amount of benefit that working-age claimants can receive so that households<sup>1</sup> on out of work benefits will no longer be entitled to receive more in benefit than the average weekly wage, after tax and national insurance. Initially the cap will be administered by local authorities via Housing Benefit. From October 2013 it will be applied for all new claims to Universal Credit including those migrated from existing benefits.

2. There will be two sets of regulations for the cap. These regulations will introduce the cap on Housing Benefit from April 2013 and the Universal Credit Main Scheme regulations will provide for an overall benefit cap in Universal Credit. They are both subject to the affirmative procedure in Parliament with the Housing Benefit regulations subject to consultation with local authorities.

3. The Housing Benefit Regulations set out:

- The level of the benefit cap;
- how a household's overall entitlement to welfare benefits for comparison with the cap will be calculated;
- what benefits will or will not be taken into account;
- how any reduction will be applied;
- exemptions;
- the relationship between the cap and benefit sanctions and other deductions;
- rules on decision-making and appeals.

## Policy Context

4. The benefit cap will complement the introduction of Universal Credit in acting as a work incentive. Universal Credit will make the benefits of work clearer and simpler: encouraging people to move into work and helping them see the financial benefits of increasing the number of hours they work. The benefit cap will help to make work pay as those claimants moving into work will be exempted from the measure.

5. The benefit cap will:

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<sup>1</sup> For the purposes of the benefit cap we define a household as a claimant, their partner and any children they are responsible for and who live with them.

- act as an incentive to work. Limiting the amount of benefit that households on out of work benefits can receive will mean it will be more likely they will be better off on entering work;
- promote greater fairness in the welfare system between those on out of work benefits and tax payers in employment by preventing households on out of work benefits from receiving a greater income from benefits than the average weekly wage;
- reduce benefit expenditure and help tackle the financial deficit.

## The level of the cap

6. The 2010 Spending Review announced that from 2013 household welfare payments will be capped on the basis of median earnings after tax and national insurance contributions for working households. An estimate for this was produced using the Department for Work and Pensions' Policy Simulation Model.<sup>2</sup> In line with this and with figures used in Parliamentary debates during the passage of the Welfare Reform Bill the Government has decided that the level of total entitlement to welfare benefits will be capped at £500 a week for couples and lone parent households. The level of entitlement for single adults will be capped at £350 per week. Again this was the estimate used during Parliamentary debates and is approximately 70% of the couple rate and is in line with the Organisation for Economic Co-operation and Development's (OECD) equivalisation factors which adjust incomes to take into account both the size and composition of households.

## Eligibility

7. The benefits that will be taken into account when calculating the cap are:

- Bereavement Allowance
- Carer's Allowance
- Child Benefit
- Child Tax Credit
- Employment and Support Allowance except where the Support Component has been awarded
- Guardian's Allowance
- Housing Benefit
- Incapacity Benefit
- Income Support
- Jobseeker's Allowance
- Maternity Allowance
- Severe Disablement Allowance
- Widowed Parent's Allowance
- Widow's Benefit

8. Any benefits not specified in the regulations as to be taken into account will be disregarded. This includes:

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<sup>2</sup> This is a static microsimulation model based on data from the 2008-09 Family Resources Survey, up-rated to the relevant year's prices, benefit rates and earnings levels. The modelling was carried out under the current benefit system rules.

- Bereavement payment
- Council Tax Benefit or the replacement localised support for Council Tax
- Discretionary Housing Payments
- Retirement Pension
- Social Fund Payments and those payments being replaced by local authorities and the devolved administrations from April 2013 including
  - Cold Weather Payments
  - Funeral Payments
  - Sure Start Maternity Grants
- State Pension Credit
- Statutory Adoption Pay – Paid by employers
- Statutory Maternity Pay – Paid by employers
- Statutory Paternity Pay – Paid by employers
- Statutory Sick Pay - Paid by employers.

## Exceptions

9. Certain benefits and payments will result in exemption from the cap. Exemptions will apply for:

**Entitlement to Working Tax Credit:** In order to increase the incentive to find a job or increase hours worked, all benefit households which are entitled to Working Tax Credit (WTC) will be excluded from the cap. This includes households who are working sufficient hours to qualify for WTC but whose earnings are so great that they have been awarded a “nil entitlement.”

**Receipt of Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Industrial Injuries Benefits (and equivalent payments made as part of a war disablement pension or the Armed Forces Compensation Scheme) or the Support Component of Employment and Support Allowance:** This is in recognition of the additional financial costs that can arise from disability and that disabled people will have less scope to alter their spending patterns or reduce their housing costs.

**War Widows and Widowers:** An exemption will apply to any war widow or widower who is in receipt of a pension paid under the relevant parts of the War Pension Scheme, Armed Forces Compensation Scheme or analogous schemes. This supports the aim of the Armed Forces Covenant to recognise sacrifice of those seriously injured or killed in the service of their country.

## Grace Period

10. There will be a grace period whereby the benefit cap will not be applied for 39 weeks to those who have been in work continuously for the previous 12 months. This period will be for a set 39 weeks during which the benefit cap will not be applied. If a grace period is applicable it will remain in place irrespective of any reportable

change of circumstances made by the claimant during the 39 weeks. The grace period will apply equally to those whose job finishes before or after the introduction of the cap. For example, in the case of somebody who finishes work in February 2013, prior to the cap's introduction in April 2013, the cap would not apply until 39 weeks later in November 2013.

## Commencement and application of the proposed changes

11. The Housing Benefit (Benefit Cap) Regulations 2012 will come into force from a date in April 2013 to be specified in the regulations. From this date any household who during the reference period receives more than the cap level will have their housing benefit reduced to the cap level. The benefit cap will only be applied to claimants who fall under the working age housing benefit regulations and not the state pension credit housing benefit regulations.

## Explanation and purpose of the regulations

12. **Regulation 2** inserts new provisions to The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 to allow a decision to reduce housing benefit under the benefit cap to be revised at any time and to allow local authorities to supersede an earlier decision which has applied the benefit cap. It also sets out the effective date from which a supersession should be applied. This should be;

- where the supersession results in the cap being applied or an increase in the reduction to be made under the cap, the decision should be applied from the day it is made.
- where the supersession results in the cap ceasing to apply or a decrease in the reduction to be made under the cap, the decision should be applied from the date on which the relevant change occurred.

13. **Regulation 3(1)** makes consequential amendments to the Housing Benefit (General) Regulations 2006 to include definitions for employment and support allowance and jobseeker's allowance in regulation 2. It also inserts a new provision into those dealing with extended payments of housing benefits so that where a claimant whose housing benefit has been reduced under the benefit cap is eligible for an extended payment, the rate of the extended payment should be calculated using the amount of housing benefit before any reduction for the benefit cap is made.

14. **Regulation 3** also inserts a new part, "Part 8A" into the Housing Benefit Regulations 1996, which provides for the application of the benefit cap. Specifically:

## **Regulation 75A – Circumstances in which a benefit cap will apply**

This regulation stipulates that unless a household meets the exemption criteria as defined in regulation 75E, the benefit cap will apply when a local authority determines that the total amount of welfare benefits a couple or a single claimant is entitled to is above the level of the cap.

## **Regulation 75B – Determination of whether a benefit cap applies**

This regulation provides for when the local authority should apply the benefit cap and make any changes to the level of reductions being made under the benefit cap provisions.

DWP is currently working with local authorities to develop the operational design for the delivery of the benefit cap. It is envisaged that the Secretary of State for Work and Pensions will provide local authorities with a notification (in the form of a computerised data scan sent by Jobcentre Plus) for all cases where it is believed that the benefit cap may apply or the rate of its reduction might need to be altered. Regulation 75(B) provides that local authorities need not apply the benefit cap or alter the amount of the reduction until it receives this notification from the Secretary of State. However there will be no legal impediment to the local authority making a determination without such a notification if it has the information to enable it to do so. For example where it has carried out an income assessment and it is apparent that the cap might apply.

## **Regulation 75(C) – Calculating the amount of welfare benefits**

This sets out the manner for determining the total amount of welfare benefits to be considered for the purposes of applying the benefit cap.

The total level of overall entitlement to welfare benefits for the purposes of the cap will be calculated by adding together the amount of entitlement for each of the prescribed benefits in payment except in the case of Child Tax Credit.

The award will be the amount for each benefit after any necessary deductions for earnings, income, or capital.

Where a claimant receives a welfare benefit at a rate below which they are entitled to it, then the amount the LA should use should be the gross amount payable. However, the gross amount payable should be the amount before reductions including sanctions, recoveries of over-payments or Third Party Deductions. The current draft sets out a list of these relevant reductions but we will consider if there is an easier way of expressing this.

The exception will be Child Tax Credit where the amount should be determined as per current Housing Benefit regulation 40(6) which prescribes how Tax Credits

should be taken into account for the purposes of determining entitlement to housing benefit.

## **Regulation 75(D) – Reduction of Housing Benefit**

This regulation prescribes that under the benefit cap, the local authority must reduce the level of housing benefit by the amount by which the claimant's and their partner's (if applicable) total entitlement to welfare benefits exceeds the level of the cap.

In circumstances where the housing benefit weekly payment would reduce to below £0.50 nil a de minimis weekly amount of £0.50 will remain in payment to enable access to the Discretionary Housing Payment Scheme (DHP) and passported benefits.

Where a claimant receives a welfare benefit at a rate below which they are entitled to it, then the amount the LA should use should be the gross amount payable. However, the gross amount payable is the amount before any reduction for sanctions, recoveries of over-payments or Third Party Deductions.

## **Regulation 75(E) – Exceptions to the benefit cap**

This regulation provides for exceptions to the benefit cap should apply.

- The benefit cap will not apply for 39 weeks for those households who have been in employment and have met the conditions set out in regulation 75F. (See below.)
- If the claimant is, or the claimant and their partner are jointly, entitled to Working Tax Credit the household will be exempt from the benefit cap.
- If the claimant or their partner is in receipt of one of the benefits listed below the household will be exempt for the period that entitlement to the exempting benefit is in place;
  - Employment and Support Allowance support component (exemption will start from the point the support component is awarded)
  - Attendance Allowance
  - Industrial Injuries Benefits (this includes all the benefits listed in s. 94(2) of SSCBA 1992, which are disablement benefit/pension, reduced earnings allowance, retirement allowance and industrial death benefit)
  - War Pension (as defined by the regulation)
- If the claimant, their partner or a child or young person for whom they have responsibility for is in receipt of Disability Living Allowance or Personal Independence Payments (when they are introduced) the household will be exempt from the benefit cap.

Where a person is not receiving Disability Living Allowance, Attendance Allowance or a War Disablement Pension because they are in hospital or a care home the exceptions will continue to apply

## Regulation 75(F)

This regulation establishes when the grace period should start and sets out its qualifying conditions.

The grace period should begin on the day after the last day for which payment was received and as set out in regulation 75(F)(i) will run consecutively.

The qualifying conditions for the grace period are that the claimant or their partner must have been:

- in work for at least 50 weeks out of 52 weeks prior to the last day for which payment was received;
- in the last employment in this period, work in the last full week was for at least 16 hours per week at the point employment ended and;
- during the period(s) of employment they were not entitled to Income Support, Jobseeker's Allowance or Employment and Support Allowance.

The qualifying conditions for the grace period can be met by either member of a couple but this must be done so independently not cumulatively.

The regulations allow for up to two weeks between periods of employment when assessing a continuous 12 month period. This offers protection to people who may have moved employment in this period and who have had a short break between employers/contracts. A claimant will be allowed to have claimed an out of work benefit in these two weeks.

## Regulation 75G - Interpretation

If the claimant is a part of a **polygamous marriage** their partner for benefit cap calculations will be the other member of the polygamous marriage to whom they were first married. Any other partners will be treated as being in a separate household and assessed accordingly.

The “**reference period**” over which application of the benefit cap will be assessed will be a week. The cap will not be considered for any part week payments of Housing Benefit.

The “**relevant amount**” is the maximum amount of welfare benefits that a single claimant or couple can be entitled to unless they meet one of the criteria for an exemption. As set out above, the relevant amount for single childless claimants will be £350 a week and £500 a week for everybody else.



The “welfare benefits” that are to be included when determining whether the benefit cap should be applied are listed here.

## Impacts of the proposed changes

15. An Impact Assessment and Equality Impact Assessment is available on the DWP website. <http://www.dwp.gov.uk/docs/household-benefit-cap-wr2011-ia.pdf> & <http://www.dwp.gov.uk/docs/eia-benefit-cap-wr2011.pdf> The latest impact assessment suggests that, in the absence of any behavioural response to the policy, around 67,000 households will have their benefits reduced by the policy in 2013/14 (this is roughly one per cent of the out-of-work benefit caseload) and 75,000 in 2014/15. Within these households, and in 2013/14, the number of adults affected is 90,000 and the number of children 220,000.

16. It is important to note that these estimates were produced before the additional easements announced on the 1<sup>st</sup> February 2012 which included the exemption of households who were in receipt of the support component of Employment and Support Allowance and a nine-month grace period for claimants who were in work for 52 weeks or more before the start of their claim.

17. The Impact and Equality Impact Assessments set out potential impacts as follows:

- **Family type:** About 90% of the households that will lose benefit from the introduction of the cap will be families. One third are likely to be couples and the almost two-thirds will be single parents.
- **Family size:** Around 60% of households affected will have 4 or more children. Around 30% will have between one and three children and around 10% will have no children.
- **Gender:** Modelling suggests that around 60% of customers who are likely to have their benefit reduced by the cap will be single females but only around 3% will be single men.
- **Age:** Modelling suggests that around 80% of those affected will be aged 25 to 44. As those under 25 tend to receive less benefit, most of the other 20% affected will therefore be 45 or over.
- **Disability:** We will be excluding households where someone is in receipt of Disability Living Allowance, Attendance Allowance, Industrial Injuries Benefit or the support component of Employment and Support Allowance. However, disability can be defined in a number of ways and receipt of these benefits is just one potential way. Of the households who lose from this policy, based on internal modelling, we expect roughly half will contain somebody who is classed as disabled under the Disability Discrimination Act.

- **Ethnicity:** A large proportion of those affected are likely to be large families, implying that households from cultural backgrounds with a high prevalence of large families and households from certain ethnic minorities that tend to have a higher proportion of large families are more likely to be affected.
- **Geography:** We expect that around 54% of those affected by the cap will be based in Greater London. This is because of the higher rents payable in London. Fewer than three per cent of affected households are in Wales (under 2,000); and fewer than five per cent are in Scotland (just under 3,000).

## Consultation

18. We are consulting on these regulations with local authorities. This process begun on 18<sup>th</sup> May 2012 and we have asked for responses by 29<sup>th</sup> June 2012.

## Information and communications strategy for the changes

19. We are giving all existing claimants who could potentially be affected by the cap early notice; so we can offer them appropriate support to change their circumstances and move into work. During May 2012 we wrote to all claimants potentially affected by the cap from April 2013 and we are planning to repeat this exercise in October 2012. A help-line has been set up to answer questions on the cap. It will provide general information about the changes and the support people can get but they will not have full access to benefit information. The help-line number is 0845 6057064 or text-phone 0845 6088551 for people with hearing or speech impairments.

20. There is a wide range of help available including employment support offered by Jobcentre Plus, the Work Programme and the Work Choice programme. The Department will work intensively with claimants explaining and identifying the support available locally and how they can look at other options if appropriate.

21. We are working closely with other Government Departments and key stakeholders at a national level to ensure they understand what the cap is and the impact it has on their business and the people they represent. Jobcentre Plus will mirror this work at a local level to understand the implications for the local landscape and economy in order to identify the required help and support needed in their area. Jobcentre Plus districts will be working closely with local authorities in their area to offer joint support to those affected by the cap.

22. Some families affected by the benefit cap may be receiving help as part of the Troubled Families Programme. We will work closely with Troubled Family co-ordinators in local authorities, and with Department for Communities and Local Government (DCLG), to identify these families and ensure that they are aware they may be affected by the cap and can put the appropriate support measures in place.

# Monitoring and evaluation of the proposed changes

23. There will be a full evaluation of the benefit cap which will explore its effectiveness and analyse the appropriateness of the policy design and delivery model. The evaluation will inform any recommendations to Ministers on whether the cap would benefit from any changes to its structure or delivery. Linked to this, the Minister for Employment announced to Parliament on 1<sup>st</sup> February 2012 that the Department will publish a review of the cap after the first year of its operation. The review will cover all the areas required for the evaluation of government policies and will be published in autumn 2014.

## Key Themes of the evaluation

- **Delivery** – How effective has the delivery of the benefit cap been (in all its delivery stages)? How effective has staff training and awareness raising been? How have claimants experienced the benefit cap? What has happened in terms of support, use of the Work Programme? How effective have the working relationships been between DWP, DCLG and LAs? How has the cap impacted on JCP and LAs' performance?
- **Work and Well Being** – What impact has the cap had on movement into work or increases in hours of employment. What impact has the cap had on work retention and progression, hours worked, job tenure?
- **Behaviour Change** – What impact has cap had on claimants' behaviour at household level? What impact has cap had on where claimants can afford to live, on household structure?
- **Income and Well Being** – What impact has the cap had on claimants' income levels? How has the cap impacted on the management of household finances and budgeting?
- **Beliefs and Expectations** – What impact has cap had on attitudes towards work and benefit receipt? What impact has cap had on public attitudes towards benefit receipt?
- **Wider Indicators** – What impact has cap had on the number of workless households? What impact has cap had on the number of children in poverty? What impact has cap had on the number of people in temporary accommodation?

# Extract from Welfare Reform Act 2012

## PART 5

### SOCIAL SECURITY: GENERAL

#### *Benefit cap*

#### 96 Benefit cap

(1) Regulations may provide for a benefit cap to be applied to the welfare benefits to which a single person or couple is entitled.

(2) For the purposes of this section, applying a benefit cap to welfare benefits means securing that, where a single person's or couple's total entitlement to welfare benefits in respect of the reference period exceeds the relevant amount, their entitlement to welfare benefits in respect of any period of the same duration as the reference period is reduced by an amount up to or equalling the excess.

(3) In subsection (2) the "reference period" means a period of a prescribed duration.

(4) Regulations under this section may in particular—

(a) make provision as to the manner in which total entitlement to welfare benefits for any period, or the amount of any reduction, is to be determined;

(b) make provision as to the welfare benefit or benefits from which a reduction is to be made;

(c) provide for exceptions to the application of the benefit cap;

(d) make provision as to the intervals at which the benefit cap is to be applied;

(e) make provision as to the relationship between application of the benefit cap and any other reduction in respect of a welfare benefit;

(f) provide that where in consequence of a change in the relevant amount, entitlement to a welfare benefit increases or decreases, that increase or decrease has effect without any further decision of the Secretary of State;

(g) make supplementary and consequential provision.

(5) In this section the "relevant amount" is an amount specified in regulations.

(6) The amount specified under subsection (5) is to be determined by reference to estimated average earnings.

(7) In this section “estimated average earnings” means the amount which, in the opinion of the Secretary of State, represents at any time the average weekly earnings of a working household in Great Britain after deductions in respect of tax and national insurance contributions.

(8) The Secretary of State may estimate such earnings in such manner as the Secretary of State thinks fit.

(9) Regulations under this section may not provide for any reduction to be made from a welfare benefit—

(a) provision for which is within the legislative competence of the Scottish Parliament;

(b) provision for which is within the legislative competence of the National Assembly for Wales;

(c) provision for which is made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(10) In this section—

- “couple” means two persons of a prescribed description;
- “prescribed” means prescribed in regulations;
- “regulations” means regulations made by the Secretary of State;
- “single person” means a person who is not a member of a couple;
- “welfare benefit” means any prescribed benefit, allowance, payment or credit.

(11) Regulations under subsection (10) may not prescribe as welfare benefits—

(a) state pension credit under the State Pension Credit Act 2002, or

(b) retirement pensions under Part 2 or 3 of the Social Security Contributions and Benefits Act 1992.

## 97 Benefit cap: supplementary

(1) Regulations under section 96 may make different provision for different purposes or cases.

(2) Regulations under section 96 must be made by statutory instrument.

(3) A statutory instrument containing the first regulations under section 96 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) A statutory instrument containing other regulations under section 96 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In section 150 of the Social Security Administration Act 1992 (annual up-rating of benefits) after subsection (7) there is inserted—

“(7A) The Secretary of State—

(a) shall in each tax year review the amount specified under subsection (5) of section 96 of the Welfare Reform Act 2012 (benefit cap) to determine whether its relationship with estimated average earnings (within the meaning of that section) has changed, and

(b) after that review may, if the Secretary of State considers it appropriate, include in the draft of an up-rating order provision increasing or decreasing that amount.”

(6) In Schedule 2 to the Social Security Act 1998 (decisions against which no appeal lies) after paragraph 8 there is inserted—

*“Reduction on application of benefit cap*

8AA decision to apply the benefit cap in accordance with regulations under section 96 of the Welfare Reform Act 2012.”