

## Housing Benefit Circular

Department for Work and Pensions  
Caxton House, Tothill Street, London SW1H 9NA

# HB A1/2014

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	The Housing Benefit (Transitional Provisions) (Amendment) Regulations 2014

### Guidance Manual

The information in this circular affects the content of the HB Guidance Manual. Please annotate this circular number against Part A, Chapter A4 paragraphs 4.450, 4.1000, 4.1740, Annex A & D and Part A Chapter A8 paragraph 8.42.

### Queries

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Contents

para

**The Housing Benefit (Transitional Provisions) (Amendment) Regulations 2014**

Introduction ..... 1

**Changes to the Consequential Provisions Regulations**

Background.....4

Summary of changes.....9

**Changes to the Housing Benefit Regulations ..... 11**

Description of the Regulations.....Annex 1

Pre 1996 cases Question & Answer Brief.....Annex 2

# **The Housing Benefit (Transitional Provisions)(Amendment) Regulations 2014**

## **Introduction**

1. This circular gives details of the provisions contained in The Housing Benefit (Transitional Provisions) (Amendment) Regulations 2014 that were laid before Parliament on 5 February 2014. A description of the regulations can be seen at Annex 1.
2. These regulations make amendments to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (the “Consequential Provisions Regulations”) and the Housing Benefit Regulations 2006 (the “Housing Benefit Regulations”) to ensure that tenants whose Housing Benefit (HB) is payable in the form of a rent rebate or whose landlord is a registered housing association are subject to the Removal of the Spare Room Subsidy (RSRS) unless their HB was determined pursuant to the transitional protection on or before 31 March 2013.
3. The changes will come into force on 3 March 2014.

## **Changes to the Consequential Provisions Regulations**

### **Background**

4. Until 1996 HB was based upon the claimant’s actual rent. There were controls where the rent was unreasonably high or the dwelling unreasonably large. These were based upon rent officer determinations, but did not need to follow them, and restrictions could not be imposed upon certain groups of vulnerable claimants unless it was reasonable for them to move and there was alternative suitable accommodation available. The rules were changed in 1996 largely as a result of the de-regulation of the private rented sector as landlords were able to obtain high rents from claimants on HB. Rent allowance cases became subject to more stringent controls which took rent officer determinations as the basis for the eligible rent calculation.
5. When the rules were changed in 1996, transitional protection was provided for in paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. This applies to anyone in receipt of HB at the time of the change until they moved (subject to a move due to fire, flood, explosion or natural catastrophe rendering the home uninhabitable) or until they ceased to be entitled to HB (subject to a grace period of 4 weeks, or 52 weeks if the claimant or their partner is a welfare to work beneficiary). The protection can also be inherited on the death of the claimant in respect of the same dwelling provided certain conditions are satisfied (essentially by the same kinds of people who can benefit from protection on death under current rules).

6. The transitional protection provisions in respect of pre-1996 tenancies do not make a distinction between rent allowance and rent rebate cases (they are framed by reference to an individual being in receipt of HB).
7. The Department for Work and Pensions (DWP) were made aware that a small number of claimants may have been entitled to have their eligible rent calculated pursuant to paragraph 4(1)(a) of Schedule 3 of the Consequential Provisions Regulations rather than the provisions which relate to the RSRS.
8. Guidance was issued to local authorities (LA) on 8 January 2014 in HB Bulletin U1/2014 detailing the action that LAs should take to identify affected tenants. A number of operational issues have since been raised by LAs and a Question and Answer brief is attached at **Annex 2** to address these concerns.

### **Summary of changes**

9. The government has now amended the legislation to clarify the original intent that all social sector tenants are liable to have their HB reduced if they under-occupy, unless they are over state pension age or are covered by the other exceptions as set out in the Housing Benefit Regulation A13. This is regardless of the length of time they have been living in their property, or how long they have been in receipt of HB.
10. However the amendments preserve the transitional protection in respect of claimants who, on or before 31 March 2013, either:
  - i) had their eligible rent reduced pursuant to the transitional provisions; or
  - ii) relevant authority determined that the person's dwelling was larger than reasonably required or that the rent was unreasonably high pursuant to the transitional protection but had not reduced that person's eligible rent because the transitional provisions prevented it from doing so.

### **Changes to the Housing Benefit Regulations 2006**

11. The Housing Benefit Regulations have also been amended to clarify that a specific exemption from the RSRS applies to those falling within the transitional protection including those living in "exempt" accommodation.

## **Description of the Regulations**

### **The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (SI 2006/217)**

#### **Regulation 2(2)**

Paragraph 4 of Schedule 3 provides transitional protection for certain HB claimants. We have amended the regulations to ensure that this transitional protection does not apply to claimants whose HB is payable in the form of a rent rebate or whose landlord is a registered housing association subject to exceptions.

The exceptions mean that the transitional protection will continue to apply to social sector tenants who have attained the qualifying age for State Pension Credit or where a relevant authority had, on or before 31 March 2013, reduced their rent or determined that the dwelling was unreasonably large or the rent was unreasonably high pursuant to the transitional provisions but had not reduced the rent as the transitional provisions prevented them from doing so.

#### **Regulation 2(3)**

This inserts a reference to HB regulation 12BA (eligible rent and maximum rent (social sector)) in the definition of eligible rent.

### **Housing Benefit Regulations 2006 (SI 2006/213)**

#### **Regulation 3(1)**

This amendment provides that a maximum social sector rent shall not be determined in respect of claimants who fall within the transitional protection.

## ANNEX 2

**Pre 1996 cases: Question and Answer Brief**

**Q1: What happens to Discretionary Housing Payment (DHP) money that was awarded in these cases? For example, in cases where a DHP has been awarded to cover a shortfall due to an under-occupation deduction, a subsequent superseding decision to remove the shortfall will render the DHP irrelevant.**

LAs are only permitted to recover DHPs in very limited circumstances. This is where a claim was fraudulent or an error occurred when making the DHP determination. LAs must determine whether or not it is appropriate to recover a DHP.

If you decide to recover a DHP in respect of the period in question you may wish to bear in mind that such decisions may be subject to legal challenge.

In addition once the regulations are amended, claimants who are under-occupying will once again face a rent shortfall and this may be something that LAs may wish to take account of.

Recovery of DHPs cannot be made from HB or other income related benefits, and must be requested from the claimant.

**Q2: What happens in situations where the LA's records do not go back to 1996 to help to identify the affected cases? Examples of what the LA could use in "balance of probability" decisions**

As long as LAs take proportionate steps to identify affected claimants and verify their exemption from the size criteria this will be seen as sufficient. LAs should get as much information as possible and err on the side of caution. The regulations entitle LAs to request such documentation as they think reasonably necessary. Where a claimant is unable to provide documentation LAs will need to make a judgment based on the evidence available.

LAs might wish to consider as evidence, tenancy agreements, Customer Information System (CIS) records, housing association payment schedules and a statement from the claimant. These are merely examples of steps local authorities could take in identifying affected claimants, therefore should not be used as a prescriptive list.

**Q3: Review: Does the pre 1996 exemption only apply to housing association stock or should LA stock be taken into account.**

All social sector tenants satisfying the criteria will have to be reviewed and this includes where the landlord is the local authority or a registered provider of social housing.

**Q4: Numbers: How many people does the DWP believe will be affected?**

Individual LAs are best placed to identify the number of people affected in their respective areas.

**Q5: Categorisation: Where affected claimants have subsequently moved homes without needing to, how should these cases be dealt with?**

The regulations will be amended from 3 March 2014. This will mean that from this point the size criteria reduction will be reapplied. Therefore if a claimant has taken steps to downsize in order to meet the rent shortfall, it is likely that they took the necessary steps to avoid an ongoing under-occupation reduction. Any HB arrears should be made from 1 April 2013 to the point they moved address.

**Q6: Toolkit: Will LAs be provided with template letters to help in identifying affected cases?**

We believe that only a small number of cases will be affected. However, LAs are best placed to identify these cases and the steps taken will depend on the information the LA holds.

**Q7: Entitlement: What happens if the claimant and partner have swapped over at some point during the seventeen years - they both remain in the property for the entire period and there is no gap between the ending of one and starting of the other?**

Transitional protection will apply. This means that where a claimant and partner swapped claim roles, and all other conditions of entitlement are met they will satisfy the criteria.

**Q8: Will the legislation be retrospective and is there a time limit for affected claimants to ask for their HB to be reviewed from 1 April 2013 to when the legislation took effect?**

The amending legislation is not retrospective. The size criteria reduction will be re-applied from 3 March 2014. Time limits for a review should fall in line with revision rules. The maximum time period within which a decision could be reviewed is 13 months as set out in the Housing and Council Tax Benefit Decisions and Appeals Regulations 2001.

**Q9: For affected cases, if the LA recovers DHP money awarded in the financial year 2013/14 can this money be carried over to the next financial year 2014/15?**

There are no plans to allow carry over of DHP funding from 2013/14 to 2014/15, so any unspent funding, whether recovered or not allocated in the first place, would be required to be returned to the DWP as usual.

In completing the DHP claim form the DWP would expect recovered/returned payments of DHP to be netted off against expenditure in the year in which the payment is received.

**Q10: Will LAs be paid subsidy where they have been awarded HB to cover the loophole?**

LAs will be paid subsidy where they have correctly applied the provisions.

**Q11: Will there be compensation for claimants that have had to move as a result of applying the under-occupation deduction?**

DWP has overarching responsibility for the HB scheme but LAs administer the scheme on a day-to-day basis. Claimants are entitled to request compensation if HB has been paid late. This can be done via the LA complaints procedure or through the Local Government Ombudsman if the complainant remains dissatisfied when the procedure is exhausted.

**Q12: Will DWP be providing additional administrative funding for the actions taken to identify and contact affected claimants?**

DWP will provide new burdens funding for LAs in 2014/15 reflecting the ongoing costs of administering HB reforms, and further details will be made available in the Spring.

With regard to the recently identified unintended effects of the Housing Benefit Regulations, as HB Bulletin U1/2014 sets out, LAs only need consider reasonable steps to identify potentially affected claimants from their records. However, we will consider what addition to the new burdens funding is appropriate in these circumstances and any information you can provide to help our assessment would be welcomed.

**Q13: How can evidence be obtained for welfare to work cases?**

As it is unlikely that the claimant will still have any record that they were a 'Welfare to Work' beneficiary, in the absence of any indication on the CIS records that they participated in the scheme it would be advisable to send an LA17 form to the relevant Jobcentre Plus office in case there is any clerical record that the claimant was part of 'Welfare to Work' and to ask the claimant for a written statement that they participated. If no proof is available at all, then you will have to make a decision based on the evidence available, keeping in mind that a claimant should not be penalised for a failure to provide evidence which they do not possess and cannot reasonably be expected to acquire.