

<i>A2</i>	<i>Claims</i>
About this chapter	2.00
Who can claim	2.20
Housing Benefit.....	2.20
Council Tax Benefit.....	2.30
Specific claimant groups.....	2.60
Claims from couples, civil partners or members of polygamous marriages	2.60
Definition of a couple	2.60
Polygamous marriages	2.63
Couples registered as liable for CT at different addresses.....	2.65
Claims from joint tenants or joint owners other than couples	2.90
Apportioning liability.....	2.91
Full time students	2.120
Claims by non student partner of student	2.122
Treatment of student income	2.123
Second adult rebate	2.124
People from abroad	2.140
Supporting People Scheme.....	2.150
Appointees.....	2.160
Landlords.....	2.170
Claimant has died.....	2.175
How claims must be made.....	2.190
Electronic claims	2.200
Telephone claims	2.203
LA has published a telephone number that offers telephone claiming	2.204
The claim form.....	2.210
HCTB1(PC)	2.240
HCTB1(PCA).....	2.270
New claims from 5 December 2005	2.274
HCTB1(PCA) received but no ETD	2.275
Date of contact on HCTB1(PCA) to be used as date of claim.....	2.276
Using an LA 'shortened' claim form.....	2.300
Declaration to include on the LA 'shortened' claim form.....	2.303
When to use an LA 'shortened' claim form.....	2.306
Further information needed from claimant.....	2.350
IS/JSA(IB)/Pension Credit claimed.....	2.370
Customer Management System.....	2.390
Effective date of claim	2.430
Claims from partners following death or separation.....	2.450

Contents

Waiting days	W2.470
Advance claims	W2.490
Housing Benefit	W2.490
Council Tax Benefit	W2.491
Pensioners	P2.490
Good cause	P2.494
First day of entitlement	P2.496
Hostels and accommodation outside the Housing Revenue Account	2.510
Backdating	W2.520
Good cause	W2.522
Six month limit on backdating	W2.524
Working age men age 60 - 64	2.530
Rent penalty notice or no rent payable order appealed against and won (Scotland only)	2.540
Reclaims	2.550
LA 'shortened' claim form	2.550
HB Rapid Reclaim	2.560
LA activity	2.566
Verification	2.568
Link with HB Extended Payments and 'in-work' claims	2.569
Amendment and withdrawal of claim	2.600
Change of circumstances - working age	W2.640
Change of circumstances - pensioners	P2.640
Change of circumstances - prisoners	2.650
HCTB6 - Notification of remand in custody	2.654
HCTB7 - Change of status/custodial sentence	2.657
HCTB8 - Release from custody/change of circumstances	2.660
Defective claims	2.670
Landlord registration or licensing and antisocial behaviour penalties	2.680
Scotland	2.680
Rent penalty notices	2.680
New claim: property subject to a rent penalty notice	2.684
Rent penalty notice issued during a claim	2.685
Rent penalty notice revoked	2.686
No rent payable orders	2.690
New claim: property subject to a no rent payable order	2.694
No rent payable order issued during a claim	2.695
No rent payable order revoked	2.696

Management control orders	2.697
New claim: property subject to a management control order.....	2.699
Management control order issued during a claim.....	2.702
Management control order revoked or ends.....	2.707
England and Wales.....	2.720
Management orders	2.720
New claim: property subject to a management order.....	2.724
Management order issued during a claim.....	2.727
Management order revoked or ceases to have an effect.....	2.731
Empty Dwelling Management Orders.....	2.740
New claim: property subject to an EDMO	2.743
EDMO revoked or ceases to have effect.....	2.746
Guidance on good cause	Annex A
Landlord registration and antisocial behaviour penalties - liaison with LA registration sections: Scotland.....	Annex B
The effects of imprisonment on HB and CTB	Annex C

A2 Claims

About this chapter

- 2.00 This chapter gives guidance on and an explanation of
- new claims for Housing Benefit (HB)/Council Tax Benefit (CTB)
 - who can claim HB/CTB
 - especially if the claimant is one of a couple, a joint tenant/owner, a full-time student or a person from abroad, see *Who can claim* later in this chapter
 - on the claimant's behalf if they are unable to manage their own affairs, see *Appointees* later in this chapter
 - how a claim must be made and what a claim form must include, see *How claims must be made* later in this chapter
 - when using a 'shortened' claim form may be appropriate, see *Using an LA 'shortened' claim form* later in this chapter
 - the effective date of a claim and how to treat waiting days and advance claims, see *Effective date of claim* later in this chapter
 - how to consider backdating a claim, including 'good cause' and the limits to backdating, see *Backdating* later in this chapter
 - when a claim is classed as defective and what to do to enable you to decide the claim, see *Defective claims* later in this chapter

2.01-2.19

Who can claim

Housing Benefit

- 2.20 Someone paying eligible rent, see chapter A4 Eligible rent later in this part, who is
HB Reg 82 & (SPC) 63
- single - can claim for themselves
 - one of a couple or civil partnership or living together as civil partners, or a partner in a polygamous marriage, must agree between themselves who is to make the initial claim. If they cannot agree who should make the claim, HB regulations give you the power to decide who should be the claimant

2.21-2.29

2.30-2.64

Council Tax Benefit

2.30 Generally the person who can claim CTB is the person who, on any day, is liable to pay Council Tax (CT) in respect of a dwelling in which they are resident.

2.31 The following paragraphs explain the treatment of claims when the person concerned is a member of a couple, a student, unable to act on their own behalf, etc.

2.32-2.59

Specific claimant groups

Claims from couples, civil partners or members of polygamous marriages

Definition of a couple

2.60 For the purposes of the CTB Regulations, a couple is a

- man and woman who are
 - married to each other and are members of the same household, or
 - not married to each other but are living together as husband and wife
- same sex couple who are
 - civil partners, or
 - living together as civil partners

2.61 For the purposes of deciding a claim, it is for the Local Authority (LA) to decide whether two people are a couple. For more information and guidance on the criteria to use, see *C1 Definition of couple* later in this manual.

2.62 It is up to the couple to decide between themselves which one of them should claim. If they are unable to decide, the LA has the power to make the decision, and in exercising this power should take account of all the relevant circumstances.

Polygamous marriages

2.63 A polygamous marriage can occur only when a valid marriage took place in a country where polygamy is permitted by law.

2.64 A polygamous marriage does not exist when three or more people are living together but there has been no valid marriage in another country. In these cases you may have to identify a couple and one or more single people, or perhaps couples.

Couples registered as liable for CT at different addresses

- 2.65 Under CT legislation, it is possible for two partners to live solely or mainly at different addresses and still remain a couple, eg when one partner is working away from home and the other remains in their home.
- 2.66 Living at different addresses is not sufficient evidence that the partners have stopped being a couple for the purposes of CTB. It is for the LA's benefit officer to decide, using the facts of the case, if the statutory definition of a couple continues to apply.
- 2.67 If the benefit officer decides that two partners who are liable at separate addresses still constitute a couple for benefit purposes, each partner must make a separate claim for benefit for the accommodation in which they live and for which they have a CT liability. Benefit entitlement will be assessed by
- aggregating the couple's income and capital and
 - using the appropriate applicable amount for the couple

2.68-2.89

Claims from joint tenants or joint owners other than couples

- 2.90 If joint tenants or joint owners who are not couples are sharing a property, assess benefit on the basis of apportioned liability.

Apportioning liability

- 2.91 Apportion liability equally on the basis of the total number of joint tenants/joint owners, unless one or more of the joint tenants/joint owners is severely mentally impaired, in which case they should be disregarded.

Example

A couple and a single person are joint tenants, and liability for CT is divided amongst all the liable residents, ie all three are liable. Benefit entitlement is apportioned on the basis of the number of liable people, ie two thirds for the couple and a third for the other tenant.

Assess the income, capital and personal circumstances of each tenant separately, **except** for couples who will be assessed on an aggregate basis.

Do not make any non-dependant deductions in respect of any joint tenants/joint owners.

2.92-2.119

2.120-2.159

Full time students

- 2.120 The definitions of student and full-time student applying for CTB and HB are the same.
- 2.121 CTB cannot normally be awarded to full-time students. However, full-time students who fall into the vulnerable categories and part time students can claim CTB. For more information, see *C2 Students who can claim* later in this manual.

Claims by non student partner of student

- 2.122 Non student partners of students, including the partners of students from abroad, can claim CTB on behalf of the couple. In assessing such claims take into account the income and resources of both members of the couple.

Treatment of student income

- 2.123 The rules on the treatment of student income for CTB and HB are the same, see *C2 Treatment of student income* later in this manual.

Second adult rebates

- 2.124 Full-time students are not excluded from claiming second adult rebates and may claim these in the same way as anyone else, see *A5 Second adult rebate* later in this part for more information.

2.125-2.139

People from abroad

- 2.140 All information on how to deal with claims from people from abroad, including asylum seekers and refugees, can be found in *C4 People from abroad* later in this manual.

2.141-2.149

Supporting People Scheme

- 2.150 Claimants whose income exceeds their benefit entitlement, due to the removal of support charges from some IS/JSA(IB) cases, continue to be entitled to full CTB, see *A6 Changes to CTB 'passporting' arrangements* as a result of Supporting People Scheme later in this manual.

2.151-2.159

Appointees

2.160 CTB may be paid to an appointee although it will normally be paid by credit to the CT account. You have discretionary power to appoint someone as the appointee for a claimant who is unable to manage their own affairs.

2.161 The person who wants to be the appointee must make a written application to you before you can consider making them an appointee.

HB Reg 82 & (SPC) 63; CTB Reg 68 & (SPC) 52

2.162 If you become aware that somebody who is unable to manage their own affairs wishes to claim HB, it is not up to you to find a suitable appointee. The responsibility for claiming HB rests with the claimant. However, you will probably become aware of a claimant being unable to manage through contact from a third party. You could consider inviting that person to apply to become the appointee.

For more information on appointees, see *C3 Appointees* later in this manual.

2.163-2.169

Landlords

2.170 In exceptional circumstances CTB payments may be made to the landlord.

CTB (SPC) Reg 27

2.171-174

Claimant has died

2.175 If CTB is owing to a claimant who has died, and it is not possible to reduce any outstanding CT bill, make any payment due to the

- personal representative, or when there is none
- to the claimant's next of kin if they are 16 or over

CTB Reg 80, 78 & (SPC) 65, 63

2.176-2.189

How claims must be made

- 2.190 CTB claims, both for benefit and second adult rebate, and HB claims can be made
- in writing
 - on a claim form approved for the purpose and provided free of charge by the Local Authority (LA), for example
 - ~ HCTB1, full claim form, see DWP website: <http://www.dwp.gov.uk/housingbenefit/model/>
 - ~ HCTB1(PC), a hardcopy version of HCTB1 for pensioners, see HCTB1(PC) later in this chapter
 - ~ HCTB1(PCA), a computer-generated version of HCTB1 for pensioners, see HCTB1(PCA) later in this chapter
 - ~ Input Document, this replaces HCTB1 for claims made via Customer Management System (CMS), see *D1 The Customer Management System*
 - ~ HBRR1, HB Rapid Reclaim form, see DWP website: <http://www.dwp.gov.uk/housingbenefit/model/>
 - ~ LA 'shortened' claim form, or
 - in a form acceptable to the LA, for example a letter saying that the writer wants to claim benefit. If a claimant makes a dated statement in writing that they want to claim benefit or otherwise provides you with all the information you need to process the claim, the claim can be treated as made from that date if it is followed up by a properly completed claim form, or
 - electronically if the LA has an e-enabling Direction for claims to be made electronically, see *Electronic claims* later in this chapter
 - by telephone when
 - the LA has published a telephone number for taking HB/CTB claims and an LA administrator interviews a claimant by telephone, completing a claim form or statement from that interview. See *Telephone claims* later in this chapter
 - a claimant makes a claim for HB/CTB over the phone alongside Pension Credit
HB Reg 83 & (SPC) 64
- 2.191 In some circumstances when not all the information gathered by the usual claim form is needed to decide a claim, a
- 'shortened' claim form may be used, for example rough sleepers entering a hostel. For more information, see *Using an LA 'shortened' claim form* later in this chapter, and *A7 Single homeless people and hostel dwellers* later in this part

continued

- (2.191) • Rapid Reclaim form may be used if
- the claimant is reclaiming IS/JSA and HB/CTB at the same time within 12 weeks of their previous claim
 - they are entitled to IS/JSA, **and**
 - there has been no changes of circumstance since their last entitlement to HB/CTB
- See *HB Rapid Reclaim* later in this chapter

2.192 A claim for CTB is a claim for both main CTB and second adult rebate, shown in the regulations as Alternative Maximum CTB. CTB cannot be awarded unless a claim has been made or is treated as having been made. A claim for HB is **not** a claim for CTB, and must not be treated as such.

2.193-2.199

Electronic claims

- 2.200 An electronic claim is when the claim is completed and submitted on-line or by other electronic means such as a tablet signed with an electronic pen. Technically electronic claims are considered as made in writing.
- 2.201 If the electronic claim does not provide all the required details, the claim is defective. You must give the claimant the opportunity to provide the details either electronically or otherwise and the normal time limits for providing verification.
- 2.202 Even though signatures are not mandatory there may be circumstances when you require an electronic or digital signature to validate the claim.

Telephone claims

- 2.203 A claimant can claim HB/CTB by telephone
- when the LA has published a number that offers telephone claiming, or
 - alongside a claim for Pension Credit applied for over the phone

LA has published a telephone number that offers telephone claiming

- 2.204 A telephone call to an LA is an effective claim for HB **only** if the LA has chosen to offer telephone claiming by publishing a telephone number for this purpose. If during the interview the claimant cannot provide all the required details, the claim is defective. Give the claimant the opportunity to provide the details and apply the normal time limits for providing verification.
- 2.205 You can ask the claimant to approve a generated statement of their circumstances before treating their claim as actually having been made. A claimant who fails to sign and return such a statement has not made a valid claim.

2.206-2.209

2.210-2.240

The claim form

- 2.210 As a general rule a claim form, see DWP website: <http://www.dwp.gov.uk/housingbenefit/model>, should include a statement
- authorising the use of the information provided, for data protection purposes
 - on the validity of the information provided and that the claimant could be liable for prosecution for not supplying the correct information
- 2.211 The claim for CTB may be made on a
- specific CTB claim form
 - composite form, ie a form which includes a claim for HB, provided that in signing the form the claimant shows they know that CTB is being claimed, for example form HCTB1, see DWP website: <http://www.dwp.gov.uk/housingbenefit/model/>
- 2.212 The claimant must provide on the claim form or in some other written form, all the information you need to decide the claim, eg if you receive an IS/JSA/ESA/Pension Credit claim form you could take a certified copy before forwarding the form to the Jobcentre Plus/pension centre.
- 2.213 Information common to HB and CTB can be collected and used to assess either benefit, but before awarding benefit, you must hold
- a completed separate claim form for each benefit, or
 - a completed combined claim form, which specifically refers to both benefits, or
 - a statement in writing signed by claimant that they want to claim both benefits
- 2.214 If the completed form does not provide enough information to decide the claim, you should return the claim form or obtain the further information from the claimant as appropriate, see *Further information needed from claimant* later in this chapter.

2.215-2.239

HCTB1(PC)

- 2.240 The HCTB1(PC) is a shortened version of the HCTB1, ie the sections about dependants, non-dependants, employment, self-employment and other types of work have been removed. It is issued with the Pension Credit application form if the claimant wants to complete it themselves rather than use the Pension Credit Application Line's (PCAL's) form completion services.

- 2.241 The form contains trigger questions to indicate if more information is needed. If additional information is needed, the claimant should get a supplementary form from PCAL, eg
- HCTB1(PC) - ND - Non-dependant questionnaire
 - HCTB1(PC) - C - Children's questionnaire
 - HCTB1(PC) - SE - Self-employed questionnaire
 - HCTB1(PC) - W - Employed questionnaire
 - HCTB1(PC) - RT - Rent tenancy questionnaire
- 2.242 A copy of HCTB1(PC) and the supplementary forms are available on the HB website.
- 2.243-2.269

HCTB1(PCA)

- 2.270 The HCTB1(PCA) is a computer-generated shortened version of the HCTB1, ie the sections about dependants, non-dependants, employment, self-employment and other types of work have been removed.
- 2.271 The HCTB1(PCA) is completed over the telephone at the same time that the claimant makes their claim to Pension Credit via PCAL. This form is usually completed with information supplied by the claimant to the telephone agent and the pre-populated form is sent to the claimant to check, sign and return to their LA.
- 2.272 The form contains trigger questions to indicate if more information is needed. If additional information is needed, PCAL issue a supplementary form, eg
- HCTB1(PC) - ND - Non-dependant questionnaire
 - HCTB1(PC) - C - Children's questionnaire
 - HCTB1(PC) - SE - Self-employed questionnaire
 - HCTB1(PC) - W - Employed questionnaire
- 2.273 A copy of HCTB1(PCA) and the supplementary forms are available on the HB website.

2.274-2.301

New claims from 5 December 2005

- 2.274 From 5 December 2005 when HCTB1(PCA) forms are issued at the same time as a new Pension Credit application, there will be a flyer attached to the HCTB1(PCA) with details of the person to whom the correspondence was sent. If these details are different to the claimant details on the HCTB1(PCA), it is likely that there is an appointee or Power of Attorney, you should
- check the details by accessing the Customer Information System (CIS) RP30 and RP31. Appointee details are displayed here for claimants who are in receipt of
 - Retirement Pension
 - Incapacity Benefit
 - contact your pension centre if the details are not held here

HCTB1(PCA) received but no ETD

- 2.275 From 5 December 2005 there may be an increase in the number of HCTB1(PCA) forms that are received before the Electronic Transfer of Data (ETD). This may be due to the claimant not returning their Pension Credit form as quickly as their HCTB1(PCA) because of its larger size. In order to make sure the claimant is not asked for duplicate information, our advice is to hold the case for 14 days to await the ETD. If the ETD is not received within that time contact The Pension Service.

Date of contact on HCTB1(PCA) to be used as date of claim

- 2.276 On form HCTB1(PCA) the date the form was requested either by the applicant or a third party, and the date the form was issued should be the same date. The date is populated automatically on new claims taken via the Pension Credit application process from 5 December 2005.
- 2.277 Use this date as the initial date of contact and treat it as the date of claim. If in exceptional circumstances neither of these dates are completed, contact your pension centre through existing channels.

2.278-2.299

Using an LA 'shortened' claim form

- 2.300 You have the discretion to require a claimant to provide information you consider reasonable to decide a claim for benefit. This can mean that in certain circumstances using a shortened claim form may be appropriate. Rather than asking a claimant to complete a full claim form, you can use a shortened form that includes a 'catch all' declaration to the effect that there are no other changes since the date of the last full declaration of circumstances.
- 2.301 You should base the format of your 'shortened' claim form on form HCTB1, see DWP website: <http://www.dwp.gov.uk/housingbenefit/model/>

- 2.302 If your 'shortened' claim form is based on form HCTB1, let Housing Support Division know and they will keep you informed about any changes to form HCTB1

Housing Support Division
Tel: 020 7962 8631
Email: jason.barrett@dwp.gsi.gov.uk

Declaration to include on the LA 'shortened' claim form

- 2.303 The following declaration has been agreed with our lawyers

"I declare that the information I have given on this form is correct and complete. I understand that if I give information that is incorrect or incomplete, action may be taken against me. I understand that the council may check the information I have given on this form. I declare that there are no other changes in my circumstances which would affect my claim for Housing Benefit since [date] and that I will inform the council of any relevant changes in the future"

- 2.304 This form, and the declaration on it, needs to be signed by the claimant.

- 2.305 When the shortened form is being made available electronically or by telephone, this declaration must appear or be read out and agreed by the claimant.

When to use an LA 'shortened' claim form

- 2.306 You can use a shortened claim form to improve service to the public. For example it would be appropriate when you have a recent full declaration of a claimant's circumstances and these are unlikely to have substantially changed.

- 2.307 For further guidance about using a shortened claim form, see the Benefit Fraud Investigators' *Best practice guide* and, if appropriate, the *HB/CTB Security Guidance, DWP advice and guidance on verification*.

2.308-2.349

Further information needed from claimant

- 2.350 You may ask for any information in connection with a claim which you reasonably need to decide that claim. The claimant should provide the information within one month of being asked to do so, but you may extend this period if the circumstances need it. Information could be

HB Reg 86 & (SPC) 67; CTB Reg 72

- certificates such as birth or marriage certificates, documents, for example tenancy agreement, rent book, and other written evidence
- further details about, eg
 - youth training
 - self employed accounts

2.351-2.389

2.351 The claimant does not need to provide information about payments from any of the MacFarlane Trusts or Fund, The Independent Living Fund, The Eileen Trust, The Skipton Trust or the London Bombings Relief Charitable Fund (LBRCF) if these are disregarded for income and capital purposes, for more information, see *BW1* or *BP1 Assessment of capital* and *BW2* or *BP2 Assessment of income* later in this manual.

CTB Reg 72 & (SPC) 57

2.352-2.369

IS/JSA(IB)/Pension Credit claimed

2.370 If IS/JSA(IB)/Pension Credit has been claimed, the DWP office will send form

- NHB (IS), showing whether IS has been awarded
- NHB (PC), showing Pension Credit has been awarded, or
- NHB(JSA), showing whether JSA(IB) has been awarded

Note: When a claim is for Pension Credit it is likely the Pension Credit and HB/CTB claims were made by telephone with no automatic requirement to subsequently sign a written statement.

2.371 If a person receiving IS, JSA(IB), income-related Employment and Support Allowance (ESA(IR)) or Pension Credit reports a change of address to a DWP office, they will be asked to complete form NHB1A, and to send it to the LA, but for offices covered by CMS, see *D1 Customer Management System*. However, the claimant is also expected to notify the LA of their new address.

2.372 Claimants should send the HB and/or CTB claim form, with all necessary supporting evidence, to the LA's office. However, when a claim is for Pension Credit it is likely the Pension Credit and HB/CTB claim would be made by telephone with no automatic requirement to subsequently sign a written statement.

2.373 If The Pension Service or Jobcentre Plus receive the HB claim form, they will send the HB form to the LA within two working days of receipt.

2.374 If you receive a Pension Credit application form, copy the documents and forward them to The Pension Service.

2.375-2.389

Customer Management System

- 2.390 If a person receiving IS or JSA(IB) reports a change of address to a DWP or Jobcentre Plus office covered by Customer Management System (CMS) see *D1 Customer Management System*, DWP/Jobcentre Plus will
- verify evidence presented by the claimant when this is needed to support the primary benefit claim
 - advise you of the evidence verified by them on an Input Document

Note: You may accept the details of the evidence as being sufficient to fulfil the requirements of the guidance on verification, see HB/CTB Security Guidance.

2.391-2.429

Effective date of claim

- 2.430 The effective date of an HB/CTB claim depends on the claimant's circumstances
- **for a claimant or partner who has not claimed IS, JSA(IB), (ESA(IR)) or Pension Credit**, the date of claim is the date the HB/CTB claim is received at the LA authorised/designated office
 - **for a claimant or partner receiving IS, JSA(IB), ESA(IR) or Pension Credit (guarantee credit or guarantee credit and savings credit)** the effective date of the claim is the first day of entitlement to IS, JSA(IB), ESA(IR) or Pension Credit (guarantee credit or guarantee credit and savings credit). A claimant entitled to JSA(IB)/ESA(IR) is treated as entitled to HB/CTB for any waiting days that are immediately before payment of JSA(IB)/ESA(IR), see *Waiting Days* below for more information. This applies only when the HB/CTB claim is received either at the DWP office or the LA's authorised/designated office within one month of the date the IS, JSA(IB) or ESA(IR) claim is received at the DWP office
 - **if the claimant or partner is not entitled to IS, JSA(IB), ESA(IR) or Pension Credit (guarantee credit or guarantee credit and savings credit) or is entitled to Pension Credit (savings credit)**, the effective date of the claim is the date the HB/CTB claim was received at the DWP office or the LA's authorised/designated office, whichever is the earlier

continued

(2.430)-W2.469

- (2.430) • **if the claimant or partner is already receiving IS, JSA(IB), ESA(IR) or Pension Credit (guarantee credit or guarantee credit and savings credit),** and an HB/CTB claim is made because the claimant becomes liable to pay rent for the first time on accommodation they occupy as their home and the claim is received at the DWP or the authorised/designated LA office within one month of the date the claimant or partner became liable, the effective date is the date the claimant or partner became liable to pay rent

Note: Treat the date of any HB claim as the date the applicant or third party first notifies an LA designated office (or DWP for a claim linked to IS/JSA/ESA(IR)/Pension Credit/Incapacity Benefit (IB)) of their intention to make a claim, provided the claim is received at either office, within a month of the claim form being issued, or any reasonable longer period. The effective date for telephone claims is the date of the telephone call. The effective date for electronic claims is the date the LA/ DWP computer system receives the claim.

2.431-2.449

Claims from partners following death or separation

- 2.450 Continue to pay HB to the former partner of a person whose award of HB has
- ended (due to their death), or
 - been revised to exclude the former partner, ie because of separation
- 2.451 Make the date of claim the date of the change of circumstances, providing the former partner makes a claim in their own right not more than one month after the previous award
- ended
 - was revised
 - was superseded
- 2.452 There is therefore no need for former partners to make a valid claim for backdating of benefit.

2.453-2.469

Waiting days

W2.470 For new claims to JSA(IB), JSA(Cont), ESA(IR) or contributory ESA (ESA(C)) a claimant normally has to 'wait' up to three days before being entitled to that benefit. Under the HB and CTB Regulations, qualifying claimants receiving JSA(IB)/ESA(IR) are treated as if they were receiving JSA(IB)/ESA(IR) for any waiting days so that they are entitled to maximum HB from the start of their JSA(IB)/ESA(IR) claim. This also applies if the waiting days are immediately before a period of sanction imposed by Jobcentre Plus.

W2.471-W2.489

Advance claims

Housing Benefit

W2.490 Under HB regulations it is possible to treat a claim as an advanced claim unless the claim is from someone who has not met the Habitual Residence Test (HRT). You may treat the claim as made in the benefit week immediately before the start date of entitlement if

HB Reg 83 & (SPC) 64

- a claimant is not entitled to HB in the benefit week immediately following the date of claim, and
- you consider that unless a change of circumstances occurs, the claimant will be entitled to HB not more than 13 weeks from the date of claim, unless claimant is approaching pension age, see *Pensioners*

Council Tax Benefit

W2.491 A claim for CTB may be made up to eight weeks before a person thinks they will become liable for CT unless the claim is from someone who has not met the Habitual Residence Test (HRT). If you are satisfied that there are reasonable grounds for assuming that the person will become liable for CT, accept the claim, see *Pensioners* later in this chapter.

W2.492 Check the claim to ensure the claimant is liable for CT. As long as liability arises within the eight week period, treat the claim as made from the date when the CT liability starts. You cannot extend the eight week period.

CTB Reg 69 & (SPC) 53

W2.493-W2.509

P2.490-P2.493

Pensioners

P2.490 Regulations allow advance claims for HB/CTB from 17 weeks before the claimant reaches the qualifying age for Pension Credit unless the claim is from someone who has not met the Habitual Residence Test (HRT).

HB Reg 7 & (SPC) 7; CTB Reg 69 & (SPC) 53

P2.491 Pension Credit claim forms are sent to claimants approaching the Pension Credit qualifying age approximately four months before, for

- women, form sent with Retirement Pension claim form
- men in receipt of IS, JSA(IB) or ESA(IR), form sent separately

P2.492 An HB/CTB claim can be determined under the rules in the HB/CTB (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006, four months before the claimant reaches the Pension Credit qualifying age. You do not have to have an associated Pension Credit entitlement decision before you make a decision under this provision, but you may have to reassess your decision following entitlement notification from The Pension Service.

P2.493 The prescribed time for claiming HB/CTB for a person who has attained the qualifying age for State Pension Credit, is the day the person is entitled to HB/CTB (apart from the condition of making a claim at the time the entitlement arose) and a period of three months thereafter.

HB (SPC) Reg 64 and CTB (SPC) Reg 53 amended by SI 2008/2424 from 6.10.08

Example 1

Claimant entitled to HB/CTB on 7 December 2009 and reached the qualifying age on or before that date. They would have three months and one day in which to claim, ie until 8 March 2010.

Consider whether entitlement to HB/CTB existed during the three months prior to the actual date of claim. So, if the person delays making their claim until 7 December 2009, the first day of entitlement is 7 September 2008.

Example 2

Claimant asks for entitlement to HB/CTB be considered from 7 December 2008 and has reached the qualifying age on or before that date. They make their claim on 11 March 2010.

Consider whether entitlement existed during the three months prior to the date of claim, ie during the period 11 December 2009 to 11 March 2010. The period 7 December 2008 to 10 December 2009 cannot be considered.

Good cause

- P2.494 The good cause provisions are not relevant to the three month period for making the claim. The claimant does not need to specifically ask for the claim to be considered from an earlier date within the three month period.
- P2.495 As these provisions apply only to people who have reached the qualifying age for Pension Credit, the backdating provisions will apply if the claimant/partner is less than six months older than the Pension Credit qualifying age and the claim for HB/CTB is for a longer period than the period during which the claimant/partner has been aged 60.

Example 3

Claimant aged 60 on 9 December 2009 makes a HB/CTB claim on 24 February 2010 and asks for the claim to be considered from 13 October 2009.

Consider whether entitlement existed from 9 December 2009, ie the date the claimant reached the Pension Credit qualifying age, up to the date the claim was made. For the period before 9 December 2009, consider backdating. The claimant must show continuous good cause from 13 October 2009 to 24 February 2010 for the claim to be backdated. Good cause must be shown for the whole period despite the fact that there may be entitlement from 9 December 2009 under the new HB/CTB provisions. If good cause fails then entitlement would begin on 9 December 2009.

First day of entitlement

- P2.496 Having determined the date of claim, determine the first day of entitlement. HB/CTB entitlement begins in the benefit week following the first day in which the claim is made when a person has

HB Reg 65; CTB Reg 56

- made a claim in accordance with the requirements for those of qualifying age
HB Reg 72; CTB Reg 62
- attained, or their partner has attained, the qualifying age for Pension Credit
- satisfied the condition of entitlement to HB/CTB

- P2.497 If a claimant first becomes liable for rent/CT within the three months and a day period allowed for making a claim, their entitlement begins in the benefit week in which the liability arises.

P2.498-P2.509

2.510-W2.523

Hostels and accommodation outside the Housing Revenue Account

- 2.510 There is no time limit for making claims and no need to consider backdating for claims from people who have a daily rent liability and live in a
- hostel, or
 - accommodation provided by LAs, outside the Housing Revenue Account (HRA), under
 - their statutory duties to the homeless, or
 - the short term leased scheme

2.511-2.519

Backdating

W2.520 If someone claims HB/CTB for a past period, you may, in certain circumstances treat the claim as made from an earlier date. The claimant must state on the claim form, or during the telephone call, that the claim covers a past period. This makes it a claim for backdating.

W2.521 Before backdating a claim, you must be satisfied

- the claimant has shown good cause for failing to claim earlier and
- that good cause existed continuously during the period for which backdating (if any) is allowed up until the date the claim for backdating was made

HB Reg 83 & (SPC) 64; SI 1996/462 from 1.4.96; CTB Reg 69

Good cause

W2.522 To establish if a claimant has shown good cause for not claiming earlier, you must be satisfied the reason for not claiming earlier is such that any reasonable person of that age, health and experience would probably not have claimed earlier in the same way as the claimant. The burden of proving good cause rests on the claimant but you must examine all the relevant facts in each case.

W2.523 Although the DSS Adjudication Officer's Guide (AOG) has now been replaced and the good cause provisions no longer apply to the other income-related benefits, you may find the extract from the AOG guidance on 'good cause' contained in *Annex A* at the end of this chapter useful.

Six month limit on backdating

W2.524 A claim can only be backdated for a maximum of six months before the date of the backdating claim. For example, if a claimant claims and receives HB/CTB then later makes a claim for a period before the original claim, the maximum period of backdating will be six months before the claim for backdating, **not** from the original claim for ongoing benefit.

Reg 83 and CTB Reg 69 amended by SI 2008/2424 from 6.10.08

W2.525-W2.529

P2.520-P2.529 Does not apply to pensioners

Working age men aged 60 - 64

2.530 Men aged 60 - 64 are working age, but are also entitled to claim Pension Credit. The following rules apply to this group.

2.531 If the claimant, or their partner, is claiming or receiving IS, JSA(IB) or ESA(IR), the six month time limit for backdating HB/CTB applies and the claimant will need to show good cause for not claiming before.

2.532 In all other cases, the three month Pension Credit age time for claiming period applies, and there is no requirement to show good cause.

2.533-2.539

Rent penalty notice or no rent payable order appealed against and won (Scotland only)

2.540 There is no need for a new HB claim if there is a successful appeal against a rent penalty notice or no rent payable order, and back payment of rent is required.

2.541 If an HB claim was terminated because of the issue of a rent penalty notice or no rent payable order and there has been a successful appeal against that notice or order, you do not need to invite a new claim and consider backdating. Revise the original decision and continue to pay HB on the existing claim.

2.542-2.549

2.550-2.564

Reclaims

LA 'shortened' claim form

- 2.550 There may be circumstances when an LA 'shortened' claim form may be appropriate, but using only one version of a shortened claim form will not be enough to cover all circumstances. The category of case will dictate what information is needed. For example, once it has been verified the claimant is receiving IS/JSA(IB)/ESA(IR), there is no need to ask questions about the claimant's resources.
- 2.551 A different shortened form would be needed for the following cases
- council tenants on IS/JSA(IB)/ESA(IR)/Pension Credit
 - rent rebate cases not on IS/JSA(IB)/ESA(IR)/Pension Credit
 - rent allowance cases on IS/JSA(IB)/ESA(IR)/Pension Credit

2.552-2.559

HB Rapid Reclaim

- 2.560 HB Rapid Reclaim
- is a streamlined reclaiming process for all those who reclaim IS/JSA/IB and HB/CTB within 26 weeks of their previous entitlement ending
 - applies to both HB and CTB
- 2.561 Form HBRR1 is issued by Jobcentre Plus staff to claimants who may be eligible.
- Note:** A copy of form HBRR1 is on the DWP website: <http://www.dwp.gov.uk/housingbenefit/model/>.
- 2.562 The HB Rapid Reclaim form is basically a declaration that the claimant's circumstances have not changed since their last entitlement to IS/JSA/IB and HB/CTB. When this is received and there is entitlement to IS/JSA or IB, LAs should be able to process the claim form without asking for additional information from the claimant.
- 2.563 LAs should consider sending out an HCTB1 form if
- the claimant indicates that their circumstances have changed since their last entitlement
 - IS/JSA/IB is not re-awarded
- 2.564 HB Rapid Reclaim will be appropriate when the claimant is
- reclaiming either IS/JSA or IB at the same time as HB/CTB, **and**
 - reclaiming within 26 weeks of their last entitlement to benefit, **and**
 - entitled to IS/JSA/IB and there have been no changes of circumstance since their last entitlement to HB/CTB

- 2.565 HB Rapid Reclaim will not be appropriate when the claimant
- is claiming HB/CTB for the first time
 - is re-claiming HB/CTB more than 26 weeks from their last entitlement
 - is claiming HB/CTB but not IS, JSA or IB
 - has had a change of circumstance (other than a change related to the change that took them off benefit, eg goes into work/stops work) since their last entitlement

Note: The claimant is **not** excluded from HB Rapid Reclaim if the only change is that the jobseeker or someone they are claiming for is now pregnant.

LA activity

- 2.566 When you receive form HBRR1 you should check
- the form is properly completed. If not, you can either return form HBRR1 to the claimant or send an HCTB1 form, as appropriate
 - the claimant has declared there are no changes of circumstance since their last entitlement to benefit. If the claimant has declared a change, then it will not be appropriate to process the claim without getting further information from them. Depending on the individual circumstances of the claim, you can either send an HCTB1 form to the claimant or contact them about the specific change
 - the claimant is entitled to IS/JSA(IB). Jobcentre Plus will send an Electronic Transfer of Data (ETD) notification of IS/JSA(IB) entitlement. You can also use the CIS for confirmation. For JSA (Cont) or IB cases, Jobcentre Plus will not automatically notify you of entitlement. In these cases you should check the CIS to establish that JSA(Cont) or IB has been reawarded. If the claimant is not entitled to IS/JSA(IB), JSA(Cont) or IB send them an HCTB1 form
 - it is not more than 26 weeks since the claimant's previous entitlement to HB/CTB. Issue of the form HBRR1 is linked to last entitlement to IS/JSA/IB and, although it is unlikely that the previous date of HB/CTB entitlement will be more than 12 weeks from the date of the reclaim, you should check to make sure that this is the case
- 2.567 Once you have established that the claim is a Rapid Reclaim you should process the claim and restore HB/CTB to the previous level of entitlement.

Verification

- 2.568 The information held by LAs for a previous HB/CTB claim will already have been verified. Therefore, cross-checking the information on form HBRR1 against these details will satisfy the requirements of both Section 19 and the verification guidance, see *HB/CTB Security Guidance*. If these details do not match further checks should be made.

2.569-W2.640

Link with HB Extended Payments and 'in-work' claims

2.569 HB Extended Payments and an 'in-work' claim are relevant at the point when the claimant leaves IS/JSA(IB)/ESA for work. HB Rapid Reclaim occurs at the point when the claimant returns to benefit. There should be no confusion between the two.

2.570 The 26 week time period between leaving and reclaiming benefit, which controls the issue of form HBRR1, is linked to IS/JSA/IB entitlement. Any award of HB Extended Payments should not be a factor in checking whether there have been more than 26 weeks since previous HB/CTB entitlement.

Note: Form HBRR1 is only for use in conjunction with a re-claim to IS/JSA/IB. It must not be used to claim HB and/or CTB for any period in between claims to IS or JSA(IB). The claimant will still need to make an 'in-work' claim for those periods or seek backdating.

2.571-2.599

Amendment and withdrawal of claim

2.600 At any time before an HB/CTB claim has been decided, the claimant may

- amend the claim. Any amendment to a claim must be made in writing to the authorised/designated office unless the LA offers an electronic or telephone claim service, see *Electronic claims* and *Telephone claims* earlier in this chapter. The amended information then applies from the start of the claim.

HB Reg 87 & (SPC) 68; CTB Reg 73 & (SPC) 58

- withdraw the claim. A notice to withdraw a claim takes effect from the day it is received by the authorised/designated office. A claim which is withdrawn is not to be decided

HB Reg 87 & (SPC) 68; CTB Reg 73 & (SPC) 58

2.601-2.639

Change of circumstances - working age

W2.640 If you are asking for information about a change of circumstances, you must

HB Reg 88 & (SPC) 67

- notify the claimant of their responsibility under regulation 88 to tell the LA of any change in circumstances which might effect benefit entitlement
- explain either orally or in writing, the kind of change in circumstances the claimant should tell you about
- ask the claimant to provide written confirmation of the change unless the LA offers an electronic or telephone claim service, see *Electronic claims* and *Telephone claims* earlier in this part. This avoids any doubt whether the claimant has satisfied their responsibility to notify a change under HB regulation 88 and CTB Reg 74

W2.641 If a claimant notifies a change of circumstances during a benefit award, and the change is relevant to a different current award, you can supersede both awards, eg change of circumstances during a CTB award, change relevant to HB, both awards superseded.

W2.642-W2.649

Change of circumstances - pensioners

P2.640 When the claimant receives both Pension Credit and HB/CTB, they are required to report the majority of any changes in their circumstances to The Pension Service.

P2.641 It will be The Pension Service's responsibility to notify the changes of circumstance to the LA when the information is needed by the LA.

P2.642 Changes the claimant should report to the LA are specified in HB (General) Reg 88 (as amended by the HB/CTB (SPC) Regs) and CTB Reg 69. See *A6 Claimants' reporting responsibilities* later in this part.

P2.643 Refer any change of circumstance reported to the LA in a Pension Credit (savings credit) only case, which is not HB/CTB specific, to The Pension Service using form NHB5 or local equivalent. The Pension Service will notify the LA when a reassessment to the Pension Credit (savings credit) or AIF is made.

P2.644-P2.649

Change of circumstances - prisoners

2.650 Prisoners who were claiming HB/CTB immediately prior to custody use forms HCTB6, HCTB7 and HCTB8 to report a change in their circumstances. Staff in the prison establishment make the forms available to prisoners. You can access and download pdfs of these forms by going to <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/claims-processing/claims-guidance/forms/>.

2.651 For offenders who were in receipt of benefit prior to custody, these forms help to ensure benefit continues and allows, when appropriate, those who are not sentenced or who receive short sentences to return to their homes. They would otherwise accrue substantial rent arrears or face eviction through non payment of rent

2.652 For other prisoners, it will make it simpler and easier to advise the LA of a change that will mean they are no longer entitled to benefit.

2.653 See *Annex C* of this chapter for a reminder about the effects of imprisonment on HB/CTB.

2.654-2.657

HCTB6 - Notification of remand in custody

2.654 Form HCTB6 is used when a prisoner

- is remanded into custody, or committed into custody but not sentenced, and
- was in receipt of benefit immediately prior to being remanded/committed

2.655 The form is divided into three parts

Part A

- details of the LA that benefit has been claimed from
- official prison address stamp
- claimant details
- address benefit claimed for

Part B

- date of first reception as either a remanded or committed prisoner
- anticipated date of trial or sentencing
- claimant declaration of nil income
- claimant's signature
- date

Part C

- details of staff member completing the documentation
- staff member's signature
- date

2.656 Once form HCTB6 has been completed prison staff should send it to the appropriate LA as soon as it is known that the prisoner wishes to continue claiming and, if possible, no later than 14 days from the day of first reception.

HCTB7 - Change of status/custodial sentence

2.657 This form is used when a prisoner

- has been received into custody for the first time, is serving a prison sentence and was claiming benefit immediately prior to custody, or
- was previously remanded in custody, receives a custodial sentence and was claiming benefit prior to sentencing

- 2.658 The prison completes form HCTB7 and sends it to the LA, if possible within seven days but no later than 14 days of the sentencing being received, when
- form HCTB6 was previously submitted to continue a benefit claim for a prisoner on remand, and
 - the prisoner was subsequently sentenced to a term of imprisonment

- 2.659 Form HCTB7 is divided into three parts

Part A

- details of LA benefit has been claimed from
- official prison address stamp
- claimant details
- address benefit claimed for

Part B

- date of first reception as remand or committal into custody
- dates of conviction and sentencing
- sentence length
- earliest date of release
- home detention curfew date
- claimant's signature

Part C

- details of staff member completing the documentation
- staff member's signature
- date

HCTB8 - Release from custody/change of circumstances

- 2.660 Form HCTB8 is usually sent to the LA by the resettlement officer on behalf of the prisoner. In some cases the prison staff issue the form to the prisoner with clear instruction of their responsibility to inform the paying LA of their discharge from custody.
- 2.661 If prison staff complete form HCTB8, they are instructed to submit the form to the relevant LA, if possible within seven days but no later than 14 days of discharge or discovering a change of circumstance.

2.662-2.672

2.662 Form HCTB8 is divided into three parts

Part A

- details of LA benefit has been claimed from
- official prison address stamp
- claimant details
- address benefit claimed for

Part B

- details of why and when the prisoner was released including date of release or full details of what change of circumstances has taken place or been discovered
- signature of claimant or official in claimant's absence

Part C

- details of staff member completing the documentation
- staff member's signature
- date

2.663-2.669

Defective claims

2.670 Treat an HB/CTB claim as defective if it is made in writing

- on a form approved for the purpose by the LA but does not provide enough information about the claimant's individual circumstances to enable you to decide the claim
- not on a form approved by the LA and does not provide enough information to enable you to decide the claim

2.671 If the claim is defective, you may provide the claimant with an approved form or ask for the information needed to decide the claim.

2.672 Treat the claim as made on the date the defective form was received if within one month of the defective claim being referred or sent, or within a longer period you decide is reasonable in the circumstances, you receive

HB Reg 83 & (SPC) 64; CTB Reg 69 & (SPC) 53

- a properly completed form, or
- the extra information needed to decide the claim

- 2.673 Sometimes a properly completed approved claim form will not provide enough information to decide the claim, for example when there is another LA involved. In these cases although you need to ask for extra information, the claim is not treated as defective. The claim must be treated as made on the date it is received.

HB Reg 86 & (SPC) 67; CTB Reg 72 & (SPC) 57

2.674-2.679

Landlord registration or licensing and antisocial behaviour penalties

Scotland

Rent penalty notices

- 2.680 The Antisocial Behaviour etc. (Scotland) Act 2004 requires all landlords in Scotland, with a few exceptions, to register with their LA.
- 2.681 Failure to register can result in a rent penalty notice. The effective date of a rent penalty notice is
- a date specified by the LA's registration section, and
 - no earlier than the day after the day on which the notice is served by the LA
- 2.682 A landlord cannot charge rent for a property to which a rent penalty notice applies, so tenants living in that property will not be able to get HB.
- 2.683 For further information about rent penalty notices, see Annex B at the end of this chapter.

New claim: property subject to a rent penalty notice

- 2.684 If you receive an HB claim in respect of a property subject to a rent penalty notice, you cannot pay HB as the tenant has no rent liability.

Rent penalty notice issued during a claim

- 2.685 If you become aware of a rent penalty notice relating to a house that is the subject of an existing claim, HB ceases from the effective date of the notice. In these circumstances the registration section should inform HB using agreed local arrangements that include an appropriate interval between service of the notice and its effective date.

Rent penalty notice revoked

- 2.686 It is up to the tenant to reclaim HB when a rent penalty notice is revoked. If the LA registration section know who the tenant is they will tell them that the notice has been revoked.

2.687-2.689

2.690-2.698

No rent payable orders

- 2.690 The Antisocial Behaviour etc. (Scotland) Act 2004 allows an LA to serve an antisocial behaviour notice on a landlord if
- anyone who occupies or visits their property engages in antisocial behaviour at or near the property, and
 - the landlord has failed to take reasonable management steps to address the antisocial behaviour
- 2.691 The notice requires the landlord to take specified actions to deal with the antisocial behaviour.
- 2.692 If the landlord fails to comply with the antisocial behaviour notice, the LA can apply to the courts for a no rent payable order, which means the landlord cannot charge rent and so HB cannot be paid.
- 2.693 For further details of no rent payable orders, see *Annex B* at the end of this chapter.

New claim: property subject to a no rent payable order

- 2.694 If you receive an HB claim in respect of a property subject to a no rent payable order, you cannot pay HB as the tenant has no rent liability.

No rent payable order issued during a claim

- 2.695 If a no rent payable order issued that relates to a house where there is an existing claim, HB ends from the effective date of the notice (date of court order) as the tenant will have no rent liability. Local arrangements help to ensure you have as much warning as possible of an application for such a court order.

No rent payable order revoked

- 2.696 It is up to the tenant to reclaim HB when a no rent payable order is revoked. The LA should give the tenants a copy of the revoked order.

Management control orders

- 2.697 If a landlord fails to comply with the antisocial behaviour notice, see *No rent payable orders* earlier in this chapter, the LA can apply to the courts for a management control order. The order allows the LA to take over the management of the property and the rent becomes payable to the LA.
- 2.698 For more information about management control orders, see *Annex B* at the end of this chapter.

New claim: property subject to a management control order

- 2.699 If the claimant lives in a property that is subject to a management control order, the LA is taking on some of the functions of the landlord and rent becomes payable to the LA rather than the landlord.
- 2.700 Normally rent rebates would be payable but in these circumstances you must treat the case as a rent allowance and apply the normal rules.
- 2.701 If there is a management control order in place you can chose to pay either the landlord, ie the LA, or the claimant.

Management control order issued during a claim

- 2.702 If a management control order is issued for a property and the claimant is already getting HB do not reassess the case as a rent rebate. Continue to treat the case as a rent allowance.
- 2.703 This situation is similar to that of a tenant in a property that has a change of private landlord.
- 2.704 If, prior to the issue of the management control order, HB was being paid
- directly to the original landlord, the landlord is responsible for notifying you that they are no longer getting the rent, as the change will affect the amount of HB they receive
 - to the claimant, the claimant does not need to tell you about the issue of the management order unless it results in a change which the claimant could be expected to know will affect the amount of HB they receive
- 2.705 Local arrangements will help to ensure that the LA tell you when a management control order is made. These cases will be rare.
- 2.706 You can decide whether to pay the landlord, ie the LA, or the claimant.

Management control order revoked or ends

- 2.707 A management control order can be revoked if the court considers that
- the landlord or the LA has taken action to rectify the antisocial behaviour, or
 - it is unreasonable for the order to continue
- 2.708 If the management control order is revoked the rent becomes payable to the original landlord again and the normal rules regarding direct payments of HB apply.
- 2.709 A management control order is for a specified period not exceeding 12 months. If that period ends without the order being revoked, the order falls and the rent becomes due to the original landlord again. Local arrangements will help to ensure the LA tell you when a management control order is revoked or ends.

2.710-2.719

England and Wales

Management orders

- 2.720 Landlords letting Houses of Multiple Occupation (HMOs) must be licensed if the building is of three or more storeys and occupied by five or more tenants. LAs can also make additional licensing schemes to cover smaller HMOs that they have problems with.
- 2.721 LAs can make a licensing scheme for privately rented accommodation in their area. These schemes are intended to be focused on areas of low housing demand and where antisocial behaviour occurs.
- 2.722 There are a range of enforcement measures including fines. One such measure is the issue of interim and final management orders where the LA takes over the management of the property and rent become due to the LA rather than the original landlord.
- 2.723 As there will be relatively few management orders you should establish arrangements for your LA's licensing sections to notify HB sections when these orders are issued or revoked.

New claim: property subject to a management order

- 2.724 If the claimant lives in a property that is subject to a management order, the LA is taking on some of the functions of the landlord and rent is payable to the LA rather than the landlord.
- 2.725 Normally rent rebates would be payable but in these circumstances you must treat the case as a rent allowance and apply the normal rules.
- 2.726 If there is a management order in place you can chose to pay either the landlord, ie the LA, or the claimant.

Management order issued during a claim

- 2.727 If a management order is issued in respect of a property and the claimant is already getting HB do not reassess the case as a rent rebate. Continue to treat the case as a rent allowance.
- 2.728 The situation is similar to that of a tenant in a property that has a change of private landlord.
- 2.729 If, prior to the issue of the management order, HB was being paid
- directly to the original landlord, the landlord is responsible for notifying you that they are no longer getting the rent, as the change will affect the amount of HB they receive
 - to the claimant, the claimant does not need to tell you about the issue of the management order unless it results in a change which the claimant could be expected to know will affect the amount of HB they receive
- 2.730 If a management order is issued you can decide whether to pay the landlord, ie the LA, or the claimant.

Management order revoked or ceases to have effect

- 2.731 Once a management order is revoked or ceases to have effect, the rent will no longer be payable to the LA. Continue to pay rent allowances, and note that as the rent is no longer due to the LA, the normal rules on direct payments of HB apply.

2.732-2.739

Empty Dwelling Management Orders

- 2.740 An LA can secure occupation of privately owned empty homes by way of interim and final Empty Dwelling Management Orders (EDMOs) which allow them to take over the management of the property.
- 2.741 Some types of empty properties are exempt from EDMOs, for example
- holiday homes
 - homes on the market
 - homes where the owner is temporarily resident elsewhere
- 2.742 As there will be relatively few EDMOs, you should establish arrangements for your LA's licensing sections to notify HB when these orders are issued or revoked.

New claim: property subject to an EDMO

- 2.743 If the claimant lives in a property that is subject to an EDMO, the LA is taking on some of the functions of the landlord and rent is payable to the LA rather than the landlord.
- 2.744 Normally rent rebates would be payable but in these circumstances you must treat the case as a rent allowance and apply the normal rent allowance rules.
- 2.745 You can decide whether to pay the landlord, ie the LA, or the claimant.

EDMO revoked or ceases to have effect

- 2.746 Once an EDMO is revoked or ceases to have effect, the rent will no longer be payable to the LA. Continue to pay rent allowances, and note that as the rent is no longer due to the LA, the normal rules on direct payments of HB apply.

2.747-2.999

Guidance on good cause

Note: Although the Adjudication Officers' Guide (AOG) is no longer current, the information in this annex, which is based on the AOG, provides a useful basis to establish whether good cause exists.

Meaning of good cause

2A.00 Good cause

- is not defined in legislation but a number of Commissioner's decisions deal with it
- includes any facts that would probably have caused a reasonable person to act as a claimant did, for example

CS371/49(KL); R(SB) 6/83

- the claimant's age, health, background and knowledge of the Social Security (SS) system
- information the claimant
 - ~ had received or
 - ~ could have obtained

2A.01 It is for the claimant to show good cause unless there is an appointee. The claimant's explanation for the delay in claiming should be considered in the light of all the facts and circumstances.

CS371/49(KL); SS (C&P) Regs, reg 33; R(G) 2/74

2A.02 Some of the circumstances which may cause delay and whether these circumstances can be accepted as good cause are looked at in AOG 11613.

Ignorance 'of itself'

2A.03 Good cause cannot be established by a claimant simply claiming to be ignorant of the

- 1 right to benefit or
- 2 time limit for claiming

R(SB) 6/83; CS 35/48

The question is whether the claimant's ignorance or mistaken belief was reasonable

CS 371/49 KL

Annex A

2A.04 A plea of ignorance will not necessarily lead to disentitlement. You must always
R(S) 5/79; Walls Meat Co Ltd v Khan [1979]; CR52

- 1 look at the reasons for the ignorance **and**
- 2 consider if it was reasonable for the claimant not to have enquired, or to think that there was nothing to enquire about

R(P) 1/79

Failure to make enquiries

2A.05 Claimants are expected to take reasonable steps to find out what their rights and duties are. Claimants should

CWG 2/49; R(G) 3/53; R(P) 1/79; R(S) 8/81

- 1 realize that they may be entitled to benefit **and**
- 2 find out how to claim by asking at an LO

You must look at the evidence and consider if the person has done what can be reasonably expected.

CWG 2/40; CSG 9/49; R(1) 82/53; R(U) 35/56; R(P) 5/61; R(SB) 6/83

2A.06 Failure to make enquiries will not on its own necessarily mean that good cause has not been shown. You should not expect claimants to make it their top priority to find out about SS legislation, on the chance they might be affected.

R(S) 3/79

Example

Reg Potter is a retired teacher receiving an occupational pension. Reg believed that being retired, there was no entitlement to IB and therefore made no enquiries. As Reg genuinely believed there was nothing to enquire about, and it was considered that this mistaken belief was reasonably held, good cause for the delay in claiming is accepted.

New legislation

2A.07 New legislation may change the conditions of entitlement or payability of an existing benefit. Claimants may become entitled under the new legislation if they had

- a claim for benefit disallowed **or**
- not claimed because it was clear there was no entitlement

2A.08 If the claimant was unaware of a publicity campaign designed to attract claims under the new legislation good cause may be accepted for delay in claiming. But you should consider if the delay was reasonable, if the claimant

R(P) 1/79

- saw the publicity or was aware of the new legislation, but
- **did not** make further enquiries

Claimant abroad or recently arrived in GB

2A.09 Claimants who are living or who have lived abroad, may be unaware of their entitlement. A person claiming benefit from outside GB is generally at a disadvantage in making enquiries. Good cause may be accepted

- while enquiries are being made **and**
- if a claim is made as soon as possible after enquiries are completed

R(G) 3/53

Difficulty with language

2A.10 Difficulty with language is not in itself good cause for delay in claiming but difficulty in communication may be. For example

- 1 a claimant who
 - 1.1 has little or no understanding of English **and**
 - 1.2 seeks advice from an interpreter at an LO
- 2 will be able to show good cause if the interpreter makes a mistake when passing on that advice

2A.11 Claimants are expected to seek help. Do not accept good cause unless there was no one who could have enquired on their behalf.

Postal delays - benefits except IS, JSA, DWA and FC

2A.12 Good cause should be accepted if there is a

- 1 normal post delay, that is the time taken for the delivery of post in normal circumstances
or
- 2 unusual postal delay, that is any delay greater than in **1**, **or**
- 3 general postal delay, for example brought about by industrial action

2A.13 If there has been any postal delay other than as in **1**, you should consider if it was reasonable for the claimant not to have enquired about the progress of the claim.

Annex A

2A.14 For guidance on DLA and AA see AOG 11106.

Staggered take-on

2A.15 When arrangements have been made for claims to be received over a number of days because large numbers are expected within a short period, good cause should be accepted.

Misled by official information

2A.16 Good cause for the delay in claiming can be accepted from the day advice was given if a claimant

- 1 enquires at an LO
- 2 acts on the information or advice given, **and**
- 3 that advice was incorrect or misleading

2A.17 If the claimant tried to carry out official advice but acted wrongly through misunderstanding, good cause can be accepted unless the claimant acted unreasonably. Consider if the delay in claiming was due to a mistaken belief reasonably held.

R(G) 1/75; R(P) 7/79; R(S) 8/81; R(SB) 6/85

2A.18 A claimant could only reasonably expect advice about benefits which the LO deals with. Good cause may be accepted when

CP 30/50; R(U) 3/60

- 1 a claimant is
 - 1.1 not given advice or
 - 1.2 is given misleading advice **and**
- 2 it would be reasonable to expect advice to have been given **and**
- 3 the advice or lack of it contributed to the delay in claiming

Misled by unofficial information

2A.19 Claimants acting on unofficial advice, for example from colleagues, friends or relatives, will not normally be able to prove good cause. But good cause may be accepted where it was reasonable for the claimant to believe the advice was either official or reliable.

2A.20 Good cause may be accepted when the delay in claiming was due to the claimant relying on advice or information given by an organization which makes available claim forms or leaflets, for example

- POs
- hospitals
- LA welfare rights offices
- Citizens Advice Bureaux

R(U) 9/74

Advice from a doctor

2A.21 A person whose doctor gives incorrect advice about claiming benefit cannot show good cause **unless**

- special circumstances, for example the claimant's age, health or experience make it reasonable to rely on the doctor's advice, **or**
- the claimant was acting on advice about a medical issue, for example whether pneumoconiosis could be diagnosed at the outset

R(S) 5/56

R(I) 40/59

Advice from a solicitor or accountant

2A.22 Good cause may be accepted when a claimant relies on advice given by a solicitor or an accountant on a legal question regarding claims and entitlement to benefit.

CS 50/50

Advice from an employer

2A.23 It may be reasonable to accept good cause when

- 1 a claimant has acted on advice from an employer, for example when a claimant
 - 1.1 is or has been receiving SSP, and
 - 1.2 delays a claim for IB **and**
- 2 the delay was because of the advice given by the employer

Deliberately does not claim

2A.24 A person who deliberately does not claim may not be able to show good cause.

CS 596/49; R(U) 34/51; CS 34/49; R(U) 5/59

Annex A

2A.25 When a claimant deliberately does not claim you must decide if the delay was reasonable. Factors to be considered include

R(U) 2/92

- the length of the delay
- the claimant's actions during that period
- any previous claims for the particular benefit
- advice the claimant has sought or received

Example

Patrick Barrat did not know there was a time limit for claiming JSA. Patrick had always worked and had never claimed any benefit before. When it became clear he was not going to find work immediately, Patrick claimed JSA. Good cause for the delay was accepted in view of

- 1 Patrick's lack of experience of the benefit system and
- 2 the fact that he made it his priority to find a job and
- 3 the fact that he claimed benefit within a reasonable time

Carelessness, thoughtlessness or indifference

2A.26 Carelessness, thoughtlessness or indifference do not constitute good cause. For example when the claim form was

- obtained in time but mislaid or
- signed in time but not sent until the end of the claimant's holiday

CS 15/48

CSG 6/48

Health

2A.27 Always consider the claimant's health when looking at good cause

- 1 If a claimant was unable to claim on time because they
 - 1.1 have a serious illness and
 - 1.2 were unable to ask someone to claim on their behalf
- 2 the claimant may show good cause while they are ill

CS 51/49

2A.28 If, after a serious illness, the delay continues, good cause depends on whether the claimant has done all that could be reasonably expected in the circumstances.

CG 207/49

- 2A.29 A claimant who
- 1 is unable to
 - 1.1 complete a claim form, or
 - 1.2 can complete a claim form but is unable to post or deliver it to the LO
 - 2 is expected to ask someone to complete, post or deliver it for them
- 2A.30 Do not accept good cause unless it would be unreasonable for them to do this.

R(S) 21/54

Claim by appointee

- 2A.31 It is the claimant's responsibility to claim unless there is an appointee.
- 2A.32 Claimants with personal good cause will not be affected by the delay of someone who makes a claim on their behalf, unless that person is the appointee.

R(SB) 17/83; R(SB) 9/84

- 2A.33 From the date of appointment
- the actions and inaction of an appointee are treated as those of the claimant
 - it is the appointee who has to show good cause

R(S) 2/51; R(P) 1/56; R(A) 2/81; R(SB) 17/83; R(SB) 9/84; R(P) 2/85

Example

A mentally disabled person claims IS on 16 February 1996. On 22 February 1996 the S of S appoints the claimant's mother to act for the claimant. On 12 April 1996 the appointee claims IS from 11 April 1988. The disabled person has good cause from 11 April 1988 to 21 February 1996 but the appointee does not show good cause continuously from 22 February 1996 to 11 April 1996 therefore the whole claim fails.

R(SB) 9/84, R(IS) 5/91

Annex A

- 2A.34 If someone has been acting for the claimant before being appointed, the actions but **not the inactions** of that person may be taken into account when deciding good cause before the date of appointment.

R(S) 2/51; R(P) 1/56; R(A) 2/81; R(SB) 17/83; R(SB) 9/84; R(P) 2/85

Example

Maureen Kelly, a 78 year old widow was in poor health and housebound. She relied heavily on her daughter Kathleen Murphy. Kathleen was not the appointee.

A claim for IS had been refused on the grounds of income. AA was subsequently awarded which gave entitlement to an SDP, however a claim for IS with a request for backdating was not made until 2 years later. Although Kathleen had not shown good cause by failing to ask about possible entitlement to IS following the award of AA, Maureen, because of her age and health, had good reason to rely on her daughter and could therefore show good cause. The inaction of Kathleen was therefore disregarded and IS awarded from a date 12 months before the date of claim.

Claim by person other than appointee

- 2A.35 Accept good cause when a claimant

- 1 is able to claim personally but for convenience asks someone else to make the claim, **or**
CU 78/49; CG 1/50; R(S) 25/52; R(P) 2/85
- 2 is unable to claim, for example because of illness, and someone takes on that responsibility,
and
CWG 6/50; CS 100/49
- 3 the claimant has done all that could be reasonably expected in the circumstances to ensure that the claim is made

Youthful claimant

- 2A.36 Whatever their age, claimants are still responsible for making their own claims. However the experience of young claimants may be limited and you should bear this in mind when deciding good cause. For example, it may be reasonable for young people to rely on their parents to deal with claims on their behalf.

R(S) 4/52

2A.37-2A.49

Belief that solicitors or trade union would claim

2A.50 Accept good cause

1 If a claimant

1.1 instructs a solicitor to make a claim or

1.2 hands over documents relating to a claim, and

2 the solicitor claims late

R(G) 17/52

2A.51 In these circumstances a claimant is entitled to rely on the solicitor to be aware of, and observe, the time limits for claiming.

2A.52 Good cause may be accepted when it was reasonable for a claimant to believe that their trades union or association would make the claim.

CU 78/49 KL

Imprisonment

2A.53 Imprisonment or detention in legal custody may provide good cause, but you should consider the question of disqualification (AOG 17001).

Good cause for particular benefits

IB - belief that the self-employed cannot claim

2A.54 Self employed claimants who firmly believe that class 2 NI contributions do not count for IB, may be able to show good cause where that belief is reasonably held.

R(S) 173; R(S) 8/81

2A.55 It may not be appropriate to accept good cause when the claimant

- is uncertain about entitlement and has failed to make enquiries or
- has received information about the benefits available to the self employed. For example, the Contributions Agency issue a starter pack to the S/E entitled 'Working for Yourself'. This contains leaflets giving details of the benefits available to the self employed

Annex A

2A.56 You should

- 1 not accept that ignorance of entitlement, by itself, proves good cause for a delay in claiming, **and**
- 2 apply the tests of reasonableness set out in AOG 11609-11610 to the facts and circumstances of each case

Example 1

A self employed farmer claimed IB following advice from his accountant. The claimant believed that, being self employed, he was not entitled to IB. Good cause was accepted as the claimant truly believed he was not entitled.

Example 2

A self employed claimant who although believing there was no entitlement to IB, obtained a claim form but did not complete it. Obtaining a claim form might suggest the belief was not a firm one and that further enquiries should have been made. Good cause will not be accepted.

IB and SDA - hospital in-patients

2A.57 A claimant who has been discharged as a hospital in-patient, is treated as having shown good cause for delay in claiming for the shorter of

- 1 13 weeks starting of the day of admission **or**
- 2 the period starting on the day of admission and ending three weeks after discharge.

SS (C&P) Regs, Sch 5 Para 2

A claimant who has not been discharged is treated as having shown good cause for the period of 13 weeks starting on the day of admission.

SS (C&P) Regs, Sch 5 Para 2

- 2A.58 When deciding the date of admission, you should count any previous period in hospital, when the period out of hospital is three weeks or less.

SS (C&P) Regs, Sch 5 Para 2

Note: For this purpose the terms used have the following meanings

Hospital - any institution for the reception and treatment of persons suffering from illness and any maternity home

SS (C&P) Regs, Sch 5 Para 2

Illness - includes mental disorder and any injury or disability requiring medical treatment or nursing

SS (C&P) Regs, Sch 5 Para 2

in-patient - person admitted to hospital to receive treatment by or under the direction of a registered medical practitioner. Does not include convalescence

SS (C&P) Regs, Sch 5 Para 2(2)(a)

week - period of seven consecutive days

R(S) 3/56

- 2A.59 If the whole period of delay is not covered by good cause, the claimant may show good cause for other reasons throughout the remainder of the period.

IB and SDA - deemed incapacity for work

- 2A.60 Ignorance of the provisions which enable a person in normal health to be deemed incapable of work should be accepted as good cause **unless** it was reasonable to expect the claimant to make enquiries. For example where no wages were paid during the period of absence from work.

SS CB Act 92, sec 171A; SS (U.S & IB) Regs. reg 3; SS (SDA) Regs reg 7;
SS (IW) (Gen) Regs. reg 11; R(S) 18/52

JSA

2A.61 Good cause may be shown when the claimant

- 1 is unable to attend a Jobcentre through following up a genuine prospect of employment
R(U) 20/56
- 2 has made genuine efforts to find work and has delayed claiming due to a genuine belief that those efforts would succeed
- 3 is waiting for the result of an application for reinstatement and believes wages will be paid for the day in question if successful
R(U) 23/52
- 4 reasonably expected to receive pay in lieu of notice or wages
R(U) 1/54

This list is not exhaustive, the factors referred to in AOG 11607 should also be considered.

2A.62 Good cause should be accepted for the Saturday where

- 1 a person makes a claim on a Monday for an earlier date
- 2 the Jobcentre would have been closed on a Saturday and a claim could not be made

When there is evidence that a claim would not have been made on the Saturday even if the office had been open, good cause should not be considered.

2A.63 Good cause will not be shown when claimants

- 1 have been advised to continue claiming while unemployed and available for employment after having a claim disallowed
- 2 think their version of the circumstances in which they left employment will not be accepted

R(U) 5/52

Dis B

2A.64 Good cause may be accepted when there is evidence the claimant did not realise that

- 1 the effects of an injury were serious **or**
- 2 the injury resulted from the industrial accident **or**
- 3 there had been an industrial accident

R(I) 51/54; R(I) 43/55

Once the claimant is aware that the injury or incapacity results from an industrial accident a claim should be made within a reasonable time.

F(I) 79/54

2A.65 Good cause should not be accepted where the claimant did not realise the incapacity was a prescribed disease (PD), **but** was aware that it was caused by work.

R(I) 82/53

2A.66 However good cause should be accepted when, although suffering from the PD, it was reasonable for the claimant to have been unaware that this was the case. The claimant will not be able to show good cause where

R(I) 6/54; R(I) 24/58

1 the symptoms were clear **and**

R(I) 25/56

2 there were no other factors, such as medical advice that the PD could not be diagnosed, that may have delayed a claim

R(I) 40/59

Increase for dependants

2A.67 The time for claiming an increase for a dependant cannot be extended for good cause.

*SS A Act 92, sec 1(2); SS (C&P) Regs. reg 19*4*

2A.68-2A.999

Landlord registration and antisocial behaviour penalties - liaison with LA registration sections: Scotland

Registration of landlords

Penalties for non-registration

- 1 Since 30 April 2006, as a result of provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, all landlords in Scotland, with a few exceptions, must register with their Local Authority (LA).
- 2 Each LA must have a register of landlords in the private rented sector and the properties that they let.
- 3 Some properties are exempt from the scope of landlord registration. For example
 - the property is the landlord's home (resident landlords)
 - properties let to family members (as defined by s.108 Housing (Scotland) Act 2001)
- 4 It is an offence to let a house without being registered or while awaiting the outcome of a valid application to register. There are penalties for failure to register. As well as seeking prosecution, the LA can serve a notice that no rent is payable on the property. These are called rent penalty notices.
- 5 When a rent penalty notice is in force, the landlord cannot charge rent to the tenant. A rent penalty notice takes effect from a date which is specified by the LA's registration section, and it must be no earlier than the day after the day on which it is served.
- 6 Anyone with an interest can appeal to the courts against a rent penalty notice within 21 days of the date that it takes effect. If the appeal is successful then the notice can be revoked.
- 7 The LA can revoke a rent penalty notice once the landlord has registered or the house is no longer subject to a lease or occupancy arrangement. The LA registration section specifies the date of revocation and from that date the landlord can charge rent to their tenants again.

The effect of a rent penalty notice on HB

- 8 During the currency of a rent penalty notice a landlord cannot charge rent in respect of the property to which the notice refers. This means that tenants living in the property cannot get HB.

Working with colleagues in the registration sections of the LA

- 9 A lead officer and other staff will implement the registration provisions which are in Part 8 of the Act. Depending on the arrangements within your LA, these staff may be part of housing, environmental health, licensing or other sections. For the purposes of this manual, we will call them 'registration sections'.
- 10 Guidance issued to LAs by the Scottish Executive on how to implement these provisions recommends that the staff concerned make contact with HB sections to come up with suitable communication and working arrangements.
- 11 The website for the guidance on registration is <http://www.scotland.gov.uk/publications/2006/02/14100433/0>
- 12 The main situation when communication is important is if the LA has issued a rent penalty notice because the landlord is letting without being registered. LAs are expected to encourage the landlord to apply for registration rather than move straight to the rent penalty.
- 13 In addition, your registration colleagues may wish to approach you to find out if there are any tenants claiming or getting HB to help with their enforcement of the registration requirement.
- 14 You should make your own communication arrangements taking into account local practice and relevant legislation. This includes data protection legislation, as read with section 139 of the Antisocial Behaviour etc. (Scotland) Act 2004 which allows for the disclosure and sharing of information, making specific reference to HB.

The public register of landlords

- 15 The public register of landlords is available on the internet.
- 16 The website is <https://www.landlordregistrationscotland.gov.uk>
- 17 This register shows landlords whose applications have been processed and accepted by the LA. It will not show landlords who
- are complying with the law because they have applied, but whose application is being processed by the LA
 - do not require to register because they only let properties which are exempt - the main category is resident landlords who do not let other property
 - have been refused registration or who have had registration removed
- 18 So the fact that a claimant's landlord is not on the register is not clear evidence that the landlord is letting illegally.

- 19 Information for tenants about registration, including leaflets, is available from the registration section. You may wish to provide claimants with a leaflet since registration is designed to protect their interests.

Information for registration officers

- 20 Registration officers have to identify and pursue landlords who should be registered but are not. Information about the addresses of HB claimants and the identity of their landlords is helpful to registration sections. This helps to prevent or detect criminal offences and you should assist registration officers in this way. Discuss with your registration and legal colleagues, as appropriate, how to share such information within your authority. Remember to take the appropriate data protection legislation into account.

Rent liability and unregistered properties

- 21 If a claimant is living in an unregistered property it does not mean that the landlord cannot charge rent. So it is possible for a tenant to live in an unregistered property and be entitled to HB. But if that property is subject to a rent penalty notice, then the landlord cannot charge rent and so no HB is payable.
- 22 If possible agree, through local arrangements, for the registration section to notify HB of the few rent penalty notices that may be issued. This is preferable to HB checking the register for each house identified in a claim and then checking with the registration section whether those houses that are not registered are subject to a notice. Again, the best approach will depend on local arrangements and should be discussed locally.

Failure to address antisocial behaviour

Penalties

- 23 Since 30 April 2006, as a result of provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, an LA can serve an antisocial behaviour notice on a landlord if
- anyone who occupies or visits their property engages in antisocial behaviour at or near the property, and
 - the landlord has failed to take reasonable management steps to address the problem
- 24 The notice requires the landlord to take specified actions to deal with the antisocial behaviour. If the landlord fails to comply with an antisocial behaviour notice, that is an offence.
- 25 If the landlord fails to comply with the antisocial behaviour notice, the LA can apply to the courts for either
- a no rent payable order, which means the landlord cannot charge rent and so HB cannot be paid, or
 - a management control order if the LA takes over the management of the property, and rent becomes due to the LA

No rent payable orders

- 26 No rent payable orders are issued by the court and aimed at landlords who fail to address antisocial behaviour by their tenants or other occupants/visitors. They may apply if the LA has served an antisocial behaviour notice on the landlord and the landlord has not taken the steps set out in the notice to rectify the antisocial behaviour.
- 27 When a no rent payable order is in force, the landlord is not allowed to charge rent to the tenants in the property. The landlord can appeal to the courts against a no rent payable order within 21 days of the date that it takes effect. If the appeal is successful then the notice can be revoked.
- 28 A no rent payable order can be revoked, or suspended for a specified period, once the court is satisfied that the landlord has taken reasonable action to address the antisocial behaviour.

The effect of a no rent payable order on HB

- 29 As the landlord cannot charge rent when these orders are in force, the tenant cannot get HB during the currency of the orders.

Management control orders

- 30 Another form of sanction if the landlord does not comply with the measures in the antisocial behaviour notice is the management control order. These can last up to 12 months - the period is specified in the order. They are issued by the court at the LA's request.
- 31 During the period of these orders, the rights and responsibilities of the landlord are transferred to the LA. This means that rent becomes due to LA rather than the original landlord.
- 32 If the court considers that the landlord has taken reasonable action to address the antisocial behaviour, or that it is unreasonable for the order to continue, an order may be revoked.

The effect of a Management control order on HB

- 33 As, during the currency of a management control order, rent becomes due to the LA rather than the landlord, if the tenant is on HB, it is payable to the LA rather than the private landlord.

Working with colleagues in the antisocial behaviour sections of the LA

- 34 The antisocial behaviour notice provisions, which are in Part 7 of the Act, are likely to fall within the remit of the antisocial behaviour team within your LA, although again, depending on local arrangements, other sections may be involved.
- 35 Guidance issued to LAs by the Scottish Executive on the implementation of these provisions recommends that the staff concerned make contact with HB sections to come up with suitable communication and working arrangements.

- 36 The website for the guidance on antisocial behaviour notices is <http://www.scotland.gov.uk/publications/2006/05/02135500/0>
- 37 The main situations when communication is important are when the court has made a
- no rent payable order following non-compliance with an antisocial behaviour notice - antisocial behaviour notices will be relatively infrequent, and so there are likely to be few rent penalty notices
 - management control order following non-compliance with an antisocial behaviour notice - management control orders are likely to be very infrequent, they are burdensome for the LA and so will be used only if it is the only effective way of rectifying the situation
- 38 You should make your own communication arrangements taking into account local practice and relevant legislation. This includes data protection legislation, as read with section 139 of the Antisocial Behaviour etc. (Scotland) Act 2004 which allows for the disclosure and sharing of information, making specific reference to HB.
- 39 Because very few no rent payable orders are expected to be made, Scottish Executive guidance to LAs on the use of the antisocial behaviour provisions (in Part 7 of the Act) says that they should notify HB administrators when such orders are made or suspended. The guidance can be found on the internet, the web address is <http://www.scotland.gov.uk/publications/2006/05/02135500/0>
- 40 Even fewer management control orders are likely to be made. They do not affect entitlement to HB, but they mean that rent is due to the LA rather than the private landlord. Again, the relevant sections in the LA should notify HB administrators in the few instances where this happens.

The effects of imprisonment on HB and CTB

Remand

- 1 For benefit purposes a person held on remand is defined as a person
 - held on remand awaiting trial, or
 - residing in a bail hostel or in similar accommodation as a condition of their bail, or
 - who has been convicted and is awaiting sentence
- 2 A person who is held on remand is treated as being temporarily absent from their home for benefit purposes. Benefit teams must consider whether they continue payment during the period of remand and must apply the '52 week' temporary absence rules in these cases.
- 3 To continue payment the three following conditions must apply. The
 - claimant intends to return to occupy the accommodation as their home, and
 - part of the accommodation normally occupied as the home is not let or sublet, and
 - period of absence is unlikely to last longer than 52 weeks or, in exceptional circumstances, is unlikely substantially to last longer than 52 weeks
- 4 Benefit teams need to consider the likely dates for trial and sentencing in these cases. The presumption is that a person will return to their home on the sentencing date. If the absence is unlikely to exceed 52 weeks benefit can remain in payment until either
 - the end of the 52 week period starting from the first day of absence
 - the date sentencing is taking place
- 5 If the indications are that a person will be absent for over 52 weeks the LA needs to consider if benefit should cease straight away. In exceptional circumstances an LA can continue payment if the absence is unlikely to substantially exceed 52 weeks. This particular rule should not be interpreted as the normal rule for all or any particular groups of claimant. You need to take account of all the circumstances before deciding whether to allow benefit for an absence that is likely to last longer than 52 weeks and consider each case on its facts.
- 6 Although the absence may be longer than 52 weeks, benefit may still only be paid for a maximum of 52 weeks.

Sentenced prisoners

- 7 For benefit purposes a sentenced prisoner is defined as a person who has been tried, convicted and sentenced to a custodial term.
- 8 A sentenced prisoner is treated as being temporarily absent from their home for benefit purposes. You must consider whether to continue payment during the custodial sentence and must apply the '13 week' temporary absence rules in these cases.

Annex C

- 9 To continue payment the three following conditions must apply. The
- claimant intends to return to occupy the accommodation as their home, and
 - part of the accommodation normally occupied as the home is not let or sublet, and
 - total period of absence is unlikely to last longer than 13 weeks
- 10 It is important to note in these cases that it is the 'total' period of temporary absence that needs to be considered. If a prisoner was already absent from home when sentenced, eg held on remand, this previous absence has to be considered as part of this 13 week limit.
- 11 For example, if a benefit claimant is remanded in custody for 13 weeks and they are then given a custodial sentence for a further week benefit should stop immediately, as the person has already been absent from home for 13 weeks.
- 12 When taking into account the 13 week rule LAs must consider the expected date of release rather than the term a prisoner is sentenced to. This should include early release and eligibility to the Home Detention Curfew (HDC) scheme.
- 13 As HDC is discretionary prisoners should be advised to make a claim for HB/CTB at the start of their sentence if they have been sentenced to more than 26 weeks and they may be eligible for HDC. This would allow an LA to review the claim if they later qualify for HDC and return home within 13 weeks and award benefit under the 13 week temporary absence rule.
- 14 For benefit purposes periods of temporary release (home leave) from prison as part of the custodial sentence are not considered a break in an absence from home. These prisoners are not treated as having returned to their home and entitlement to benefit will exhaust in the normal way under the temporary absence rules.