Section 7: Rent allowances

Introduction

This section provides guidance on
- the different types of rent allowance cases
- referral to the rent officer
- payments on account and indicative rent levels

Rent allowance cases

There are five types of rent allowance cases
- regulated tenancy cases
- pre-1996 cases (old scheme cases)
- maximum rent cases (new scheme cases)
- registered social landlord cases
- LHA cases

To claim subsidy correctly LAs need to establish to which type of case any claim they received relates.

Regulated tenancies

A letting is normally a regulated tenancy if the tenancy began before
- 15 January 1989, in England and Wales, or
- 2 January 1989 in Scotland

If it began after that date, as a result of a contract agreed before those dates, it may be a regulated tenancy.

The tenancy will also be a regulated tenancy if it is a new tenancy granted on or after those dates to an existing regulated tenant, other than a shorthold tenant, by the same landlord; or if it is granted as a tenancy of suitable alternative accommodation as the result of a court order and the court directed that it should be a regulated tenancy. Section 34 of the Housing Act 1988 refers.
Although no new regulated tenancies can be created now, other than those under section 34 of Housing Act 1988, new HB claims from those with regulated tenancies may occur.

The regulated tenancy rules apply to the tenancy and not the property and therefore in general any new tenancy on a property, which was formerly a regulated tenancy, will not be regulated.

The tenancy will cease to be a regulated tenancy if the tenant to whom the tenancy was originally granted leaves the property. However, if the original tenant dies the regulated tenancy may be transferred to his or her spouse, or someone living with the tenant as husband or wife. The regulated tenancy cannot be transferred to other members of the family.

If a LA believes a claim for HB is from a claimant who has a regulated tenancy they should consider the paragraphs above and the guidance from DCLG or Scottish Government, as appropriate.

LAs in England and Wales should refer to the booklet Regulated Tenancies published by DCLG Regulated Tenancies

Scottish LAs should refer to guidance from the Scottish Government.

The tenancy will not be a regulated tenancy if the landlord is

- a LA
- a new town development corporation
- a housing association registered with the Housing Corporation
- a housing trust which is a registered charity
- the Housing Corporation
- a Government Department

Subsidy and regulated tenancies

From April 2004 qualifying expenditure in regulated rent cases has received 100% subsidy. As other subsidy controls do not apply to these cases it is important that LAs keep records that clearly demonstrate these cases are regulated cases.
LAs should be able to provide evidence that the tenancy is regulated in order to claim subsidy. Ideally this would be a copy of the tenancy agreement or other documentation that establishes the tenancy started before 15 January or 2 January 1989. Where such evidence is not available LAs should document their reasons for treating the case as a regulated tenancy.

The eligible rent – the pre-1996 rules (old scheme cases)

Old scheme cases are those which have the eligible rent assessed using the rules which were in force on 1 January 1996. They are

- those who have been continuously entitled to benefit since 1 January 1996 from the same address, subject to permitted breaks in the award and permitted periods in other accommodation, and
- those who have claimed before and since 1 January 1996 and who live in ‘exempt accommodation’

Continuously entitled to benefit

This means;

- a person whose original claim was assessed prior to 2 January 1996 and has been continuously in receipt of HB at the same dwelling since that date. A change of dwelling due to fire, flood, explosion or natural catastrophe rendering the first dwelling uninhabitable is permitted. Certain breaks in the award are also permitted. See paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.
- Note: Cases backdated to before that date are included in this exemption provided the claimant was in occupation of the dwelling on or before 1 January 1996 and was liable to pay rent.
- the partner of somebody, whose original claim was assessed prior to 2 January 1996 and who has been continuously in receipt of HB at the same dwelling since that date (subject to permitted moves or breaks in the award), where the original claimant has died, been imprisoned, or has left the household, and the new claim is made within four weeks.

Exempt accommodation

Exempt accommodation is accommodation provided by a non-metropolitan county council in England, a housing association, registered charity or voluntary organisation if that landlord, or someone acting for the landlord, also provides the claimant with care, support or supervision.
Calculation of subsidy in pre-1996 cases

To calculate the eligible rent for subsidy purposes, use the rent officer’s determination of the claim-related rent which will already be net of all ineligible charges, eg fuel, water charges, laundry, cleaning, etc unless the tenant occupies accommodation where the landlord provides substantial board and attendance. In these cases the rent officer will return a claim-related rent, which may include an amount for meals from which the standard deduction for meals should be made.

The following examples show how to calculate the eligible rent for subsidy purposes.

<table>
<thead>
<tr>
<th>Example 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>A contractual rent of £150.00 inclusive of water charges, cleaning and laundry is referred to the rent officer. You value the water charges as £2.00. The rent officer notifies you of the following determinations</td>
</tr>
<tr>
<td><strong>Claim-related rent (CRR) (size related)</strong></td>
</tr>
<tr>
<td>*excluding ineligible items</td>
</tr>
<tr>
<td><strong>Total value of ineligible items</strong></td>
</tr>
<tr>
<td><strong>Eligible rent for 100% subsidy is</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Example 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>A contractual rent of £120.00 per week includes a breakfast each day, laundry, cleaning and water. The rent officer notifies you of the following determinations.</td>
</tr>
<tr>
<td>The RO will notify CRR</td>
</tr>
<tr>
<td>*exceptionally high excluding ineligible items @ £4.50</td>
</tr>
<tr>
<td>You deduct breakfasts at £2.45</td>
</tr>
<tr>
<td><strong>Eligible rent for 100% subsidy is</strong></td>
</tr>
</tbody>
</table>
Rates of subsidy for pre-1996 cases

In general, no subsidy will be payable on HB attributable to rent above the rent officer’s determination. However, there are exceptions to this general rule. These are when

- LAs are satisfied that the claimant could have met their rent when they took on the liability and that they did not claim HB within the previous 52 weeks to their claim. This means that the claimant will be entitled to HB based on the contractual rent less ineligible charges for the first 13 weeks. The effect is that for that period full subsidy will be paid, or
- a LA concludes that it is unable to reduce the eligible rent under the provisions of the old regulations 13(4), (5) and (7) and 13ZA. Subsidy at the rate of 60% will be payable on HB attributable to that part of the eligible rent which exceeds the rent officer’s determination, see HB/CTB Guidance Manual, A4.960, Eligible rent.

Where the eligible rent used in the HB calculation exceeds the rent officer’s determination, nil or 60% subsidy will apply to HB attributable to the excess. For example, if the eligible rent used to calculate HB exceeds the rent officer’s determination by £10, the first £10 of any HB awarded will attract a reduced rate of subsidy (60% or nil). The following examples show how subsidy should be calculated.

Example 1

Rent significantly higher than rents for similar tenancies. The LA cannot restrict HB under the old regulations 13(4), (5) and (7).

CRR = £50.

Eligible rent figure used to calculate HB = £70.

Since the eligible rent is £20 above the CRR the first £20 of any benefit awarded will attract a reduced rate of subsidy (60%).

If HB is £70, subsidy is 60% on £20 (£70-£50) and 100% on £50.

If HB is £30, subsidy is 60% on £20 and 100% on £10.

If HB is £20 or less, subsidy is 60% on amount paid.

continued
Example 2
Rent significantly higher than rents for similar tenancies. The old regulations 13(4), (5) and (7) do not apply; the LA restricts HB but not to the level of the determination.

CRR = £30

Eligible rent figure used to calculate HB = £45

Since the eligible rent is £15 above the CRR the first £15 of any HB awarded will attract nil subsidy

If HB is £45, subsidy is nil on £15 (£45-£30) and 100% on £30

If HB is £20, subsidy is nil on £15 and 100% on £5

If HB is £15 or less, no subsidy is payable

Example 3
Rent too high and the claimant is over-accommodated. The LA cannot restrict HB under the old regulations 13(4), (5) and (7).

CRR = £35

Eligible rent figure used to calculate HB = £47

Since the eligible rent is £12 above the determination, for the first 13 weeks the first £12 of any HB awarded will attract a full rate of subsidy. Thereafter, since the eligible rent is £17 above the CRR, the first £17 of any HB awarded will attract a reduced rate of subsidy

If HB is £47, for first 13 weeks subsidy is 100% on £47; after 13 weeks subsidy is 60% on £12 (£47-£35) and 100% on £35 (CRR)

If HB is £30, for first 13 weeks subsidy is 100% on £30; after 13 weeks subsidy is 60% on £12 and 100% on £18

If HB is £12, for first 13 weeks subsidy is 100% on £12; after 13 weeks subsidy is 60% on £12

continued
Example 4

Supported accommodation provided for the elderly by a voluntary organisation. The LA cannot restrict the HB under the old regulation 13(4). Service charges included in the rent are for general counselling and support only.

CRR = £50

Eligible rent figure (net of support charges) used to calculate HB = £60

Eligible support charges = £20

If HB is £60, subsidy is 60% on £10 (£60 - £50), 100% on £50
If HB is £30, subsidy is 60% on £10, 100% on £20
If HB is £10 or less, subsidy is 60% on the amount paid

Maximum rent cases (new scheme cases)

Maximum rent cases are rent allowance cases that do not fall to be administered under the pre-1996 rules or cases where referral to the rent officer is not required, which have their eligible rent decided under the rules that were introduced from 2 January 1996.

Subsidy in maximum rent cases

Subsidy is paid at 100% up to the maximum rent as determined by the lowest of the rent officer’s determinations.

For detailed guidance on the maximum rent to be used in the calculation of the eligible rent for HB in these cases, see HB/CTB Guidance Manual, Chapter A4.1330, Eligible Rent.
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Registered Social Landlord cases

For England and Wales the 1996 Housing Act refers to Registered Social Landlords (RSL) rather than Registered Housing Associations. Provided they are registered with the Housing Corporation, RSLs includes:

- housing associations
- local housing companies, and
- other organisations

In England and Wales all Registered Housing Associations are RSLs.

In Scotland, the term RSL can also include organisations which do not fully meet the conditions for statutory registration. You should therefore check that an RSL in Scotland is a Registered Housing Association which is statutorily registered under Part I of the Housing Associations Act 1985.

Rent officer referrals in respect of RSL tenancies

Paragraph 3 to Schedule 2 of the HB (General) Regulations states that an application for a rent officer determination, where the landlord is a Registered Social Landlord (RSL), including housing cooperatives that are registered as RSLs and hostel cases where the rent is set by an RSL, must be made when the LA considers that the rent payable for the dwelling is unreasonably high, or accommodation is larger than is reasonably required by the claimant and their household who occupy the dwelling ('over accommodation'). From 1st April 2013 this ground for referral applies only to pension-age cases. Over-accommodated working-age claimants are now dealt with via the maximum rent (social sector) rules.

For more details see Housing Benefit and Council Tax Benefit Guidance Manual, A4.1440, Eligible rent.

If the rent is not unreasonably high and there is not over accommodation, then such tenancies are excluded tenancies and need not be referred.
Subsidy in RSL cases

820 Where referral to the rent officer is not required then subsidy may be claimed on the full value of the HB-eligible rent determined in accordance with the HB Regulations.

821 If a tenancy of an RSL is referred to the rent officer because the accommodation is too large or the rent is unreasonably high, then the maximum rent rules apply to the determination of the eligible rent.

822 If the RSL provides care, support or supervision, the accommodation is exempt accommodation. The rent officer determination will be for subsidy purposes, but could also be used as a guide on the level of restriction that is appropriate, if any.

Local Housing Allowance cases

830 LHA rules apply to new claims made on or after 7 April 2008 and to existing awards but only following a change of address.

831 Claims subject to the LHA rules should not be referred to the rent officer.

832 However, some new claims on which rent allowance may be paid are not subject to the LHA rules.

Cases exempt from the LHA rules

840 Cases that are exempt include

- RSL cases
- protected exempt accommodation cases
  - that is, cases protected under paragraph 4 of schedule 3 (Transitional and Savings Provisions) of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. To satisfy this definition the landlord must be a
  - a non-metropolitan county council in England, housing association, registered charity or voluntary organisation, and
  - the tenant must be provided with care, support or supervision by either the landlord or someone acting directly on their behalf. In the latter there must be interposition not merely that the landlord be part of a group co-ordinating care, support or supervision. The landlord must have ultimate responsibility. If the organisation
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- concerned is providing care but is not itself the landlord, its tenants are not exempt from LHA
- a regulated tenancy
- a large scale voluntary transfer has taken place
- exceptional cases, e.g. caravans, houseboats, mooring fees, mobile homes and hostels
- board and attendance cases

841 The above list is not exhaustive and LAs should refer to regulation 13(C)5 of SI 2006/213 as inserted by SI 2007/2868.

842 Where a case is excluded from the LHA rules LAs must consider if referral to the rent officer is required.


844-849

Subsidy in LHA cases

850 Subsidy may be claimed at 100% for correctly paid benefit in cases that are subject to the LHA rules.

851-859

Referral to the rent officer

860 A frequent reason for the incorrect claiming of subsidy in rent allowance cases is the failure to refer relevant cases to the rent officer.

861 All rent allowance claims must be referred to the rent officer unless they are excluded by schedule 2 of the Housing Benefit Regulations 2006 (SI 2006 No 213). The most common reasons why a rent allowance claim is excluded from referral to the rent officer are
- the tenancy is a regulated tenancy; see Regulated tenancies earlier in this section
- the claim is from a tenant of a RSL and the LA does not
  - consider that the rent payable for the dwelling is unreasonably high, or
  - the accommodation is larger than is reasonably required by the claimant and their household who occupy the dwelling, see Rent officer referrals in respect of RSL tenancies earlier in this section
- an earlier referral to the rent officer was less than 52 weeks ago
- claim relates to a dwelling in a hostel, as defined in regulation 14 of the Housing Benefit (General) Regulations, and
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- a rent officer has made a determination for similar accommodation in the same hostel in the previous 12 months, and
- there has been no change to that accommodation (as referred to above)
- the claim is administered under the LHA rules; see Local Housing Allowance cases earlier in this section

Referral to the rent officer in certain Housing Association schemes

In private rented sector cases when a Housing Association (HA) or a RSL acts as a managing agent for the private landlord (HAMA schemes), LAs have a mandatory duty to make a referral to the rent officer.

When an HA/RSL leases a property and is the landlord for the tenants, the arrangements for referrals in respect of RSL cases earlier in this section apply.

This list is not exhaustive and LAs should refer to schedule 2 to the HB (General) Regulations 2006 (SI 2006 No.213).

Where no referral to the rent officer has been made but the tenancy is not an excluded tenancy, as defined in schedule 2 to SI 2006/213, then subsidy should not be claimed.

Further applications for rent officer determinations

In general, once a rent officer has made a determination in respect of a particular dwelling, it will be used for a benefit award until a further determination is acquired following an application to the rent officer which has to be made 52 weeks after the date the previous application was made. Throughout the period of the award for which a rent officer determination is used, no increase in that rent will be considered for HB purposes unless it is a relevant change in circumstances, see paragraph 883. A subsequent rent officer determination is implemented in the award by a superseding decision.
881 Unless entitlement to benefit is ended as a result of the determination, when the rent officer’s determination increases or remains unchanged, if the rent is paid

- weekly or in multiples of weeks, the effective date will be the first day of the benefit week in which the day following the last day of the 52 week exclusion occurs. The previous rent officer’s determination should be used for the award up to the week before
- other than weekly, for example if the rent is paid monthly, the decision will take effect on the first day following the last day of the 52 week exclusion occurs. The previous rent officer determination should be used for the award up to the day before

882 When the determination has decreased, the effective date of the decision will be the first day of the benefit week following the date the LA receives the rent officer determination.

883 However, circumstances may arise where a LA must make a further application for rent officer determinations where one or more of the following apply

i. there is a substantial change in the condition of the dwelling, eg major structural repairs or improvements, and the rent has increased as a result

ii. there is a substantial change in the terms of tenancy, eg a transfer of the repairing obligation to the landlord or a change in the number of rooms available for the tenant’s use

iii. there is a rent increase provided for in a term of the tenancy that was in place at the time of the original determination. The term of the tenancy may be written or verbal. However, a further application for a rent officer determination may not be made in these cases if the rent officer has already determined that the rent is above market levels or the dwelling is over-large or the market rent is exceptionally high

iv. a new tenancy is awarded to either the same or a new tenant and the terms of the tenancy are different, with the exception of terms relating to rent, eg where a short-hold comes to an end or a new tenant strikes a fresh bargain with the landlord

v. the number of occupants in a particular dwelling changes, except where the claimant has a bed in a hostel and the number of bed-spaces has not changed

vi. as soon as a child (or children) sharing a room with a child of the opposite sex reaches the age of ten and the accommodation was deemed to exceed the size criteria at the time of the original referral

vii. as soon as a child (or children) reaches the age of 16 and the accommodation was considered to exceed the size criteria at the time of the original referral
Re-determinations

When a claimant requests a review of the LAs HB assessment, and the representations concerning their decision relate to the rent officer’s determination, the LA must apply to the Chief Rent Officer for its area for a re-determination of the original determination. In cases when the LA considers there are good grounds for applying for a re-determination, it may do so on its own initiative, whether or not the claimant requests a review.

A LA may seek a re-determination at any time following the original decision. If the claimant requesting a review, within six weeks of receiving the decision, triggers the application to the rent officer it should be made within seven days of receiving representations from the claimant. See Appendix B for relevant details of effective dates of rent officers’ determinations.

Authorities may notify the Chief Rent Officer of any relevant information and must pass on the claimant’s representations.

Since 3 April 2000, the LA may, of its own volition, seek one re-determination without written representations from the claimant. The application for re-determination can be made at any time during the life of the current rent officer determination. Claimants can still seek a re-determination, but in general they can only seek one re-determination of any rent officer determination, see HB/CTB Guidance Manual, A4.2100, Eligible rent.

The re-determination will be made within four weeks of the application or as soon as is reasonably practicable thereafter. The rent officer who made the original determination will not be part of the re-determination procedure.

The outcome of the re-determination will be notified to the LA. Where the LA has requested it to do so, the review panel will include the reasons for its decisions in the notification of the results of the review. It will then be for the LA to consider the benefit position.

If, following a re-determination, the rent officer provides a higher determination, the re-determination will apply for subsidy purposes from the effective date of the original determination.

If the re-determination is lower than the original, the effective date for subsidy purposes will be the date of the re-determination or the following Monday.
Supply of rent officer information to claimants

900 There is a minimum amount of information LAs are required to make available about each of their determinations of HB, as set out in the HB (General) Regulations.

901 Regulation 90(2) allows claimants to get enough detail to check the factual basis of a LAs decision of an HB awarded. Authorities can, therefore, provide claimants with details of the rent officer’s relevant determinations if requested, or include it in a statement of reasons if one has been sought.

902 Copies of rent officers’ original determinations should not be passed to claimants.

903-909

Failure to refer relevant cases to the rent officer

910 If a LA fails to make an application for a rent officer determination in respect of a case that falls within the scope of the arrangements

- within the relevant year, or
- before the due date for the submission of the subsidy claim for the relevant year

any HB awarded will not qualify for subsidy.

911 This also applies to RSL tenancies if the LA considers that the rent payable for the accommodation is unreasonably high or that the accommodation is larger than is reasonably required by the claimant and any others who occupy the dwelling, but makes no application for a rent officer determination.

912-919

Transfer of housing authority stock to the private sector

920 Housing authority stock may be transferred to the private sector through

- voluntary transfers
- tenants’ choice
- New Towns and Scottish Homes Transfers
- Housing Action Trusts (HATs)
- transfers that take place at the end of the lifetime of a HAT
In these cases, it is not necessary to make a referral on the original rent as rent levels will be controlled at the point of transfer. However, once the first rent increase after transfer has taken place, LAs are required to consider whether the tenant is over-accommodated or the rent unreasonably high. If this is the case, the claim must be referred to the rent officer in the normal way.

However, when the transfer of a tenancy took place on or after 7 October 2002, LAs must continue to refer those tenancies where the rent is unreasonably high but are no longer required to refer such tenancies where the person is over-accommodated. Transfers made to other private landlords are subject to the normal rent officer referral arrangements. Cases that do not have to be referred at this stage are not subject to the subsidy controls.

**Representative cases in hostels**

Special arrangements relate to hostel cases when one rent officer determination can be applied to similar accommodation within a particular hostel. The rent officer’s determination will generally apply for 12 months, but see Further applications for rent officer determinations, earlier in this section for more details.

When an application for a rent officer determination has already been made, LAs should apply the rent officer determination to any other claims in respect of similar accommodation within the same hostel. This means that no application for a determination is required for these similar cases.

Regulations define ‘similar accommodation’ as that which provides sleeping accommodation for the same number of people, ie single rooms, double rooms, etc.

An additional referral may be required to obtain an SRR where appropriate.

**Hostel cases – tenancies entered into before 2/15 January 1989**

Tenancies entered into before deregulation are not subject to rent officer referral.
Joint tenancies

950 In the case of joint tenancies, rent officers have to look at the full rent payable under the terms of a tenancy, not just the share of one of the joint tenants, in order to make their determination. On receipt of the determination, you should apportion it in accordance with regulation 12B(4) of the HB (General) Regulations.

951 To assist LAs in the apportionment, although not a requirement, rent officers may provide an assessment of the value of the joint tenant’s share of the accommodation, although this is a matter for discussion between LAs and their Chief Rent Officer. The rent officer’s apportionment is not binding – LAs are responsible for deciding on the proper apportionment.

952 If a rent officer has made a determination in respect of the full rent payable for the tenancy, and a new claim for HB is made by one of the joint tenants, a further application to the rent officer cannot be made unless it has been 52 weeks since the previous application for a rent officer determination was made.

Sub-tenancies

960 In the case of claimants who are sub-tenants, rent officers are required to consider the reasonableness of the rent paid by the sub-tenant. For these cases you should advise the rent officer of the rent paid by the sub-tenant.

Payments on account and indicative rent levels (IRL)

970 Where a claim for benefit is made that will not be subject to the local housing allowance a LA must make a payment on account when it is impractical for a decision to be made on a claim for rent allowance within 14 days of the claim having been made.

971 The claimant must not have contributed to the impracticality, for example by failing to provide, without good cause, information, certificates, documents or other evidence that the LA requires to allow it to make a decision.

972 The payment on account should be an amount which the LA considers reasonable having regards to

- available information about the claimant’s circumstances, and
- any relevant determination made by a rent officer
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IRLs are maximum amounts up to which LAs may make payments on account and be protected for subsidy purposes. They are not calculated for each locality but will apply to the whole of a LA's area. Where there are extremes of rental values within this area, the IRL may be over-generous for properties at the lower end of the market.

To avoid overpayments, caution should be exercised when deciding on the level of a payment on account, and the following should also be borne in mind:

- the IRL for board and lodging cases should only be used in genuine cases where the landlord physically provides meals. The determination should be reduced by the appropriate deductions for fuel, board and water charges
- the IRL for non-self-contained accommodation should be reduced by the appropriate deductions for fuel and water charges
- for joint tenancies, use the IRL for the number of rooms in the property and apportion according to the claimant's share
- if the LA considers the claimant to be over accommodated, it should use the IRL for the appropriate size criteria

Note: See Appendix B for relevant details of effective dates of rent officers' determinations.

IRLs are no longer published monthly by the Rent Officer and are now only provided upon request by the LA.

Where a LA requires the use of an IRL in order to make a payment on account, they will need to request one from the Rent Service.

IRLs will be exclusive of ineligible services but in non-self-contained accommodation will be inclusive of fuel, water charges and, where relevant, board.

Rent officers will not supply IRLs for:
- dwellings with more than six rooms
- site rents
- mooring charges
- dwellings with rental purchase agreement

As LAs are unable to determine new scheme cases until the rent officer has given a determination, the IRL can be used only to inform decisions on the level of the payment on account.
If the IRL is used to calculate and make a payment on account for an HB claim, and the rent officer’s determination is lower, LAs will receive full subsidy on HB attributable to rent up to the level of the IRL until the rent officer’s determination is made. Any revised benefit determination will also have to be notified to the claimant in the usual way. If the rent officer’s determination is higher than the IRL, LAs can review their decision and pay up to the level of the rent officer’s determination. The review can receive full subsidy on rent up to the level of the rent officer’s determination.

Where the IRL is used to inform the LA as to the level of a payment on account, the arrangements contained in paragraphs 982-994 will apply.

If the rent officer’s full determination, once received, results in an eligible rent which is less than the IRL, LAs are required to recover the excess payment on account from ongoing benefit.

When the final determination removes entitlement to benefit or the claim ceases for other reasons, overpayment action should be taken. The IRL overpayment should be calculated as follows

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referred rent for single non-self-contained accommodation</td>
<td>£55.00</td>
</tr>
<tr>
<td>Payment on account calculated as follows: IRL</td>
<td>£46.00</td>
</tr>
<tr>
<td>less fuel</td>
<td>£6.63</td>
</tr>
<tr>
<td>less water charges</td>
<td>£0.90</td>
</tr>
<tr>
<td>Total</td>
<td>£38.47</td>
</tr>
<tr>
<td>Rent officer’s determination below IRL</td>
<td>£43.00</td>
</tr>
<tr>
<td>HB eligible rent calculated as follows</td>
<td>£43.00</td>
</tr>
<tr>
<td>less ineligible services</td>
<td>£0.50</td>
</tr>
<tr>
<td>less fuel</td>
<td>£6.63</td>
</tr>
<tr>
<td>less water charge</td>
<td>£0.90</td>
</tr>
<tr>
<td>Total</td>
<td>£34.97</td>
</tr>
</tbody>
</table>
Weekly IRL overpayment
£3.50

Overpayment recovery action

LAs will be expected to take normal overpayment recovery action. When LAs are unable to recover all or part of the overpayment caused by the difference between the final determination (and consequent eligible rent) and the payment on account, full subsidy will be paid on the unrecovered amount. This provision is dependent on the

- IRL or other relevant determination of a rent officer used corresponding to the number of rooms available to the claimant, and
- LA using the IRL which was current at the time it decided to make payments on account

Any recovered amounts are not eligible for subsidy. Subsidy should be claimed on amounts which are unrecovered at the end of the financial year. Should a LA recover in the 2008/09 financial year an overpayment which occurred in 2007/08, it will reduce the subsidy claimed for IRL/payment on account overpayments at the end of the 2008/09 financial year.

In cases where LAs

- continue to make a payment on account immediately after the Monday following receipt of the rent officer’s determination, or
- make a payment on account for a future period and the Monday following receipt of the rent officer’s determination falls within this period

that portion of the overpayment will change its status to LA error.

If payments on account are made using an IRL and it becomes apparent that all or part of the weekly payment should not have been made, eg because there had been a fraudulent claim, and there is no benefit entitlement from which the payments can be clawed back, the overpayment should be classified as if the IRL had not applied. Subsidy should be claimed at the rate applicable to the overpayment type.

When there is no IRL, for example in cases involving site rents, the payment on account provisions will apply. Overpayments should not be dealt with under the IRL subsidy provision.
Subsidy in payment on account and IRL cases

1000 Subsidy may be claimed at 100% in respect of payments made on account/IRL cases and LAs do not have to reclassify the expenditure when they receive the rent officer’s determination.

1001 If when the rent officer’s determination is received it indicates that a payment on account has resulted in an overpayment, the overpayment must be recovered. HB regulation 99(3) refers. The overpayment should be recorded in the appropriate IRL overpayment cell.

Queries

1010 If you have any subsidy-related queries concerning the content of this section, contact

Housing Delivery Division
Email: HBSUBSIDY.QUERIES@DWP.GSI.GOV.UK

1011 If you have any non-subsidy-related queries concerning the content of this section, contact

Email: HOUSING.BENEFITENQUIRIES@DWP.GSI.GOV.UK

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