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## Section 7: Rent allowances

### Introduction

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

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### Rent allowance cases

- 710 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, and
  - Local Housing Allowance (LHA) cases
- 711 To claim subsidy correctly local authorities need to establish to which type of case any claim they received relates.

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### Regulated tenancies

- 720 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
- 721 If it began after that date, as a result of a contract agreed before those dates, it may be a regulated tenancy.
- 722 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.

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- 723 Although no new regulated tenancies can be created now, other than those under section 34 of HA 1988, new Housing Benefit (HB) claims from those with regulated tenancies may occur.
- 724 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.
- 725 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.
- 726 If a local authority believes a claim for HB is from a claimant who has a regulated tenancy they should consider the paragraphs above and the guidance from Communities and Local Government or Scottish Executive, as appropriate.
- 727 Local authorities in England and Wales should refer to the booklet *Regulated Tenancies* published by Communities and Local Government  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11445/138295.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11445/138295.pdf)
- 728 Scottish local authorities should refer to guidance from the Scottish Executive.
- 729 The tenancy will NOT be a regulated tenancy if the landlord is
- a local authority
  - 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

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## **Subsidy and regulated tenancies**

- 740 From April 2004 qualifying expenditure in regulated rent cases has received 100 per cent subsidy. As other subsidy controls do not apply to these cases it is important that local authorities keep records that clearly demonstrate these cases are regulated cases.

741 Local authorities 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 local authorities should document their reasons for treating the case as a regulated tenancy.

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

750 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**

751 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**

752 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.

753-759

## Calculation of subsidy in pre-1996 cases

760 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.

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

### Example 1

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

Claim-related rent (CRR) (size related)	£90.00 (excluding ineligible items)
Total value of ineligible items	£5.00
Eligible rent for 100% subsidy is	£90.00

### Example 2

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.

The RO will notify

CRR	£75.00 (exceptionally high excluding ineligible items @ £4.50)
You deduct breakfasts at £2.45	£2.45
Eligible rent for 100% subsidy is	£75.00 - £2.45 = £72.55

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## Rates of subsidy for pre-1996 cases

770 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

- you 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 local authority 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*

771 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 local authority 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.

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Example 2

Rent significantly higher than rents for similar tenancies. The old regulations 13(4), (5) and (7) do not apply; the local authority 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 local authority 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

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**Example 4**

Supported accommodation provided for the elderly by a voluntary organisation. The local authority 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

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**Maximum rent cases (new scheme cases)**

780 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.

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**Subsidy in maximum rent cases**

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

791 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**

800 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

801 In England and Wales all Registered Housing Associations are RSLs.

802 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.

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## **Rent officer referrals in respect of RSL tenancies**

810 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 co-operatives that are registered as RSLs and hostel cases where the rent is set by an RSL, must be made when the local authority 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 1<sup>st</sup> 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.

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

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

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## 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.

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## 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.

833-839

## 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, eg caravans, houseboats, mooring fees, mobile homes and hostels
- board and attendance cases

841 The above list is not exhaustive and local authorities 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 local authorities must consider if referral to the rent officer is required.

843 For further guidance on LHA cases local authorities should refer to the guidance on LHA at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/232359/lha-guidance-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/232359/lha-guidance-manual.pdf)

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## 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 registered social landlord (RSL) **and** the local authority 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
  - 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 Local Housing Allowance rules; see *Local Housing Allowance cases* earlier in this section

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## **Referral to the rent officer in certain Housing Association schemes**

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

871 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.

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

873 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.

874-879

## **Further applications for rent officer determinations**

880 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.

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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 local authority receives the rent officer determination.

883 However, circumstances may arise where a local authority 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-let 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

- viii. there is a change to the composition of the household but there is not a change to the number of occupiers

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## Re-determinations

- 890 When a claimant requests a review of the local authority's HB assessment, and the representations concerning their decision relate to the rent officer's determination, the local authority must apply to the Chief Rent Officer for its area for a re-determination of the original determination. In cases when the local authority 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.
- 891 A local authority 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.
- 892 Authorities may notify the Chief Rent Officer of any relevant information and must pass on the claimant's representations.
- 893 Since 3 April 2000, the local authority 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*.
- 894 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.
- 895 The outcome of the re-determination will be notified to the local authority. Where the local authority 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 local authority to consider the benefit position.
- 896 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.
- 897 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.

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## **Supply of rent officer information to claimants**

900 There is a minimum amount of information local authorities 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 local authority's 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.

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## **Failure to refer relevant cases to the rent officer**

910 If a local authority 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 local authority 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

921 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, local authorities 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.

922 However, when the transfer of a tenancy took place on or after 7 October 2002, local authorities 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.

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### **Representative cases in hostels**

930 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.

931 When an application for a rent officer determination has already been made, local authorities 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.

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

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

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

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

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## **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 local authorities 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 local authorities and their Chief Rent Officer. The rent officer's apportionment is not binding – local authorities 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.

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## **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.

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## **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 local authority 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 local authority requires to allow it to make a decision.
- 972 The payment on account should be an amount which the local authority considers reasonable having regards to
- available information about the claimant's circumstances, and
  - any relevant determination made by a rent officer



- 973 IRLs are maximum amounts up to which local authorities 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 local authority'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.
- 974 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 local authority 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.
- 975 IRLs are no longer published monthly by the Rent Officer and are now only provided upon request by the local authority.
- 976 Where a local authority requires the use of an IRL in order to make a payment on account, they will need to request one from the Rent Service.
- 977 IRLs will be exclusive of ineligible services but in non-self-contained accommodation will be inclusive of fuel, water charges and, where relevant, board.
- 978 Rent officers will not supply IRLs for
- dwellings with more than six rooms
  - site rents
  - mooring charges
  - dwellings with rental purchase agreement
- 979 As local authorities 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.

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- 980 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, local authorities 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, local authorities 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.
- 981 Where the IRL is used to inform the local authority as to the level of a payment on account, the arrangements contained in *paragraphs 982-994* will apply.
- 982 If the rent officer's full determination, once received, results in an eligible rent which is less than the IRL, local authorities are **required** to recover the excess payment on account from ongoing benefit.
- 983 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

		£
Referred rent for single non-self-contained accommodation		55.00
Payment on account calculated as follows:	IRL	46.00
	less fuel	6.63
	less water charges	0.90
	Total	38.47
Rent officer's determination below IRL		43.00
HB eligible rent calculated as follows		43.00
	less ineligible services	0.50
	less fuel	6.63
	less water charge	0.90
	Total	34.97
Weekly IRL overpayment		
£3.50		

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## Overpayment recovery action

990 Local authorities will be expected to take normal overpayment recovery action. When local authorities 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
- local authority using the IRL which was current at the time it decided to make payments on account

991 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 local authority 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.

992 In cases where local authorities

- 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 local authority error.

993 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.

994 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.

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## 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 local authorities 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.

1002-1009

## Queries

- 1010 If you have any **subsidy-related** queries concerning the content of this section, contact
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- 1011 If you have any **non-subsidy-related** queries concerning the content of this section, contact
- Email: [housing.benefitenquiries@dwp.gsi.gov.uk](mailto:housing.benefitenquiries@dwp.gsi.gov.uk)

1012-1099