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A4 Eligible rent

About this chapter

- 4.00 This chapter gives guidance on
- rent and housing costs that are eligible for Housing Benefit (HB) and those that aren't, see *Payments which are eligible for HB and Payments which are not eligible for HB* later in this chapter
 - service charges included in housing costs and how to treat them see *Service charges* later in this chapter
 - calculating the eligible rent and how to deal with
 - joint occupiers
 - claimants in shared rooms
 - fuel and service charges
 - restricting the eligible rent
- 4.01 After you have established that the claimant is liable to make payments for, and is occupying their home, see *A3, Liability to make payments and occupying the home* earlier in this part, the next condition to be satisfied is that the payments are eligible for HB.
- 4.02 The term 'eligible rent' is used in this chapter to cover all eligible housing costs.
- 4.03-4.19

What is eligible rent?

- 4.20 Eligible rent is the amount of housing costs a claimant pays which may be met by HB. This is the claimant's rent or other housing costs less deductions for any ineligible items, see *Ineligible service charges* later in this chapter. Certain service charges are also eligible, see *Service charges* later in this chapter. There are also other housing costs which are eligible for HB, such as mooring charges or site rent for a caravan, see *Mooring charges and Site rent for a caravan or mobile home* later in this chapter. VAT can be allowed if charged on eligible costs.
- HB Reg 12 & (SPC) 12*
- 4.21 In certain circumstances the rent may be restricted.
- HB Reg 12, 13 & (SPC) 12, 13*
- 4.22-4.39

4.40-4.79

What is included as the dwelling

4.40 Treat as part of the accommodation any structure or space, such as a garage, parking space or garden including a garage detached from the property, for example in a separate block, which is used for the purposes of the accommodation if either of the following conditions is met

HB Reg 2 & (SPC) 2

- from the start it was rented with accommodation which could not have been rented without it, or
- the claimant has made or is making all reasonable efforts to end their liability for it

4.41 Treat the following land as part of the accommodation

- gardens and children's play areas
- the land a caravan or mobile home (but not a tent), used as the home, stands on and is used for the purpose of the home

HB Reg 2 & (SPC) 2

- if the home is a houseboat, the land used for mooring the houseboat

HB Reg 2 & (SPC) 2

- in Scotland, croft land

HB Reg 2 & (SPC) 2

4.42 Do not treat as part of the accommodation land used for commercial or agricultural purposes, other than croft land.

4.43-4.69

Payments which are eligible for HB

Payments for a licence or permission to occupy the accommodation

4.70 These payments qualify for HB. No written tenancy agreement has to exist for HB to be paid, if someone with a licence to occupy a property, or anyone else who has permission to occupy the accommodation, has a legal liability to make payments to be able to live in the accommodation, see A3 *Is there a legally enforceable liability* earlier in this part.

HB Reg 12 & (SPC) 12

4.71-4.79

Mesne profits

4.80 Mesne profits are

HB Reg 12 & (SPC) 12

- eligible for HB
- payments made by a former tenant who remains in occupation unlawfully, for example, after their notice to quit has expired
- also known as damages for trespass and are formally awarded by a court. If a former tenant makes payments in advance of a court order, regard the payments as mesne profits and eligible for HB
- known in Scotland as violent profits

4.81-4.89

Payments for, or in consequence of, use and occupation of the accommodation

4.90 These payments are

- eligible for HB
- similar to mesne profits but are payable by claimants who were formerly licensed to occupy a property

HB Reg 12 & (SPC) 12

4.91-4.99

Mooring charges

4.100 Mooring charges payable for a houseboat which a claimant occupies as their home

- are eligible for HB
- includes berthing fees for a boat which a claimant occupies as their home
- are eligible even if the claimant owns the houseboat or boat

HB Reg 12 & (SPC) 12

4.101-4.109

4.110-4.139

Site rent for a caravan or mobile home

- 4.110 Site rent for a caravan or mobile home is eligible for HB when it is used as the home
- unless paid under a long lease, see *Long leaseholders* later in this chapter
HB Reg 12 & (SPC) 12
 - even if the caravan or mobile home is owned by the claimant
- 4.111 Site rents for tents are not eligible for HB. Help with these payments may be given through Income Support (IS), Income-based Jobseeker's Allowance (JSA(IB)), income-related Employment and Support Allowance (ESA(IR)) or Pension Credit.

4.112-4.119

Almshouse contributions

- 4.120 An almshouse is a building provided by a charity to house people with limited resources of their own.
- 4.121 Payments, less any ineligible items, made by the claimant towards the cost of maintaining and servicing an almshouse provided by a housing association will count as eligible rent.
HB Reg 12 & (SPC) 12

4.122-4.129

Shared ownership schemes

- 4.130 If a claimant occupies accommodation under a
- shared ownership lease or tenancy, also known as an equity sharing or 50-50 scheme, any rent or service charges paid for the accommodation are eligible for HB
 - co-owner scheme they are not eligible for HB, see *Co-ownership scheme* later in this chapter
- 4.131 Assess the charges as normal. Do not apportion service charges according to the percentage of the accommodation bought under a long lease, and the percentage which is rented.
- 4.132 When the claimant is entitled to HB, with the eligible rent including eligible service charges, they are not entitled to help with those same charges from either IS, JSA(IR) or Pension Credit. However, if the claimant is not entitled to HB, they could then be entitled to help from IS, JSA(IB), ESA(IR) or Pension Credit with those same eligible service charges.
HB Reg 12 & (SPC) 12

4.133-4.139

Rental purchase

- 4.140 Payment under a rental purchase agreement are eligible for HB. A rental purchase agreement is when the occupier acquires ownership of the accommodation by paying the whole or part of the purchase price by instalments over a fixed period of time. The accommodation remains the property of the landlord until the final payment is made when the occupier then becomes the owner.

HB Reg 12 & (SPC) 12

4.141-4.149

Crofters

- 4.150 In Scotland, payments made for croft land are eligible for HB.

HB Reg 12 & (SPC) 12

4.151-4.159

Increase in rent to cover Council Tax

- 4.160 Some tenants, such as boarders, those living in homes in multiple occupation and persons under 18, are not liable for Council Tax but their rent may be increased to cover part or all of the landlord's own Council Tax liability.
- 4.161 Treat this increase as rent and eligible for HB. You must still consider whether the total rent, including the Council Tax, is reasonable.

4.162-4.169

Housing co-operatives

- 4.170 Payments made by members of housing co-operatives may be eligible for HB if the payments can be treated as rent. A housing co-operative usually either owns or rents properties which it lets or sub-lets to its members. This rental income is used to meet the co-operative's indebtedness.

4.171-4.209

- 4.171 When assessing HB claims from housing co-operatives members you must consider
- the relationship between the tenant and the co-operative by obtaining and examining full details of the tenancy agreement and the co-operative's articles of association
 - is the tenant liable for the payments as a condition of occupying the accommodation?
 - the claimant's housing position if no rent is paid. In particular, would the co-operative take steps to evict the claimant? Remember HB is only payable if there is a legally enforceable rent liability, for more information, see *A3 Is there a legally enforceable liability* earlier in this part
 - has the tenancy been created to take advantage of the HB scheme? If it has, no benefit would be payable, see *A3 Regulation 9, General provision* earlier in this part. When dealing with this question, you must consider whether there would be a rent liability if HB is not paid
 - are payments being made under a co-ownership scheme? See *Co-ownership scheme* later in this chapter. HB is not payable for these payments
- 4.172 Claims from members of housing co-operatives are subject to the same conditions affecting all other rent allowance claims, such as the
- requirement to be referred to the rent officer, see *Rent officer referrals and rent restrictions* later in this chapter, and
 - provisions concerning restriction of excessive rents, see *Deciding what constitutes a reasonable rent*, later in this chapter

4.173-4.199

Payments which are not eligible for HB

Crown tenants

- 4.200 Payments made by Crown tenants, including payments for properties that other agencies manage and collect the rent for the Crown or Government Department, are not eligible for HB.
- HB Reg 12 & (SPC) 12*
- 4.201 Other forms of help with their housing costs may be available for Crown tenants, see *A3 Crown tenants* earlier in this manual. However, a Crown landlord may ask you to make a notional HB assessment for a Crown tenant – see *Notional HB assessments* later in this chapter – as some run their own equivalent rent rebate scheme.

4.202-4.209

Notional HB assessments

4.210 Some government departments and agencies operate rent rebate schemes on broadly the same terms as HB. While some of these departments assess rebates for tenants themselves, others may seek assistance from Local Authorities (LAs).

4.211 There is a long-standing agreement that LAs will perform notional HB assessments for Crown tenants and that LAs may be reimbursed for the cost of performing such assessments. The following paragraphs represent best practice for those LAs who perform notional assessments for Crown tenants.

4.212-4.219

Crown tenant seeking relief on low income grounds

4.220 If you receive an HB claim form from a Crown tenant who is seeking relief on low-income grounds, assess entitlement in the normal way, see *A5 Calculating benefit* later in this manual.

4.221 However, since these cases do not qualify for HB, do not refer to the rent officer

- 1 take the contractual rent as the maximum rent
- 2 make deductions for ineligible charges as for any other case
- 3 do not implement a rent allowance
- 4 notify the tenant of their notional entitlement. They will forward this notification to the landlord who will be responsible for awarding a rebate
- 5 retain the completed forms as a record of the assessment

4.222-4.229

Crown tenant receives IS/JSA(IB)/ESA(IR)/Pension Credit

4.230 A Crown tenant who receives IS/JSA(IB)/ESA(IR)/Pension Credit gets help with their rent through these benefits. The amount of the rent liability is taken into account when the claimant's IS/JSA(IB)/ESA(IR)/Pension Credit applicable amount is calculated, and deductions are made for any

- water charges
- ineligible service charges, and
- non-dependants in the claimant's household

4.231-4.269

4.231 These tenants receive enough benefit to pay their rent in full. If you receive an HB claim form from a Crown tenant

- 1 who receives IS, JSA(IB) or Pension Credit
 - a do not perform a notional assessment of entitlement
 - b tell the claimant
 - i that a notional assessment is not appropriate because they receive help with their rent through IS/JSA(IB)/Pension Credit
 - ii to notify changes of circumstances to any Department for Work and Pensions (DWP) office, rather than to the LA, and
 - c do not include them in repeat claim arrangements
- 2 whose entitlement to IS, JSA(IB) or Pension Credit is not yet decided
 - a take no action until their claim to benefit is decided
 - b when the claim is decided, if IS, JSA(IB) or Pension Credit is
 - i awarded, take the action in 1a - c above
 - ii not awarded, but the tenant asks for a rebate on low income grounds, calculate a notional assessment in the normal way

4.232-4.239

LA administration costs and notional assessments

4.240 Government departments have been asked to make arrangements with individual LAs for meeting their administration costs for performing a notional assessment of entitlement for a Crown tenant. Each LA should decide the charge for assessing notional entitlements. LAs will be fully reimbursed for their operating costs by the relevant landlord departments.

4.241 When setting charges, LAs should consider whether the landlord requires reviews to be undertaken in accordance with normal practices. If they do

- you will need to include Crown tenants in the repeat claim arrangements that apply to other claimants, and
- tenants will need to notify authorities of changes of circumstances in the normal way

4.242-4.259

Long leaseholders

4.260 Periodic payments under a long tenancy are not eligible for HB, except for payments under a shared ownership tenancy or lease, see *Shared ownership schemes* earlier in this chapter.

HB Reg 2, 12 & (SPC) 2, 12

4.261-4.269

Co-ownership scheme

- 4.270 Payments under a co-ownership scheme are not eligible for HB.
- 4.271 The accommodation occupied by the tenant is owned by a housing association. Co-owners are granted the right to occupy their home by buying a share in a housing association.
- 4.272 The payments they make include an amount towards the cost of the capital and interest repayments of the housing association's mortgage. When the co-owner stops being a member of the association they receive a capital sum in accordance with the terms of their agreement which is related directly or indirectly to the value of their accommodation.
- 4.273 Some co-ownership agreements require certain conditions to be met, such as a minimum period of occupation, before a capital sum is returned. The exclusion from HB still applies whether the claimant has met these conditions or not.
- 4.274 It should be clear from the tenancy agreement or housing association rules that the claimant is a co-owner. If you are doubtful after seeing a copy of the agreement, seek legal advice.
HB Reg 2, 12 & (SPC) 2, 12

4.275-4.279

Owner-occupiers

- 4.280 All payments made by owner-occupiers, whether the claimant or the partner of the claimant, do not qualify for HB, for example
SSCBA Section 130; HB Reg 2, 12, & (SPC) 2, 12

- mortgage payments
- service charge payments (unless the person occupies the dwelling under a shared ownership scheme)
- any other payments made for the owner-occupier's home, such as subscriptions to estate management associations (unless the person occupies the dwelling under a shared ownership scheme)

Help with these payments may be given through IS, JSA(IB), ESA(IR) or Pension Credit.

Previously an owner-occupier

- 4.281 Treat a person who is liable to pay rent as **not** liable to pay rent for HB purposes if they
- once owned the dwelling (as a freeholder or leaseholder) that they now rent, and
 - sold the dwelling less than five years before, and
 - did not need to sell the dwelling to remain living in it
- See *A3 Claimants who are liable but are treated as if they are not, Ex-owners* earlier in this manual.

4.282-4.289

4.290-4.321

***Payments under a hire-purchase credit sale
or conditional sale agreement for accommodation
or furniture***

- 4.290 Hire-purchase credit sale or conditional sale agreement payments for accommodation, such as a mobile home or furniture, are not eligible for HB, except to the extent that the agreement is a conditional sale agreement for land.

HB Reg 12 & (SPC) 12

4.291-4.299

Rent increases for arrears

- 4.300 Increases in rent or other housing costs for any outstanding arrears, or any unpaid payment or charge owed by the claimant for their current or any previous home are not eligible for HB.

HB Reg 11 & (SPC) 11

4.301-4.309

Housing costs included in IS, JSA(IB) or ESA(IR)

- 4.310 HB is not payable for payments made by claimants whose housing costs will be included in their IS, JSA(IB) or ESA(IR), except when the claimant was already receiving HB at the same address before IS, JSA(IB) or ESA(IR) became payable, for example when the claimant's capital originally exceeded the IS, JSA(IB) or ESA(IR) limit.

HB Reg 11

- 4.311 In these cases, the claimant remains eligible for HB for the first four weeks of entitlement to IS, JSA(IB) or ESA(IR) after which HB must stop. During this overlapping period, any HB paid will be deducted from IS, JSA(IB) or ESA(IR).

4.312-4.319

Business premises

- 4.320 Payments for business or commercial premises are not eligible for HB because eligible rent is rent payable for the 'dwelling' which is the residential accommodation.

- 4.321 If a claimant pays rent covering both business and residential accommodation, for example, a shop plus flat, you must apportion the rent.

4.322 If the lease or other agreement does not specify how much of the rent is for the residential accommodation, you will need to apportion the rent on whatever basis appears to be reasonable in the circumstances.

4.323-4.329

Former business premises

4.330 Rent payable for former business premises could in certain circumstances be eligible for HB if the

- business has stopped operating, and
- premises are no longer used for business purposes

4.331 Eligibility would depend on what the premises are now used for. If the premises are

- left empty or largely unused, they would still be business premises
- converted for use as part of the claimant's home, the rent payable for those premises should be assessed for HB

4.332-4.339

LA care accommodation costs

4.340 From April 2002, the Care Standards Act 2000 replaced the Registered Homes Act 1984 and in Scotland, a similar change occurred with the Regulation of Care (Scotland) Act 2001 replacing the Social Work (Scotland) Act 1968 and the Housing (Scotland) Act 1988. As a result residents of those LA owned or managed homes that were previously unable to claim HB continue to be excluded from HB when the home is registered as

- a care home
- an independent hospital
- an independent healthcare service in Scotland

4.341-4.349

Care homes and independent hospitals in the private and voluntary sectors - transitional protection

4.350 The majority of people in care homes and independent hospitals were already excluded from HB for the home's fees before 1 April 1993. Instead, they had actual or potential entitlement to special levels of IS. From 1 April 1993, they have access to IS.

HB Reg 9 & (SPC) 9

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- 4.351 Those people in registered homes who retained access to HB before 1 April 1993 are listed in *A8 Savings provisions, Care homes and independent hospitals in the voluntary and private sectors - transitional protection*.
- 4.352 If a claimant living in a care home or independent hospital is entitled to HB for their housing costs, although you will assess their HB as usual to calculate how much to deduct for ineligible items, you might have to obtain detailed information from the claimant, or home owner, about the way the charge is made up.
- 4.353 If you need to make a referral to the rent officer for a care home or independent hospital case and the rent includes ineligible personal care and any other support charges, you will need to tell the rent officer, the
- total payments due to be made to the home (HB regulation 12(1))
 - total amount of any ineligible support charges included in the rent, including any ineligible charges for personal care, nursing care or medical expenses
 - total amount of any support charges
 - rent net of all support charges

4.354-4.359

Part of care home or independent hospital exempt from registration process

- 4.360 Generally for HB purposes, the registration of a care home or independent hospital
- applies to the whole of the accommodation and not to individual bed-spaces
 - normally applies to a care home or independent hospital where both board and personal care are provided
- 4.361 However, certain parts of care home or independent hospital may be exempt from the registration provision because personal care is not provided. In these cases HB may be payable subject to the normal qualifying conditions. You may need to make further enquiries.
- 4.362 If a care home or independent hospital claims that only certain bed-spaces are registered, check the details of the registration itself and make a decision on the facts available.

Example 1

A care home or independent hospital has self contained bungalows in the grounds for 'less-dependent' residents. The home claims these bungalows are not registered. You should check with the registering authority, the Commission for Social Care Inspection, whether the bungalows are registered or not, as these residents may be eligible for HB.

continued

(4.362)

Example 2

A member of staff living in a staff flat within a care home or independent hospital, falls ill and the home suspend their salary for the time they are ill. The member of staff claims HB to pay for the accommodation. The flat should not be treated as part of the care home or independent hospital, and HB should be considered in the normal way.

4.363-4.369

Small homes (less than 4 residents) in England and Wales

- 4.370 Claimants who entered small homes on or after 1 April 1993 which were registered under the Registered Homes Act 1984 or were deemed to be so registered from 1 April 1993 under section 2(g) of the Registered Homes (Amendment) Act 1991 are excluded from entitlement to HB.
- 4.371 Claimants may have had entitlement to HB under normal rules if they were in a small home which was
- not required to register under the Care Standards Act 2000
 - refused registration
- 4.372 Residents of small homes which should be registered from 1 April 1993, and who were entitled to HB for that accommodation on 31 March 1993, keep that entitlement after 1 April 1993 for as long as they live in the same home and otherwise remain entitled to HB.
- 4.373 Once they move away, other than for a period of temporary absence when they can be treated as occupying their accommodation, or stop being entitled to HB for any reason, they lose their right to transitional protection and no longer have access to HB for a home's fees.

4.374-4.379

Adult placement or supported lodgings schemes

- 4.380 Residents in private rented accommodation under adult placement or supported lodgings schemes
- are placed there by social services authorities
 - remain in the community but receive a higher level of support and supervision than is possible in normal rented accommodation.
- 4.381 Before 1 April 1993, such establishments were not generally required to register under the Registered Homes Act 1984 and residents had access to HB under normal rules.

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- 4.382 From 1 April 1993, accommodation provided under adult placement and supported lodgings schemes for fewer than four residents in need of personal care are only required to register if both board and personal care was provided.
- 4.383 The Adult Placement Schemes (England) Regulations 2004 introduced the registration and inspection of Adult Placement Schemes in place of the registration and inspection of the individual adult placement carer.
- 4.384 If there is any doubt about the registration of accommodation provided under these schemes, liaise with the relevant social services authority.
- 4.385 People placed by social services under adult placement or supported lodging schemes in accommodation that is registered with an adult placement scheme under the Adult Placement Schemes (England) Regulations 2004 are eligible for HB from the point of registration unless the individual is assessed as incapable of living in the community in which case social services will retain responsibility for their housing costs.
- 4.386 Those in a placement that is registered as a care home or independent hospital continue to be excluded from HB.

4.387-4.389

Royal Charter/Act of Parliament homes

- 4.390 Some Royal Charter/Act of Parliament homes, most typically care homes or hostels run by the Salvation Army, were previously exempt from registration as residential homes and residents could claim either HB or, subject to a care test, IS. Those in nursing homes were not eligible for HB. Now that the exemption from registration has been revoked, residents of those homes that are registered care homes or independent hospitals have no entitlement to HB but are able to claim IS or Pension Credit instead. Residents of homes or hostels which are not registered as care homes or independent hospitals are eligible for HB.

4.391-4.399

Tied accommodation

- 4.400 If a tenant occupies their home as a consequence of a contract of employment, you should ensure the terms of that contract do not mean that the claimant is not liable to make payments for the accommodation, for example by placing on the employer a duty to provide rent free accommodation.
- 4.401 This means if a claimant is
- required to live somewhere as a condition of their job they are not eligible for HB
 - staying on in tied accommodation after retirement they may be eligible for HB

4.402-4.449

Calculating eligible rent

4.450 The eligible rent is broadly calculated in one of three ways:

- **No rent officer referral** – this method applies to both rent rebate cases and those rent allowance tenancy types (see *paras 3 – 11 of schedule 2*) that are not required to be referred to the rent officer. The eligible rent is determined by the LA generally using the actual amounts of the rent and service charges the person is liable to pay, although these can be restricted, see *No rent officer referral* later in this chapter. This method would also apply to all rent allowance cases during the first 13 weeks of the award if the rent could be afforded by the claimant and certain others when the liability was taken on, provided the claimant was not entitled to HB in the 52 weeks before their current award.
- **'Old scheme' rules** – this method applies to those rent allowance cases that have their eligible rent decided under the rules that existed on 1 January 1996. These rules apply to those who have been receiving benefit continually since that day (subject to permitted breaks in the award and other permitted periods in other accommodation) and those living in 'exempt accommodation' who have claimed benefit since. While a rent officer referral is required, the eligible rent is determined by the LA and can be based on the amounts of the rent and service charges the person is liable to pay, although these can be restricted, see *'Old' scheme rules* later in this chapter.
- **'New scheme' rules** – this method applies to all those rent allowance cases that do not fall into either of the above and have their eligible rent decided under the rules that were introduced from 2 January 1996. The eligible rent is based on the maximum rent which is generally based on the lowest of the rent officer's determinations where a claimant is entitled to protection on death, see *'New' scheme rules* later in this chapter.

4.451 There are a number of general principles that apply to each of the above methods when calculating the eligible rent

- if appropriate, apportion the rent between
 - joint occupiers, see *Joint occupiers* later in this chapter, or
 - claimants occupying shared rooms, see *Shared rooms* later in this chapter
- apportion that part of the payments for the dwelling that relate to the residential accommodation if the dwelling consists of both residential and other accommodation
- consider restricting the eligible rent when it appears to be higher than would be reasonable to meet from benefit

Consequential Provisions Para 5 Sch 3; HB Reg 12 & (SPC) 12

4.452-4.459

4.460-4.619

No rent officer referral

4.460 The eligible rent is determined by the LA generally using the actual amounts of the rent and service charges the person is liable to pay, although these can be restricted.

4.461-4.469

Ineligible charges

4.470 The eligible rent is the total of those charges on which the occupation of the home depends less those charges which are ineligible. These include

- water and sewerage charges if they are included in the rent, see *Water charges* later in this chapter, and
- ineligible service charges, see *Service charges* later in this chapter. While this would normally be the actual charge there is provision to deduct either a higher or lower amount having regard to comparable services

4.471-4.599

Water charges

4.600 Water charges are not eligible for HB, and are excluded from eligible rent in all cases.

HB Reg 12 & (SPC) 12

4.601-4.609

Definition of water charges

4.610 Water charges in

- England & Wales means domestic water and sewerage charges for the claimant's home
- Scotland means domestic water and sewerage charges for the claimant's home made by Scottish Water under section 29A of the Water Industry (Scotland) Act 2002

4.611 From April 1990, environmental charges are the National Rivers Authority's responsibility and are no longer charged to householders. For guidance on the amount to deduct, see *Specified water charges* and *Unspecified water charges* later in this chapter.

HB Reg 2 & (SPC) 2

4.612-4.619

Identifying water charges paid as part of the rent

4.620 Most claimants will pay water charges either direct to the water authority or as a specified or unspecified part of their rent. If water charges are paid as part of the rent, you will need to identify the water charge element.

4.621-4.629

Specified water charges

4.630 LAs will already know the amount of any water charges which they collect from their own tenants. Some private tenants, particularly housing association tenants, will also have the water charge element of their rent specifically identified.

4.631-4.639

Unspecified water charges

4.640 If the water charges are not specified and the claimant is unable to supply the figure, you will have to estimate the relevant sum in each case.

4.641 If the claimant occupies

- the whole accommodation, identifying the water charge element of the rent should not be difficult. If necessary the amount can be obtained from the water authority

HB Reg 12 & (SPC) 12

- part of the accommodation for which a single water charge is levied, for example the claimant rents a room in a flat or has a bedsit in a multi-occupied property, you must apportion the water charge, including the standing charge, payable for the whole property. Calculate the amount according to the proportion of the property occupied by the claimant and any dependants or non-dependants living with them. Apportion the water charges in the same way as when calculating eligible rent for Joint occupiers see *Joint occupiers* later in this chapter

HB Reg 12 & (SPC) 12

4.642 If a claimant's water charges vary according to the amount of water they actually use, you must decide a fair deduction for water on the basis of the claimant's actual or estimated consumption.

HB Reg 12 & (SPC) 12

4.643-4.699

4.700-4.721

Service charges

4.700 HB is intended to meet only service charges which a claimant is obliged to pay under the terms of the tenancy, and which are related to the accommodation.

4.701 Include service charges as part of the eligible rent only when the right to occupy the home depends on their payment, see *Eligible service charges* later in this chapter.

4.702-4.709

Definition of service

4.710 HB regulations define services as 'services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling'.

4.711 If a charge is made for a function that is not classed as a service under the definition above, then it cannot be classed as a service charge under HB regulations. Many functions often done by the landlord, such as general management tasks and building insurance, are usually included in the rent, whether or not they are a service to the tenant.

4.712-4.719

Ineligible service charges

4.720 Charges for any service not connected with the provision of adequate accommodation are not eligible for HB. This includes services which make it possible for the tenant to occupy the accommodation but which have no bearing on the adequacy, that is the fabric, of the accommodation. The accommodation must be adequate as accommodation in general, not just with regard to the particular tenant.

4.721 The following service charges are not eligible for help

- purely personal services such as nursing, or
- service charges considered to be part of a claimant's normal daily expenditure, such as meals, laundry, cleaning of rooms, or fuel other than for communal areas
- service charges for the cleaning of rooms and windows, **except** for the cleaning of
 - communal areas
 - exteriors of windows where neither the claimant nor any member of the household is able to clean themprovided the charge is not met by the Supporting People Scheme
- service charges for fuel, **except** a charge in respect of services for communal areas
- provision of an emergency alarm system
- general counselling or other support services whoever provides the service

HB Reg 12 Sch 1 & (SPC) 12, Sch 1

4.722 Ineligible service charges, **other than those for fuel**, are listed in Schedule 1, Part I, paragraph 1 to the regulations, for guidance on interpretation, see *Service charges other than for fuel* below. Those **for fuel** are covered in Schedule 1, Part II to the regulations, for more information see *Service charges for fuel* later in this chapter.

4.723-4.729

Service charges other than for fuel

4.730 Charges for the following services are eligible

- wardens and caretakers - allow the proportion of the charge for the time they are providing eligible accommodation related services
- refuse removal
- lifts
- radio and television relay
- portering
- communal telephone charges, but not for personal calls
- entry phones
- cleaning of communal areas
- childrens' play areas

4.731 This list does not cover every service that may be eligible, it aims to cover the items you will usually need to determine.

4.732-4.739

Day-to-day living expenses

4.740 Deduct service charges for day-to-day living expenses from eligible rent. In particular, these include the provision of

- meals, including the preparation of meals or the provision of unprepared food. For more information about charges for meals, see *Charges for meals* below
- laundry, except for providing premises and equipment for the claimant to do their own laundry

HB Sch 1, Pt 1 & (SPC) Sch 1, Pt 1

continued

A4 - Eligible rent

(4.740)-4.750

- (4.740)
- leisure items, including
 - sports facilities but not children's play areas, and
 - television rental and licence fees but not television and radio relay charges, see *Television relay* later in this chapter
 - cleaning, except for
 - the cleaning of communal areas, ie areas of common access or communal rooms in sheltered accommodation, or
 - when neither the claimant nor a member of the household is able to do the cleaning for themselves
 - transport

4.741-4.749

Charges for meals

4.750 Charges for meals are not eligible for HB. If meals are provided deduct the following standard weekly rates

HB Sch 1, Pt 1 & (SPC) Sch 1, Pt 1

For each adult aged 16 or over	April 2009	April 2010
Full board (at least 3 meals a day)	£22.95	£23.35
Breakfast only	£2.80	£2.85
Part board (any other arrangement when meals are provided)	£15.25	£15.50
For each child aged under 16*		
Full board (at least 3 meals a day)	£11.60	£11.80
Breakfast only	£2.80	£2.85
Part board (any other arrangement when meals are provided)	£7.65	£7.80

* For these purposes, a child is deemed to reach age 16 on the first Monday in September following their 16th birthday

- 4.751 You do not have discretion to vary the standard deductions even when the cost of the meals provided is higher or lower than the standard deduction.
- 4.752 Make a deduction for each person meals are provided for within the charge, whether or not they are members of the family.
- 4.753 If the claimant's family includes a child who reaches 16, take the higher meals deduction from the first Monday in the September following that 16 birthday.
- 4.754 If all or part of an unspecified service charge includes meals, deduct the standard deduction for meals before
- making deductions for other services
 - considering whether the charge is excessive

4.755-4.759

Television signal relay

- 4.760 Charges for television signal relay which are eligible for HB are normally only those which are for installing, upgrading and maintaining equipment for receiving the free to view television channels that are now increasingly accessible through satellite, cable or broadband systems as well as the traditional tv aerial.
- 4.761 However, a service charge is not eligible for HB if it is for providing equipment such as
- a television
 - an individual satellite dish
 - satellite decoders
 - set top boxes or other equipment
 - television rental fees
- 4.762 Only those service charges for receiving the ordinary free to view television channels are eligible for HB. If the service charge includes charges for subscription channels as well, that part of the charge will be ineligible for benefit.
- 4.763 A service charge for the relay of free to view television and radio signals within a communal system is eligible for HB. It is up to the landlord, in consultation with tenants, to decide which type of system to install. Landlords may choose to be responsible for the system themselves or through a leasing arrangement and recover their costs through a service charge. These charges are eligible for benefit in so far as they bring the broadcast signal into the home through the communal facilities of the building. A charge that relates to equipment or service access beyond the plug in the wall are the tenant's responsibility.

A4 - Eligible rent

4.764-4.849

4.764 When a charge for cable or satellite television services includes receiving both the free to view channels and subscription channels, you will usually need to apportion the charge between its eligible and ineligible components.

4.765 As with any eligible service charge when you consider that the charge is excessive by comparison with similar service charges elsewhere, you should make a deduction from the otherwise eligible charge in the normal way, see *Excessive charges for eligible services* later in this chapter.

4.766-4.799

Furniture or household equipment

4.800 If furniture or household equipment is charged for, and will

- become the claimant's property, any charges for its acquisition or use are not eligible
- **not** become the claimant's property, charges for the use of the furniture or household equipment are eligible

HB Sch 1, Pt 1 & (SPC) Sch 1, Pt 1

4.801-4.809

Medical expenses, nursing and personal care

4.810 All charges for medical expenses, nursing and personal care or counselling are not eligible. Personal care relates to the tenant's ability to function physically, socially or emotionally and can include emotional or psychiatric as well as physical care.

4.811-4.849

General counselling and support services

4.850 All charges in respect of providing general counselling and support services are not eligible. General counselling and support services relate to those services previously described in schedule 1B during the period of the Transitional HB Scheme.

4.851-4.859

Ineligible service charges

Amount for ineligible service charge is specified

4.860 If the charge is specified, deduct the whole amount of the charge unless you consider the charge is unreasonably low for the service provided, in which case substitute your own valuation of the cost of providing that service and deduct that amount.

4.861-4.869

Unspecified amount of ineligible service charge

4.870 If the charge is unspecified and the tenancy agreement, rent book or bill gives a total figure for all the rent and services provided, you must apportion the different elements and deduct ineligible items.

HB Sch 1 Pt 1 & (SPC) Sch 1 Pt 1

4.871-4.879

Apportioning ineligible service charges

4.880 To apportion ineligible charges, you must

- consider the cost of comparable services and decide what value is fairly attributable to the provision of those services, and

HB Sch 1, Pt 1 & (SPC) Sch 1, Pt 1

- deduct the full cost of providing the service. Even when the claimant does not fully use the service

4.881-4.889

4.890-4.910

Excessive charges for eligible services

4.890 If you decide that a charge for a particular service is an eligible charge, but the payment is excessive for the service provided, deduct from the charge an amount you consider appropriate to arrive at the correct eligible service charge.

HB Sch 1, Pt I & (SPC) Sch 1, Pt I

4.891-4.899

Service charges for fuel

4.900 The general rule is that the full fixed or variable specified charges should be deducted from eligible rent. For rent allowance cases only, if the amount of the charge is not specified or otherwise readily identifiable, make a flat-rate deduction. It is assumed that in rent rebate cases the fuel charges, whether fixed or variable, will always be specified.

HB Sch 1, Pt II & (SPC) Sch 1, Pt II

4.901-4.909

Flat-rate deductions

4.910 Deductions are to be made at a flat rate in rent allowance cases where the amount of the charge is not specified or otherwise readily identifiable. The amounts to be deducted in respect of each amenity are as follows

HB Sch 1, Pt II & (SPC) Sch 1, Pt II

More than one room	April 2009	April 2010
Heating	£21.55	£21.55
Hot water	£2.50	£2.50
Lighting	£1.75	£1.75
Cooking	£2.50	£2.50
All fuel	£28.30	£28.30

HB Sch 1, Pt 11 & (SPC) Sch 1, Pt 11

One room	April 2009	April 2010
Heating only, or heating and any hot water and/or lighting	£12.90	£12.90
Cooking	£2.50	£2.50

HB Sch 1, Para 6 & (SPC) Sch 1, Para 6

4.911 The regulations provide for a lower standard rate deduction for fuel where the claimant and any family occupy only one room and the rent includes an unspecified charge for heating, or heating and hot water, or heating and lighting, or heating, hot water and lighting. In these cases the deduction is half the total of those for heating, hot water and lighting. When a charge for cooking is also included in the rent the full standard cooking deduction applies in addition.

HB Sch 1, Para 6 & (SPC) Sch 1, Para 6

4.912 The lower deduction applies in any case where the claimant occupies one room only, including cases where the room or other communal areas are shared. For the definition of communal areas, see *Communal areas* later in this chapter.

4.913 There is no definition in HB legislation of one room only. However, it is not a reference to the number of rooms occupied solely by the claimant. So if a claimant has their own room and shared occupation of other rooms the higher rate of deduction will apply. Also do not count as rooms occupied by the claimant or their family

- bathrooms and/or toilets
- a shared kitchen

4.914 Details of the amount of any flat rate fuel charge deduction and a statement that it may be varied if further evidence is provided must be shown on the decision notification in all cases.

Paras 9 & 10, Sch 9, Pt II & (SPC) Para 9 & 10, Sch 8, Pt II

4.915-4.919

Conversion to weekly amounts

4.920 The amounts specified for flat-rate deductions are weekly amounts intended to apply for each week of the year, ie 52 or 53 as appropriate. Where rent is not payable on a weekly basis, or there are rent-free weeks, the LA should convert the deductions to weekly amounts in the way explained in *A5 Converting eligible rent into a weekly eligible amount* later in this manual.

HB Sch 1, Pt II & (SPC) Sch 1, Pt II

4.921 Flat-rate deductions may be varied if the claimant produces evidence from which the actual or approximate amount of the fuel charge can be estimated.

HB Sch 1, Pt II Para 6 & (SPC) Sch 1, Pt II Para 6

4.922-4.929

4.930-4.961

Communal areas

4.930 Fuel charges payable for communal areas, that is areas of access to the accommodation or, in sheltered accommodation, communal rooms, are eligible.

HB Sch 1, Pt II Para 5 & (SPC) Sch 1, Pt II Para 5

4.931-4.939

Charges which should be treated as unspecified

4.940 In rent allowance cases, a fixed charge should be treated as unspecified, and therefore subject to flat-rate deductions, when the amount of the charge is unrealistically low in relation to the fuel provided, or the charge cannot readily be distinguished from a charge for a communal area.

HB Sch 1, Pt II Para 6 & (SPC) Sch 1, Pt II Para 6

4.941-4.949

Definition of fuel charges

4.950 A reference to a charge for fuel, including gas and electricity, includes any charge which contains an amount in respect of providing the fuel, this includes standing charges on fuel bills. However, separately identifiable amounts for the provision of a heating system should be dealt with under the normal rules for service charges.

HB Sch 1, Para 8 & (SPC) Sch 1, Para 8

4.951-4.959

Restricting the eligible rent

4.960 Regulation 12(7) provides that if you consider the eligible rent, as calculated in accordance with regulation 12, is greater than is reasonable for HB to meet, then the eligible rent will be an amount as you consider reasonable in the individual case. As you cannot refer these claims to the rent officer for a determination, you must determine a reasonable eligible rent in each individual case.

HB Reg 12 & (SPC) 12

4.961 You must act reasonably in determining this question, having regard to

- evidence of rent to substantiate your decision, and
- the relevant facts in the particular case, eg what is the current rent, do any of the occupants have any special housing related needs

- 4.962 Because the regulation refers to an amount appropriate **in that particular case**, you
- must not adopt a fixed rule or policy and apply it in all cases, eg an overall fixed amount of rent, and
 - must have evidence to support your determination, ie why the eligible rent in that case is considered higher than is reasonable and why the restricted rent is considered appropriate
- 4.963 The judgement of *Regina v Macclesfield Borough Council Housing Benefit Review Board ex parte Temsamani* found that regulation 12(7) confers a wide discretion upon you to consider all the circumstances of the case. A summary of the case and the judgement are included at *Annex B*, at the end of this chapter.
- 4.964 This provision is most commonly used for non Housing Revenue Account tenants, particularly those who are homeless and housed in temporary accommodation.

4.965-4.999

'Old' scheme rules

- 4.1000 This guidance applies only to cases which are required to be assessed using the rules which were in force on 1 January 1996. This includes
- those who have been continuously entitled to benefit since 1 January 1996 from the same address, subject to permitted breaks in the award and permitted periods in other accommodation, and
 - those who have claimed since who live in 'exempt accommodation'
- Refer to *'New' scheme rules* later in this part, for most rent allowance claims made after 1 January 1996.
- 4.1001 The relevant rules were in the Housing Benefit (General) Amendment Regulations 1995 (SI 1995 No. 1644, now revoked) which originally introduced the Local Reference Rent (LRR) and the requirement to use the lowest of the rent officer determinations to decide the eligible rent for the majority of private sector tenants – the maximum rent.
- 4.1002 These regulations included a 'saving' provision that protected existing awards and certain new awards by determining the eligible rent in specific circumstances under what has become known as the 'old' HB scheme rules. These old HB scheme rules can only apply to new benefit claims by those living in dwellings defined as 'exempt accommodation' within those regulations.
- 4.1003 Since the consolidation of the HB and CTB regulations you can find the definition of 'exempt accommodation' in sub-paragraph 4(10) of schedule 3 (Transitional and Savings Provisions) to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006, with the saved version of the HB (General) Regulations 1987 in paragraph 5.

4.1004-4.1009

4.1010-4.1020

Exempt accommodation

- 4.1010 'Exempt accommodation' is an individual dwelling for which a person is liable to make payments, that they occupy as their home and which is
- a resettlement place provided by persons to whom the Secretary of State has given assistance by way of grant pursuant to section 30 of the Jobseeker's Act 1995 (grants for resettlement places), or
 - provided by a non-metropolitan county council in England, a housing association, a registered charity or voluntary organisation when that body or a person acting on its behalf also provides the claimant with care, support or supervision
- 4.1011 The purpose of including this provision was to ensure that the rents of certain non profit making groups who are involved in providing specialist supported accommodation with care, support or supervision to residents were not subject to rent restriction under the maximum rent rules.
- 4.1012 This is achieved through defining the housing provision as exempt accommodation and protecting it from the use of the maximum rent through the continued use of what has become known as 'old scheme' rules. The protection was designed to ensure that HB would continue to meet rents at levels that reflected the higher costs of providing this type of accommodation but is also balanced against the requirement to restrict rent levels by comparison with suitable alternatives.
- 4.1013 The link between the provision of accommodation with that of care and support creates further potential difficulty in that it is similar to that in the Care Standards Act that requires the property to be registered as a care home with both accommodation and more intimate levels of personal care provided. Those in residential accommodation (which includes accommodation provided in a care home) are treated as not liable to make payments in respect of a dwelling, and so are not eligible for HB.
- 4.1014 As an aid there is a Question and Answer section at *Annex D* of this chapter and a brief summary of the most significant Commissioner's Decisions at *Annex E*.

4.1015-4.1019

Accommodation provider

- 4.1020 To decide whether an individual dwelling meets the definition of 'exempt accommodation', the starting point is the accommodation provider, which must be
- a non-metropolitan county council in England (defined in section 1 of the Local Government Act 1972)
 - a housing association (defined in section 1(1) of the Housing Associations Act 1985)
 - a registered charity (within the meaning of charity in Part 1 of the Charities Act 2006), or
 - voluntary organisation (defined in regulation 2(1) of the HB Regulations 2006)

- 4.1021 The accommodation provider should be the landlord, in other words the person or organisation to whom the tenant is ultimately liable to pay their rent. This will be the person who holds either the freehold or the leasehold of the dwelling.
- 4.1022 Therefore a landlord cannot be a managing agent or an organisation that is only involved in arranging or facilitating the provision of accommodation along with the care, support or supervision, see *Annex E*, Commissioner's decision CH/3900/2005.

Specific landlords

- 4.1023 If the accommodation is provided by a
- **non-metropolitan county council** you should check the claimant's tenancy agreement, or contact the relevant county council, to ensure that the tenant is liable, or treated as liable when relevant, to pay rent to them
 - **registered charity** you should confirm the registered charitable status by reference to any correspondence from the landlord and checked using the Charity Commission's web site at www.charity-commission.gov.uk. You can search on the web site using either the registration number or the name of the charity. With few exceptions and exemptions, all charities are required to be registered with the Charity Commission, if their gross annual income exceeds £5,000. Details of charities that are exempt from registration are provided in s3 of the Charities Act 1993, which applies to England and Wales only. If a charity claims to be exempt from registration, you should check to see that they meet the conditions for exemption outlined in the 1993 Act
- There are circumstances where organisations may not be registered as a charity because they have been established for purposes that are not exclusively charitable; or they do not satisfy the public benefit requirement because, for example, the section of the public they provide benefit to, is unreasonably restricted. For the purposes of these regulations they must be a registered charity
- **housing association**, if they are a
 - registered housing association or Registered Social Landlord (RSL), you should check their registration details with the Housing Corporation. This can be checked using the Housing Corporation's website at www.housingcorp.gov.uk, in Wales at the Welsh Assembly Government website and in Scotland on the Scottish Housing Regulator website at http://www.esystems.scottishhousingregulator.gov.uk/register/reg_pub_dsp.home. Checks can be undertaken on the web site using either the name or registration number of the RSL
 - housing association which is not registered with the Housing Corporation, you should confirm that they fall within the definition of a Housing Association under s1(1) of the Housing Associations Act 1985. This is defined as

continued

(4.1023)-4.1029

(4.1023) '...a society, body of trustees or company -

- (a) which is established for the purpose of, or amongst whose objects or powers are included those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of, housing accommodation, and
- (b) which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such rate as may be prescribed by the Treasury, whether with or without differentiation as between share and loan capital'

To confirm an unregistered Housing Association's status, you should ask to see a copy of their constitution or the rules which govern their activities, an explanation of why they are unregistered, and, when appropriate, a summary of their accounts.

- **voluntary organisation.** The HB/CTB Regulations 2006 define a voluntary organisation as '...a body, other than a public or local authority, the activities of which are carried on otherwise than for profit'

You should therefore ask to see a copy of their constitution or the rules that govern their activities and request a summary of their accounts to demonstrate their not-for-profit status. The common features of a voluntary organisation are that it

- is formally constituted
- does not formally or informally pay dividends or make profits from its operations or in selling, disposal or winding up of its assets or operations
- does not make payments to directors or any person, organisation or body connected to them which are quasi or disguised profits dividends from its operations or in selling, disposal or winding up of its assets or operations. Confirm these from their accounts
- does not have arrangements with any person, organisation or body, formally or informally to make payments or dividends, quasi dividends or disguised profits from its operations or in selling, disposal or winding up of its assets or operations
- that the objects of the organisation and its arrangements are such that it is not possible for any person, organisation or body to make a profit from its operations or in selling, disposal or winding up of its assets or operations

Further guidance is at http://www.nao.org.uk/guidance/better_funding/AnnexA.htm.

4.1024 In some situations, a landlord may fall in more than one of these above categories, eg a Housing Association may also be a registered charity. In these situations, it is sufficient to verify that the accommodation is included within one of the above categories, not all of them.

4.1025-4.1029

Care, supervision or support provider

- 4.1030 Having established the status of the landlord, you need to find out whether that body, or someone acting on their behalf, is providing care, support or supervision to the tenant. There is no definition within the HB/CTB Regulations of these terms, so they take their ordinary meanings.
- 4.1031 The amount of care, support or supervision provided by the landlord can vary considerably but it must be more than minimal. It could be the case that the tenant has a very intensive package of care or it could be that the support is fairly minor, but, nevertheless goes beyond that which is normally provided by a housing provider, see *Annex E, Commissioner's decisions CHI423/2006, CHI3811/2006 and CHI779/2007* etc at the end of this chapter.
- 4.1032 For most cases funding will be available from either the Supporting People budget or the Care in the Community budget for the provision of care, support or supervision respectively and covers a wide spectrum of need from low level to high dependency care or support. It would not be unreasonable for one or both to be in payment for someone in supported accommodation. When neither is in payment it would be reasonable to investigate the level of assistance being provided and whether funding is being received from other sources.
- 4.1033 The *Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008 (SI 2008/2112)* sets out when information can be shared between government departments and LAs and within LAs without the need for the client's consent. However, the exchange of information must meet one of the prescribed purposes of the regulations or the Welfare Reform Act 2007.
- 4.1034 If there is no funding from either the Supporting People or the Care in the Community budgets you need to be satisfied that care, support or supervision is being provided, that it is more than minimal and determine how it is funded. If there is no separate identifiable funding stream you may make a deduction from the eligible rent that covers the cost of its provision.
- 4.1035 As with the provision of accommodation it should be the landlord that has ultimate responsibility for providing care, support or supervision or provides a level of support that the authority is satisfied is more than minimal. It is not sufficient for the landlord to simply facilitate, co-ordinate or just be involved in the provision of care, support or supervision either on behalf of others, ie social services, the NHS or within a joint responsibility, see *Annex E, Commissioner's decisions CHI423/2006, CHI3811/2006 and CHI779/2007* at the end of this chapter.
- 4.1036 If the care, support or supervision is not directly provided by the landlord or by someone acting on their behalf, for example if all the care, support and supervision are independently commissioned by Social Services, then 'exempt accommodation' status will not apply.

4.1037-4.1049

4.1037 In all cases, you should

- check whether the care, support or supervision is being funded locally, or by the landlord, and that it is provided to the tenant directly by the landlord (or someone acting on their behalf), and
- check that there is a contractual responsibility for the landlord to supply this care, support or supervision itself (or to contract with someone else to act on its behalf) by reference to the tenancy agreement or separate contract. If not contained within the tenancy agreement you should ask for evidence of the formalised arrangements that are in place. However, Commissioner's decision CH/3811/2006 (or R(H) 7/07) confirmed that it is not necessary for a landlord who is providing care, support or supervision to be providing it pursuant to some statutory or contractual obligation, see *Annex E* at the end of this chapter
- ask how this support has been accounted for in any breakdown of rent, so that this charge can be made ineligible for HB purposes, as charges for care support and supervision in exempt accommodation will also be ineligible service charges within paragraph 1 of schedule 1 to the HB Regulations 2006. In the case of some organisations (eg charities) there may be no separately identifiable charge, as this may be funded through fund-raising activities etc. In other cases, the cost of the care, support or supervision may be met through a Supporting People grant or another source of funding. Details of this should be requested, as mentioned above

4.1038 The accommodation should be accepted as 'exempt accommodation' and eligible rent and HB entitlement should be assessed under the 'old' HB scheme rules if you are satisfied that

- the landlord falls within one of the prescribed categories, ie non-metropolitan county council in England, housing association, registered charity, or voluntary organisation, and
- the landlord or a person acting on its behalf is responsible for supplying care, support or supervision beyond the level of assistance that would be expected from any landlord to any tenant, and
- that the tenant has an actual or potential need for the available support which must be connected with giving of advice and assistance to the claimant in coping with the practicalities of everyday life, and
- the care, support or supervision is an obligation of the landlord, eg set out in the tenancy agreement, although this is not essential, and
- there is an explanation about how much this ineligible service charge is, or how the cost of it is funded

4.1039 If you decide the accommodation should **not** be accepted as 'exempt accommodation' the eligible rent will be calculated by the 'new' HB scheme rules including the maximum rent or the maximum rent (LHA).

4.1040-4.1049

Contrived to take advantage

4.1050 When an arrangement appears to be constructed in such a way as to create or increase an entitlement to benefit consider whether it is contrived to take advantage of the benefit scheme

HB Reg 9(1)(l)

4.1051 You need to make a judgement on the facts of the case and, in doing so, consider the dominant purpose behind the arrangement as it exists. See *Annex E, Commissioner's decisions CH/58/2007* and *CH/136/2007* at the end of this chapter.

4.1052 The following situations may be relevant factors which indicate that the dominant purpose of the arrangement is to take advantage of the HB scheme. These factors may not be decisive on their own and must be considered among all the other facts of the case

- If the landlord leases the property, ensure that the terms of the lease support the tenancy granted, especially where it is an assured tenancy
- If the landlord leases the property and is a voluntary organisation, in the form of a not for profit limited company, use companies house to find out whether the company which owns the property has connections to the voluntary organisation that is the landlord
- If care and support is alleged to be provided, ensure that the need has been assessed and agreed by a qualified person or organisation. A private sector voluntary organisation landlord providing support following their own assessment of need would not be acceptable

4.1053-4.1059

Calculating the eligible rent

4.1060 Usually this means their HB is based on their eligible rent as calculated under regulation 12. However, if you consider the eligible rent is unreasonable, regulation 13 allows you to reduce it by an appropriate amount. Regulation 13ZA enables rent increases to be restricted in certain circumstances.

4.1061 It is for the LA to decide on any restriction to the rent under the 'old' HB scheme rules. They may do so 'by reference to' a rent officer determination. The rules on applying to the rent officer for a determination are the same whether the 'old' or 'new' HB scheme rules apply.

4.1062 All rent allowance cases not subject to the maximum rent (LHA) are referred to the rent officer unless the tenancy is excluded from referral, see schedule 2 to the HB Regulations 2006. The tenancies of non registered housing associations, non-metropolitan county councils (in England), registered charities and voluntary organisations are not 'excluded tenancies' through schedule 2 of the HB regulations so must all be referred to the rent officer.

4.1063-4.1069

4.1070-4.1099

Referring cases to the rent officer

4.1070 Refer the rent to the rent officer to determine whether it is reasonable. Their determination can then be used for subsidy purposes. It can also be used when deciding on the cost of suitable alternative accommodation.

4.1071 When the rent officer is determining whether a rent is reasonable, they take account of whether the

- dwelling is bigger than the claimant reasonably needs, having regard to anyone who lives with them, including boarders and sub-tenants, or
- rent is unreasonably high having regard to the rent for suitable alternative accommodation

4.1072-4.1079

Cases 'excluded' from rent officer referral

4.1080 Those cases excluded from the rent officer referral arrangements will have their eligible rent based on the contractual rent and have their subsidy considered on the whole rent.

Referring Registered Housing Association accommodation to the rent officer

4.1081 If the landlord is a Registered Housing Association (ie registered with the Housing Corporation or Housing Corporation of Wales) there is no requirement to refer the case to the rent officer (see paragraph 3 of schedule 2) unless the

- accommodation is larger than reasonably required by the claimant and any others who occupy that dwelling, or
- rent payable for the property is unreasonably high

4.1082 The decision to refer a Registered Housing Association case to the rent officer rests with the LA, but for the sake of transparency the LA should have a policy for determining whether a referral is appropriate as a high rent or a large property is not wholly determinative: the test is unreasonably high or larger than reasonably required.

4.1083 Exempt accommodation provided by a Registered Housing Association should be dealt with under the old scheme rules.

4.1084-4.1099

Cases not 'excluded' from rent officer referral arrangements

- 4.1100 Although a rent officer determination is required for all types of exempt accommodation (but see *Referring Registered Housing Association accommodation to the rent officer* earlier in this chapter) unlike the maximum rent rules the Rent Officer (RO) determination does not determine the maximum rent and thereby the eligible rent for exempt accommodation. However, a decision may be made by the LA to restrict the eligible rent in these cases by reference to the RO determination or by other means. The RO determination may influence any rent restriction the LA may make as it would reflect the market rents for similar sized local properties in the private profit making rented sector.
- 4.1101 Additionally, as subsidy control is retained for HB expenditure on these cases, the RO determination will determine the level of DWP subsidy LAs will receive on their HB expenditure. For those in the vulnerable groups subsidy is awarded at 60% on expenditure above the RO determination and full subsidy on expenditure up to the RO determination.
- 4.1102 This therefore provides an incentive for LAs to restrict unreasonably high rents by reference to the RO determination. However, LAs must not take the amount of subsidy payable into consideration when considering if accommodation is unreasonably large, or a rent unreasonably high.
- 4.1103-4.1109

Unreasonably expensive or large accommodation – restriction on the eligible rent

- 4.1110 Under the 'old scheme' rules there are two tests for a LA considering whether a rent restriction is necessary. These are that the
- accommodation is not larger than reasonably required by the tenant and others who also occupy that dwelling, having regard in particular to suitable alternative accommodation occupied by a household of the same size, or
 - rent payable for the property is not unreasonably high, by comparison with the rent payable in respect of suitable alternative accommodation elsewhere
- 4.1111 When considering who is a member of the claimant's household it is important to note that you should only include those who occupy the dwelling on the same basis as the claimant. Whether a person occupies a dwelling is explored in HB regulation 7. Therefore, any accommodation needs of a person who has a home elsewhere, ie visitors or care/support workers, should not be taken into account when considering the size of accommodation required.

4.1112-4.1122

- 4.1112 However, it is important to bear in mind that in these circumstances the size criteria applied by the rent officer are different from the test to be applied by the LA. The test is whether the dwelling is larger than the claimant reasonably needs, whereas the rent officer is simply applying a formula based on the number of occupants.
- 4.1113 If the LA decides that the accommodation is larger than is reasonably required or that the rent is unreasonably high you must restrict the level of eligible rent by the amount the LA considers appropriate after taking into account, amongst other factors, the rent levels of suitable alternative accommodation in the area, for more details see *Suitability of alternative accommodation* later in this chapter and *Annex E, Commissioner's decision CH 1992.2002* and *CH 3528/3560.2007* at the end of this chapter.
- 4.1114 It is not necessary to find a vacant property that a person can move to immediately, merely that a local market exists at the level of rent to which rent is restricted. For this purpose the LA should collect evidence of comparable rental properties in the area to support the decision to restrict the claimant's eligible rent.

4.1115-4.1119

Deciding what constitutes a reasonable rent

- 4.1120 There are two complementary tests of what constitutes a reasonable rent for HB
- the 'reasonable market rent' test applied by the rent officer in cases involving deregulated rent. When deciding whether the rent being charged for a property is at a reasonable market level the rent officer is concerned only with the individual property referred to them, and whether the rent charged for that property is significantly higher than the rent which would be paid by someone not on HB. In doing this they compare the rent with those for other properties of that type, in that particular area
 - when awarding HB, authorities are on the other hand required under Regulation 13 (CPR version) to consider whether the rent being charged is unreasonably expensive 'in comparison' with suitable alternative accommodation elsewhere. Regulation 13(9) specifies certain factors which you must take into account when deciding whether alternative accommodation is suitable
- 4.1121 When deciding on a reasonable rent you must consider whether the individual is a vulnerable person, see *Vulnerable groups* later in this chapter.
- 4.1122 You must have regard to the
- rent officer's determination when deciding whether the rent, net of support charges, is unreasonable, although it is not conclusive
 - cost of suitable alternative accommodation elsewhere, comparing like with like

4.1123 If no comparable tenancies exist in the area then you cannot apply a restriction under Regulation 13 (*R v Coventry City Council ex parte Waite*). However, such properties do not have to be available (Lord Clyde in *Walter Malcolm v Housing Benefit Review Board for Tweedale District*).

4.1124 Remember that you must

- consider each case on its own circumstances
- establish all the relevant facts of the case

4.1125 Regulation 13 does not permit the operation of blanket policies, either of automatic restriction of HB up to the reasonable market rent, or of automatic payment of HB up to the full reasonable market rent in every case. The Court of Appeal in the East Devon case recognised that it may frequently be appropriate to set a level below that.

Reg 13 (CPR version)

4.1126 Although you will need to be aware of rent levels in your authority area to operate Regulation 13, you must also make judgements about the claimant's personal circumstances and housing needs that are not relevant to the rent officer's determination. Essentially the question to be asked is whether it is reasonable in any particular case that an HB claimant should receive unrestricted benefit for a rent that is higher than the cost of normal adequate accommodation, whether or not the rent in any individual case is at the market rate for that particular property. This means that it will in some cases be appropriate to restrict HB to below the reasonable market rent.

4.1127 The following are some examples of situations when it might be appropriate to restrict HB below the reasonable market rent, when a claimant is living in a

- particularly expensive area where rents generally are higher than those charged for similar accommodation within a reasonable distance
- hotel or bed and breakfast accommodation where the rent charged is considerably higher than rents for ordinary flats or houses in the same or nearby area

4.1128-4.1129

Rents at the top end of the market

4.1130 Rents for luxurious accommodation are often at appropriate levels for that particular market. So rent officers usually find that rents are at market levels. From April 1994 rent officers must identify those rents which are exceptionally high and to make a high rent determination based on a more reasonable rent, compared with accommodation of the same or suitable size and tenure, which is not exceptionally high.

4.1131 These arrangements will only affect claimants living in the most expensive rented accommodation. So you will usually restrict the level of HB in these cases on the grounds that there is suitable alternative accommodation elsewhere which is cheaper.

4.1132-4.1139

4.1140-4.1149

Identifying unreasonably expensive accommodation

4.1140 There may be properties which although the rent is not exceptionally high, still have rents which you consider to be above the level of rent for suitable alternative accommodation. LAs should develop administrative procedures to identify rents which it may be appropriate to restrict. An effective method of identifying high rents requiring further scrutiny is establishing a series of local rent limits to be used as a trigger for management action. These indicators of reasonable rents in any locality will need to vary according to the type of accommodation and the requirements of particular types of household. Information on which these indicators may be based include

- staff knowledge of the area and its typical rent levels
- comparisons with the market rents being assessed by rent officers for deregulated tenancies in comparable accommodation
- comparison with the LA's own rents for similar properties

4.1141 The precise administrative procedures for dealing with potentially unreasonable rents will depend on the organisation of each individual LA's own HB service. The limit should be used as a trigger, for a detailed examination of the rent by assessment officers, including a possibility of a visit to the property. There is clearly a role for more senior officers looking at particularly difficult cases, and for involving officers who have a special responsibility for fraud and abuse if that is suspected.

4.1142 In cases where a rent is above the local limit for accommodation of that type, do not make the final HB decision until the case has been checked and any appropriate Management action taken, looking at the case on its individual merits. LAs should also consider devising codes of practice on the factors to take into account when deciding whether, and by how much, a rent should be restricted.

4.1143 Where it is decided to restrict HB for an unreasonable rent, notify the decision to the claimant as usual, giving the reasons why benefit is being restricted, the procedure for appeal, and, when the restriction is not to take effect immediately, the timetable for applying the restriction.

4.1144-4.1149

Unreasonably large accommodation

- 4.1150 Although restriction of HB for unreasonable payments is mostly for unreasonable rents, Regulation 13 also applies to cases when payments are unreasonable because the accommodation is unreasonably large for the claimant's needs. When accommodation is overlarge according to the rent officers statutory size criteria, the rent officer determines a notional rent for subsidy purposes based on the cost of accommodation of an appropriate size, if that would be less than the actual reasonable market rent. You are not, however, bound by the size criteria when considering whether the accommodation is unreasonably large for the purposes of Regulation 13. This is something which you should decide on the facts of the individual case, taking into account the factors described for unreasonably expensive accommodation.

Reg 13 (CPR Version)

4.1151-4.1159

Accommodation may be unreasonably expensive and unreasonably large

- 4.1160 It is possible for a property to be both unreasonably expensive and unreasonably large. If you apply a restriction in such a case, the decision notice should make it clear whether rent has been restricted on the grounds of excessive rent, overlarge accommodation or both.
- 4.1161 If you consider the accommodation is unreasonably large or expensive compared to that charged for suitable alternative accommodation, you must restrict the amount of rent for HB unless the claimant's circumstances mean you are unable to restrict the rent, see *Vulnerable groups* later in this chapter.

4.1162-4.1169

Suitability of alternative accommodation

- 4.1170 If a claimant already has security of tenure, you should not regard alternative accommodation as suitable unless it provides reasonably equivalent security of tenure. Some types of assured tenancy give greater rights to the tenant and you must distinguish between the different types when considering suitable alternative accommodation. It is not necessary to show an active market in the type of tenancy, but evidence of its existence should be shown (*R v Coventry City Council ex parte Waite*).
- 4.1171 You should also take account of the size and condition of the alternative accommodation and the facilities provided, bearing in mind the age and state of health of the claimant and anyone else living in the accommodation. For example, a disabled or elderly person might have special needs and require more expensive or larger accommodation.

Reg 13 (CPR version)

4.1172-4.1190

4.1172 When considering all the issues for alternative accommodation remember, alternative accommodation to be considered suitable, need not be

- precisely equivalent to the current accommodation, or provide identical facilities, for example, while a second-floor flat with no lift might not be suitable alternative accommodation for an elderly person, it might be regarded as suitable for a young, fit claimant
- in the same immediate area as the current accommodation. You may, if you consider it appropriate, compare the current accommodation with the cost of similar accommodation outside your authority's area if that would be suitable for the claimant's needs. This might be appropriate when it is not possible to make valid comparisons with accommodation within your area. However, do not make comparisons with other parts of the country where accommodation costs differ widely from those which apply locally

4.1173 Authorities

- can pay HB on rent both above and below the level of any rent officer determination or subsidy threshold
- may have regard to their financial situation and the level of any subsidy limits when deciding the amount of any restriction, but they cannot restrict rent on financial grounds alone or when the claimant is protected from rent restriction, see *Personal circumstances of claimant and certain other people using the accommodation* later in this chapter. The judgement in the case of *Regina v Brent LCB Ex parte Connery* may also be helpful.

4.1174-4.1179

Personal circumstances of claimant and certain other people using the accommodation

4.1180 If you consider that the property is either unreasonably expensive or unreasonably large, you should generally reduce the eligible rent by an amount you consider appropriate. However, before applying any restriction you must consider the personal circumstances of the claimant and certain other people living in the accommodation. The other people are any

- member of the claimant's family, including civil partners or partners in a polygamous marriage and any child or young person for whom they are responsible and who is a member of the same household, or
- relative of the claimant or partner who occupies the same accommodation and who has no separate right of occupation of the accommodation

4.1181-4.1189

Vulnerable groups

4.1190 Certain additional conditions apply before the rent can be restricted under 'old scheme rules' (regulation 13) when the claimant, any member of their family or a relative of the claimant or the claimant's partner falls into one of the following categories of vulnerable groups

- a has attained the qualifying age for state pension credit, or

continued

- (4.1190) **b** incapable of work, or
- c** treated as temporarily capable of work, but only because of a temporary disqualification from Incapacity Benefit (IB), or
 - d** is responsible for a child or young person who lives in the same household
 - e** is treated as temporarily not having limited capability for work, but only because of a temporary disqualification from ESA

4.1191 The rent may only be restricted if

- suitable cheaper alternative accommodation is available, and
- taking into account the relevant factors it is reasonable to expect the claimant to move from their present accommodation

4.1192 Each of the above categories is explained in more detail below.

Qualifying age for state pension credit

4.1193 If the claimant, a member of their family or a relative living with them is aged 60 or over, you should check and verify the dates of birth of the relevant person.

Incapable of work/has limited capability for work

4.1194 To qualify as a person who is incapable of work, a claimant, a member of their family or a relative living with them should be

- in receipt of IB, Employment and Support Allowance (ESA) or national insurance credits because of their incapacity, or
- in receipt of Severe Disablement Allowance (SDA), or
- entitled to Statutory Sick Pay (SSP), or
- a pregnant woman, or one who has recently had a baby, and she is within a period beginning on the first day of the sixth week before the expected week of childbirth, or beginning with the actual date of childbirth if that is earlier, and ending with the 14th day after the date she has had the baby, or
- treated as incapable of work (eg claimants who are not in receipt of IB or ESA but who would potentially qualify because of their incapacity). This is a decision that would have to be made by the Secretary of State (according to Commissioner Jacob's decision in CH/4424/2004- R(H) 3/06), rather than a decision maker in the LA

4.1195 Note that the registration of the claimant as a blind person, the payment of Attendance Allowance (AA), entitlement to Disability Living Allowance (DLA) or the inclusion of a disability premium in IS/JSA(IB) does not automatically mean that the claimant is treated as incapable of work, unless one or more of the criteria detailed above have been met.

4.1196-4.1201

- 4.1196 So a registered blind person or someone receiving AA or care component of DLA is not deemed incapable of work unless one of the other conditions listed above is also met. The same applies to people receiving industrial injury benefits or war pensions for a disability and not because of incapacity for work.

Temporarily capable of work due to temporary disqualification from IB or ESA

- 4.1197 Some claimants may be restricted from receiving IB/ESA for a period of up to six weeks because the claimant has contributed to their incapacity (eg failed to follow a prescribed course of treatment, or failed to attend for medical treatment). In this situation, you should request information from the claimant about the reason why IB/ESA cannot be paid, or directly contact DWP to find out the details of the case.

Responsible for a child or young person who lives in the same household

- 4.1198 To determine whether the claimant, a member of their family or a relative living with them is responsible for a child or young person who lives with them, you should
- check the ages of any dependant
 - confirm that Child Benefit (ChB) is in payment and that it is paid to either the claimant or their partner living at the property

Identified as being in a vulnerable group

- 4.1199 When a claimant or a member of their family is in one of the specified vulnerable groups and when it appears to the LA that the dwelling is larger than reasonably required or that the rent is unreasonably high, no deduction shall be made to the claimant's eligible rent unless
- suitable cheaper alternative accommodation is available, and
 - the authority, taking into account the relevant factors, considers that it is reasonable to expect the claimant to move from their present accommodation
- 4.1200 It is important with vulnerable groups to note that the suitable cheaper alternative accommodation must be available to the claimant. The question to ask is whether the claimant is in fact able to obtain the suitable alternative accommodation and not whether it is generally available.
- 4.1201 In the case of the specified vulnerable groups when deciding if it is reasonable to expect the claimant to move from their present accommodation, the LA must take into account
- the suitability of alternative accommodation, see *Suitability of alternative accommodation* earlier in this chapter
 - the effects of a move to alternative accommodation on the
 - claimant's prospects of holding on to their employment
 - on the education of any child or young person living in the same household if such a move were to result in a change of school

4.1202 For more information about restricting the level of the eligible rent, see *Restricting the eligible rent* earlier in this chapter.

4.1203 If a person's disability only requires more superficial alterations to the property, such as those individuals with learning disabilities there is related information in *Annex E, Commissioner's decision CHI/1992/2002* at the end of this chapter.

4.1204-4.1219

Availability of suitable alternative accommodation

4.1220 If anyone listed in *Personal circumstances of claimant and certain other people using the accommodation* is one of a vulnerable group listed under *Vulnerable groups* earlier in this chapter, you must consider whether

Reg 13 (CPR version)

- suitable cheaper alternative accommodation is available, and
- it is reasonable to expect the claimant to move from their present accommodation. When deciding this you must take into account whether it would have an adverse effect on the
 - claimant's prospects of keeping their employment, or
 - education of any child or young person they or a partner are responsible for and who lives in the same accommodation if the child or young person was required to change schools

4.1221 If you consider that suitable cheaper alternative accommodation is available and that it is reasonable to expect the claimant to move, you should restrict the eligible rent by an amount you consider appropriate having regard, in particular, to the cost of suitable alternative accommodation available elsewhere. However, in certain circumstances, the restriction should be

- delayed for 13 weeks, see *When a delay in restricting eligible rent is appropriate* later in this chapter
- deferred for 12 months following a bereavement, see *Delay restricting eligible rent following bereavement* later in this chapter

4.1222 It is not necessary for an authority to be able to identify specific properties available for the claimant's occupation to demonstrate that suitable alternative accommodation is available to the claimant when restricting rent under Reg 13(4). The Court of Appeal has confirmed that authorities are not accommodation agencies and it would be inappropriate for them to adopt this role. Authorities need to show that an active market exists in houses of the appropriate type in an appropriate place at the level of rent to which rent is restricted. To do this, it is enough to point to a range of properties or block of property which is available without identifying specific dwellings (*Regina v HBRB of East Devon District Council ex parte Gibson*). LAs should regard accommodation as not available if, in practice, there is little or no possibility of the claimant being able to obtain it, for example if it could only be obtained by paying a large deposit which the claimant does not have.

4.1223-4.1249

4.1250-4.1299

Decision made to restrict the rent

Amount of restriction

- 4.1250 If you consider that a rent restriction is appropriate, restrict the eligible rent by an amount you consider reasonable, having regard in particular to the cost of suitable cheaper alternative accommodation. The restriction may be of any amount from nil to the cost of suitable cheaper alternative accommodation elsewhere. The rent cannot be restricted below the cost of such suitable alternative accommodation. The judgement in the case of *Regina v Brent LBC Ex parte Connery* may be helpful.
- 4.1251 If the accommodation is unreasonably large, restrict benefit to, but not below, the cost of suitable cheaper alternative accommodation of an appropriate size.

4.1252-4.1259

When a delay in restricting eligible rent is appropriate

- 4.1260 When you are satisfied that it is reasonable to restrict the eligible rent you must consider whether delaying the restriction is appropriate, if the claimant or any other person listed in *Personal circumstances of claimant and certain other people using the accommodation* earlier in this chapter was able to meet the financial commitments for the accommodation when they were first entered into. If they could

Reg 13 (CPR version)

- meet the financial commitment, do not restrict the eligible rent for the first 13 weeks of the claimant's current benefit award. However if the claimant or partner was receiving HB at any time in the 52 weeks before their current benefit award started do not delay the restriction and apply it from the outset unless there is some other reason for not applying the restriction, such as bereavement, see *Delay in restricting eligible rent because of bereavement* later in this chapter
- not meet the financial commitment, apply the restriction immediately. That is from the beginning of the claim

Reg 13 (CPR version)

4.1261-4.1299

Restriction on rent increases

4.1300 If a claimant's eligible rent increases during a benefit award, restrict the eligible rent if you consider, having regard in particular to the level of increases for suitable alternative accommodation, that the increase is

- unreasonably high or
- unreasonable because a previous increase has occurred within the preceding 12 months, see *Is the rent increase reasonable?* below

4.1301 In these cases you should reduce the eligible rent by the full amount of the increase unless you consider that, in the circumstances, a lower increase is reasonable in which case you should reduce the eligible rent by a lower amount you consider appropriate.

Reg 13ZA (CPR version)

4.1302-4.1309

Is the rent increase reasonable?

4.1310 When deciding whether an increase is reasonable and the extent to which the eligible rent should be restricted, you should, for example, take into account

- the level of rent increases locally for similar accommodation, and
- any improvements made to the accommodation which might justify an increase, even if the last increase had taken place less than 12 months before

4.1311-4.1319

Delay restricting rent increase following bereavement

4.1320 Do not restrict a rent increase for 12 months from the date of death of any person listed in *Personal circumstances of claimant and certain other people using the accommodation* earlier in this chapter providing the rent restriction was not in place before the death. No other groups are protected from restriction on rent increases.

Reg 13ZA Sch 3 Para 4; (SPC) Reg 13ZA Sch 3 Para 5 (CPR version)

4.1321-4.1329

'New' scheme rules

Rent restrictions

4.1330 For rent allowance cases, current legislation provides for HB to enable reasonable rents to be met by people

- living in the deregulated private rented sector, and
- who are on low incomes

4.1331 In these cases, the maximum rent that HB can help with is generally calculated with reference to the determinations of the rent officer with regard to the tenancy in question. For the exemptions to this, see *Annex A* at the end of this chapter.

4.1332 The rent should be referred to the rent officer net of all ineligible charges. However, the rent officer should be told of all the charges and the amounts that the person is liable to pay as a condition of occupying the dwelling.

4.1333 Under regulation 70, a claimant's maximum HB cannot exceed their eligible rent. Regulation 12 and Schedule 1 define when payments

- constitute 'rent', and
- cannot be met by HB

4.1334 These regulations also provide for

- deducting charges which are ineligible, such as some service charges
- apportioning the eligible rent
 - in joint tenant cases, or
 - when part of the dwelling is not residential accommodation
- restricting the eligible rent when it would be higher than would be reasonable to be met from benefit

4.1335-4.1349

The maximum rent

4.1350 The maximum rent is generally determined by the lowest of the rent officer determinations. The following provides a broad summary only, and does not deal with every detail or possible outcome. The maximum rent would generally be the

- claim-related rent (CRR) **provided** it is less than the Local Reference Rent (LRR), or where the rent officer does not notify an LRR or SRR, or
- LRR, provided it is less than the CRR, or
- SRR where this has been determined, but only when it is less than the LRR or the CRR. However, when the CRR includes an ineligible amount in respect of meals and the CRR less that amount is lower than the SRR, the maximum rent cannot exceed the CRR less the amount in respect of meals

Note: When the maximum rent is determined by either the CRR or the LRR and the determination includes meals, a deduction includes an ineligible amount in respect of meals a deduction should be made using the statutory amounts, unless the maximum rent is derived from an exceptionally high rent officer determination and the notice of CRR stated that an ineligible payment has been included in it.

Note: The SRR does not apply to young individuals.

4.1351 Where the reckonable rent is reduced during an award after the maximum rent has been determined, in certain circumstances the maximum rent will be reduced to the amount of the reckonable rent where it is lower than the maximum rent. Similar rules apply where a pre-tenancy determination was obtained and the reckonable rent is then reduced to a figure below the figure that would have been the maximum rent based on the pre-tenancy determination. See *When rent restrictions temporarily do not apply* later in this chapter.

Reg 13

4.1152-4.1359

Registered Social Landlords

4.1360 For England and Wales the 1996 Housing Act refers to Registered Social Landlords (RSL) rather than Registered Housing Associations. Provided they are registered with the Housing Corporation, RSLs includes

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

4.1361 In England and Wales all Registered Housing Associations are RSLs.

4.1362-4.1399

4.1362 In Scotland, the term RSL can also include organisations which do not fully meet the conditions for statutory registration. You should therefore check that an RSL in Scotland is a Registered Housing Association which is statutorily registered under Part I of the Housing Associations Act 1985.

4.1363-4.1369

Applications to the rent officer

4.1370 If a claim may result in the award of a rent allowance, you must ask the rent officer for a determination. This may be

- on a new claim for HB
- following a change of address on an existing award
- following an application for a pre-tenancy determination (PTD)
- following a change relating to a rent allowance during the benefit award
- 52 weeks from the date you made the previous application

4.1371-4.1379

When you should not apply to the rent officer

4.1380 Sometimes you should not apply to the rent officer for a determination. These situations are detailed in regulation 14(4) and Schedule 2, and involve

- dwellings within a hostel, and
- excluded tenancies

4.1381 These are considered in more detail below.

4.1382-4.1389

Dwellings within a hostel

4.1390 Regulation 2(1) defines hostel. For a definition and interpretation of hostel, see *Definition of a hostel* later in this chapter.

4.1391 You cannot usually refer a case to the rent officer if, within the last 12 months, the rent officer has made a determination on a similar dwelling within the hostel.

HB Reg 14 & (SPC) 14

4.1392 The exception is when there has been a change relating to a rent allowance. In these cases you can apply for a further determination.

4.1393-4.1399

Excluded tenancies

- 4.1400 You should not apply to the rent officer for a decision if the claimant lives in an excluded tenancy. Excluded tenancies include
- tenancies covered by the 52 week rule
 - RSLs, unless there is an unreasonably high rent or the claimant is over-accommodated, see *Referring RSL rents to the rent officer* later in this chapter, and
HB Reg 14, Sch 2 & (SPC) 14, Sch 2
 - certain other excluded tenancies
- 4.1401 Those tenancies coming under the 2nd and 3rd bullet points above that are excluded from referral to the rent officer will have their eligible rent determined using their contractual rent as described at *Rent restrictions* earlier in this chapter. Otherwise each of these is considered in more detail below.

4.1402-4.1409

The 52 week rule

- 4.1410 The definition of an excluded tenancy in paragraph 2(2) of Schedule 2 of the HB and SPC Regulations requires cases to be referred to the rent officer for a new determination when 52 weeks have passed since the application was made for the rent officer determination used for
- the original claim or award
 - a previous claim or award
 - a claim or award for a previous tenant
- 4.1411 At the end of the 52 week exclusion period, apply for a new determination from the rent officer so you can undertake a review of the eligible rent for the award and/or subsidy. Send the application within three days of the end of that period or as soon as practicable after to maintain an annual review in those rent allowance cases requiring a rent officer determination.
- 4.1412 If it has been less than 52 weeks since the application was made for an existing rent officer determination when a claim for HB from a new or existing tenant or a change of address for an existing award is made
- you must use that determination, provided the terms of the tenancy are the same, and
 - that determination remains valid, for decisions on the award and subsidy purposes, until the end of the 52 week exclusion period
- 4.1413 Do not use a rent officer determination which was applied for over 52 weeks before to decide a new claim or an award following a change of address. You can consider a payment on account for a new claim, see *Payments on account* later in this chapter.

A4 - Eligible rent

4.1414-4.1440

4.1414 To prevent the rent officer returning the referral form to you as being invalid, and therefore minimising the chance of any delay, do not annotate the referral form with the date the claim form was received at the LA.

4.1415-4.1419

When the 52 week rule does not apply

4.1420 During the 52 week exclusion period, you can only ask for a new rent officer determination if

- there is a change relating to a rent allowance, see *Changes relating to a rent allowance* later in this chapter, or
- a new claim is received from a young individual, and the previous determination was not on a single room rent (SRR)

HB Sch 2 & (SPC) Sch 2

4.1421-4.1429

Payments on account

4.1430 Do **not** use a rent officer determination which was applied for over 52 weeks before to decide a new claim or an award following a change of address. You can only consider a payment on account for a new claim, see *Payments on account* later in this chapter.

4.1431 If you need to make a payment on a new claim before you receive the rent officer's determination, make a payment on account in the normal way, see *A6 Payment on account*, later in this part.

4.1432 When appropriate, use indicative rent levels (IRLs) to make the payments on account but do not use IRLs to determine claims. See *Payments on account* later in this chapter for more information.

4.1433-4.1439

Referring RSL rents to the rent officer

4.1440 You only need to refer RSL rents to the rent officer if you consider that the

- **rent is unreasonably high.** A rent does not necessarily have to be referred because it is high, or higher than for similar properties. It must be **unreasonably** high before a referral is necessary, or
- **accommodation is larger than is reasonably needed by the claimant** and others who may occupy the accommodation, including those who pay rent to the claimant

In these cases you must have regard to all the circumstances and housing options available to the individual household.

HB Reg para 3 of Sch 2 & (SPC) para 3 of Sch 2

- 4.1441 If a tenancy of an RSL is referred to the rent officer because the accommodation is too large or the rent is unreasonably high, then the new scheme rules apply to the determination of the maximum rent. Schedule 2 of the Rent Officers (Housing Benefit functions) Order 1997 sets out the size criteria that rent officers use to determine what size of house a claimant needs. These may be useful as a guide. However, as it is up to LAs to decide what size accommodation is reasonable they do not necessarily have to follow the size criteria. They must ensure their assessment procedures are consistent and fair. See *Annex F* at the end of this chapter for some good practice notes. **The SRR rules never apply to tenants of RSLs.**
- 4.1442 If the RSL provides care, support or supervision, the accommodation is exempt accommodation, see *Exempt accommodation* earlier in this chapter for more information. The rent officer determination will be for subsidy purposes, but could also be used as a guide on the level of restriction that is appropriate, if any.

4.1443-4.1449

Other excluded tenancies

- 4.1450 *Schedule 2, paragraphs 4 to 10* list various types of regulated tenancies and other tenancies which you cannot refer to the rent officer, including tenancies entered into before 2nd or 15th January 1989. These tenancies will have their eligible rent determined using their contractual rent as described above.
- 4.1451 **Paragraph 11** excludes ex-council dwellings which have been transferred to another landlord. The exemption ceases to apply
- if there is an increase in rent since the transfer, **and**
 - you consider the rent for the dwelling is unreasonably high, or
 - you consider the dwelling is larger than reasonably required by the tenant and others who occupy the dwelling, including any non-dependants of the claimant or someone paying rent to the claimant

Note: If the transfer took place after 7 October 2002 the exclusion only ceases to apply where the first two bullet points apply.

4.1452-4.1459

4.1460-4.1469

Changes relating to a rent allowance

- 4.1460 Under regulation 14(1)(c) you must ask the rent officer for a determination when you receive a notification of a change relating to a rent allowance during the HB award.
- 4.1461 Regulation 14(10) defines these changes, which are outlined in paragraphs 2(3)(a)-(d), Schedule 2. These are a
- change in the number of occupiers of the dwelling **unless** the dwelling is a hostel
 - **substantial** change in the condition of the dwelling or the terms of the tenancy. **Note:** A change in the condition of the dwelling includes improvements by the landlord, but not a rent increase, no matter how big the increase, but see below
 - rent increase under a term of the tenancy, **and** the
 - term, or a term which was substantially the same, was included in the tenancy at the time the previous determination was made, and
 - determination was not made because of
 - ~ a significantly high rent
 - ~ the size of the dwelling, or
 - ~ an exceptionally high rent
 - significant change in the composition of the household occupying the dwelling, and the original determination was a size related determination. Treat the following as significant changes
 - a child becomes age 10
 - a young person becomes age 16, or
 - a change in the composition of the household occupying the dwelling
- 4.1462 Any change of circumstances that falls outside those given above is **not** a change relating to a rent allowance and you cannot apply to the rent officer for a determination.
- 4.1463 Sometimes you may receive notice of a change relating to a rent allowance and there is already a rent officer's determination that covers the change and was applied for less than 52 weeks before, for example a change in the number of people occupying the dwelling. In these cases use the previous determination for the remainder of that determination's 52 week exclusion period.

4.1464-4.1469

Change of circumstance

- 4.1470 An award of benefit is open ended, relying on an existing or new rent officer determination from the initial award until a new determination is actioned.
- 4.1471 A determination acquired following a change of circumstances takes effect from the same effective date as the change to which it relates. Any arrears would be paid or overpayment calculated depending on the determination's effect on benefit entitlement, see *LA action on receipt of rent officer's determination* later in this chapter for determinations received at the end of the 52 week exclusion period.

4.1472-4.1479

Dates

- 4.1480 To allow the rent officer to decide if they can accept your request for a new determination, give them additional information about dates of receipt of claim forms and/or the date of the previous application.
- 4.1481 The rent officer computer software validates referrals to make sure applications for new claims, following a change of circumstances and for the subsequent review will have at least a 52 week gap between the relevant dates.

New claims

- 4.1482 Tell the rent officer the date the application was received at the LA.

Subsequent reviews

- 4.1483 Tell the rent officer the date of the previous application made by the LA, which must be at least 52 weeks before the date of the present application.

Change to rent allowance

- 4.1484 When requesting a new determination in respect of a change relating to a rent allowance, you only need to tell the rent officer the effective date of the change.

4.1485-4.1489

Change of address within LA area

- 4.1490 Any change in the award following a change of address within your area can only be dealt with as a change of circumstance and actioned as a superseding decision.
- 4.1491 When the claimant tells you about the move and has confirmed the date of move, treat the change of address as a change of circumstance so payment of benefit can be continuous by making a superseding decision once you have evidence of their new liability, see *C6 Reconsidering, revising and superseding decisions*.

4.1492-4.1499

4.1500-4.1513

Deciding who is an occupier

4.1500 For every case referred to them, rent officers must decide *'whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers'*. See Paragraph 2 of Schedule 1 of the Rent Officers (Housing Benefit Functions) Order 1997. The size criteria can be found in Schedule 2 to the Order. When referring cases to the rent officer, you must therefore include everyone you consider 'an occupier'.

4.1501 The HB regulations do not define occupiers, but the Rent Officers (Housing Benefit Functions) Order 1997 says an occupier is

'a person (whether or not identified by name) who is stated, in the application for determination, to occupy the dwelling as his home.'

4.1502-4.1509

Who occupies the dwelling as their home?

4.1510 Who occupies the dwelling as their home is a matter of fact.

4.1511 Before asking for a rent officer determination, you must

- decide who occupies the dwelling as their home, based on the facts
- only include these people on the referral

Note: Do not ask the rent officer to make separate determinations for various combinations of occupiers.

4.1512 Usually it is clear who occupies the dwelling as their home, but sometimes there may be difficulties. In these cases, it helps to consider what constitutes the dwelling.

4.1513 The dwelling is usually defined by the tenancy, and may or may not be the whole building. Your referral should therefore include all the people who occupy the dwelling covered by the tenancy in question as their home, eg

- if the claimant is single and rents a room in a high multiple occupancy (HMO), your referral should only include the claimant as an occupier, regardless of the number of people in the HMO as a whole. The rent officer will then base their determination on one adult occupying the dwelling as their home
- if there is a joint tenancy, your referral must include all the joint tenants. The rent officer will then base their determination on a dwelling for that number of joint tenants, and you must apportion the rent as appropriate

continued

- (4.1513) • everyone included in the HB assessment of the claimant's HB is counted as an occupier, ie
- the claimant
 - if the claimant is one of a couple, their partner, and in the case of a polygamously married claimant, all their partners
 - any member(s) of the claimant's family
 - any person who is a non-dependant of the claimant. The definition of non-dependant is in the Housing Benefit (General) Regulations 1987, Regulation 3
 - any person who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of occupying the dwelling as their home and any member of that person's family. This means boarders, sub-tenants and their families
 - any other person who is a joint tenant with the claimant, and who occupies the dwelling as their home

4.1514-4.1519

Clarifying areas of doubt

- 4.1520 You can only include as occupiers those people whose presence is relevant to the calculation of HB, see *Who occupies the dwelling as their home?* earlier in this chapter.
- 4.1521 To do otherwise would be to misunderstand the purpose of the size criteria determinations made by rent officers, and would produce unintended results. Also rent officers need this information to enable them to carry out their statutory requirements.
- 4.1522 You must also be satisfied that any person the claimant says lives with them does, in fact, do so. If there is any doubt you must clarify the position before referring the claim to the rent officer.
- 4.1523 The status of the following groups deserve particular mention
- visiting children
 - foster children, and
 - grown-up children
- 4.1524 Each of these is considered in more detail below.

4.1525-4.1529

Visiting children

- 4.1530 If you included visiting children as occupiers, you would have to accept that any casual visitor could be included too.
- 4.1531 Children who no longer live with one parent should not be included just because they visit that parent from time to time.

4.1532-4.1599

- 4.1532 Particular problems arise if you include as occupiers children who visit claimants who are subject to a SRR. The relevant definitions within the regulations preclude you from doing anything other than applying the SRR. This applies regardless of any size-related determinations made by the rent officer. **Note:** The claimant cannot be a lone parent unless the child is a member of their household.
- 4.1533 When deciding whether a child or young person occupies the home, you must consider HB law. Whether a court order for access exists or not may be evidence to support a decision one way or the other, but you must decide whether or not a child or young person is a member of the claimant's household.
- 4.1534 When you have done this, the number and frequency of visits should not influence your decision further. See *Annex C* at the end of this chapter, for *R v Swale Borough Council Housing Benefit Review Board ex parte Marchant*.

4.1535-4.1539

Foster children

- 4.1540 Under regulation 21(3), a foster child is not treated as being a member of the claimant's household.
- 4.1541 As a result, do not count a foster child as an occupier. To do otherwise would create double provision, ie foster parents are paid to accommodate foster children.

Grown up children

- 4.1542 If a claimant's grown up child is a student or trainee living away from home for periods of study or training, only include them in the referral to the rent officer if you are satisfied that the parental home is, at the time of referral, the dwelling normally occupied as their home.
- 4.1543 When the non-dependant moves away to live elsewhere for whatever reason, but not a student living elsewhere during term-time, do not include them as occupiers in the referral.

4.1544-4.1549

Ineligible service charges

- 4.1550 When you refer the rent to the rent officer, you must give details of the total of those payments specified in regulation 12(1) which the claimant is liable to make in respect of their home.
- 4.1551 Tell the rent officer what services are included in the total payments, eg water charges, fuel, meals, cleaning, laundry, etc.
- 4.1552 If the rent officer considers that you (or the service provider) has placed an unreasonably low value on other ineligible charges, they may return an exceptionally high rent determination for the cost of accommodation of the same size.

4.1553-4.1599

Rent officer determinations

4.1600 The rent officer will make the following determinations

- significantly high rent
- size-related rent or
- exceptionally high rent
- claim-related rent
- local reference rent (LRR)
- single room rent (SRR)

4.1601 The rent officer will only notify you of the LRR, SRR and claim-related rent.

4.1602-4.1609

Significantly high rent determination

4.1610 If the rent officer considers the referred rent is significantly higher than the rent the landlord might reasonably expect to obtain for the tenancy, having regard to the rent for similar tenancies of similar dwellings in the vicinity of the dwelling, they will determine the amount of rent the landlord could reasonably expect.

4.1611-4.1619

Size-related rent determination

4.1620 The rent officer will consider whether the dwelling exceeds the size criteria for the number of occupiers. If it does, they will determine the rent the claimant might expect to pay for a more appropriate size of accommodation.

4.1621 The size criteria is defined in the rent officer's Order. However, before asking the rent officer for a determination, you must decide

- who occupies the dwelling as their home, and
- whether to include them on the referral form, see *Who occupies the dwelling as their home?* earlier in this chapter

4.1622-4.1629

4.1630-4.1659

Exceptionally high rent determination

4.1630 After making their significantly high rent or size related rent determination, the rent officer will consider whether the rent is exceptionally high.

4.1631 If it is, they will determine the highest rent which is not exceptionally high that the landlord might reasonably be expected to get for a suitably sized dwelling, in a reasonable state of repair, in the same neighbourhood.

4.1632-4.1639

Claim-related rent determination

4.1640 From 3 April 2000, the terms 'property-specific rent', 'relevant rent' and 'size-related rent' were replaced by the term 'claim-related rent'. The claim-related rent will be net of all ineligible service charges. You will therefore not be required to make any deductions from the claim-related rent as notified to you by the rent officer.

4.1641 The only exception to this is if the tenant lives in one room accommodation and the landlord provides substantial board and attendance. In these cases

- the rent officer will notify the claim-related rent and LRR inclusive of charges for meals and
- you must make the appropriate standard deduction

4.1642 The rent officer will continue to tell you if meals are included in the claim-related rent. If they are not included, do not make any deduction.

4.1643-4.1649

Local reference rent determination

4.1650 The rent officer will only notify you of the LRR if this is less than the claimant's claim-related rent.

4.1651 The LRR represents the midpoint between the

- highest rent which is not exceptionally high, and
- lowest rent which is not exceptionally low for properties of a similar size in the same locality

4.1652-4.1659

Single room rent determination

- 4.1660 The SRR reflects the cost of very basic accommodation. In making a determination the rent officer will consider if the tenant
- has exclusive use of one bedroom
 - does not have the use of any other bedroom, and
 - has shared use of
 - a living room
 - a bathroom and toilet
 - a kitchen, without the exclusive use of cooking facilities
- See *Young People aged under 25* later in this chapter.

4.1661-4.1669

Rent officer action

- 4.1670 On receipt of your application the rent officer will make all the above rental determinations, but will only notify you of the
- claim-related rent determination
 - LRR determination, and
 - SRR determination, if it is appropriate
- 4.1671 The rent officer will
- tell you what determinations were taken into account when deciding the claim-related rent, eg size-related determination or significantly high rent determination
 - not provide rental amounts for these determinations
- 4.1672 The claim-related rent and LRR will be net of all ineligible charges, eg fuel, water charges, laundry, cleaning, etc unless the tenant occupies accommodation where the landlord provides substantial board and attendance.
- 4.1673 In these cases the rent officer will return a
- claim-related rent which may include an amount for meals, but no other ineligible charges, and
 - LRR which will include an amount for meals, but no other ineligible charges
- 4.1674 The rent officer will indicate on the notification when meals are included in the determination.

Note: SRR determinations will not include any amounts for ineligible charges and therefore you must not make any deductions from this determination.

4.1675-4.1709

4.1675 The rent officer will

- tell you
 - an overall figure for ineligible charges for claim-related rent and LRR determinations
 - what determinations were taken into account when deciding the claim-related rent, eg size-related determination or significantly high rent determination, but
- not provide rental amounts for these determinations

4.1676 To allow you to assess cases which are to be determined in accordance with the rules as in force on 1 January 1996 (which now appear as regulations 12, 13 and 13ZA in paragraph 5 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 and to determine the eligible rent for other cases the rent officer will annotate the determination with the sum of money that relates to their valuation of the total of all the ineligible services they took into account when making the claim-related rent determination.

4.1677-4.1699

LA action on receipt of rent officer's determination

4.1700 When you receive the rent officer's determination, use it to calculate the maximum rent.

4.1701 If the claim-related rent is **more** than the LRR or SRR, use the LRR or SRR to determine the maximum rent. Do not

- deduct any ineligible charges from the LRR or SRR, as the rent officer will already have done this
- use the tenant's/landlord's figures for ineligible service charges if they are different from those supplied by the rent officer

4.1702 There is no need to detail ineligible charges on the claimant's notification letter, but it is sensible to tell the claimant that the rent

- referred to the rent officer included all the charges they have to pay for, and
- used to determine their claim is net of these charges

4.1703 A new determination may be needed before the end of the HB award if there has been a change relating to a Rent Allowance, see *Changes relating to a rent allowance* earlier in this chapter, or where it has been more than 52 weeks since the previous referral.

4.1704-4.1709

Effective dates of subsequent rent officer determinations

- 4.1710 Unless entitlement to benefit is ended as a result of the determination, when the rent officer's determination increases or remains unchanged, if the rent is paid
- weekly or in multiples of weeks, the effective date will be the first day of the benefit week in which the day following the last day of the 52 week exclusion period occurs. Use the previous rent officer determination for the award up to the week before
 - other than weekly, eg if the rent is paid daily or monthly, the decision will take effect on the first day following the last day of the 52 week exclusion period. Use the previous rent officer determination for the award up to the day before
- 4.1711 When the determination has decreased, the effective date of the decision will be the first day of the benefit week following the date the LA receives the rent officer determination in every case.

4.1712-4.1719

When rent restrictions temporarily do not apply

- 4.1720 Rent restrictions temporarily do not apply in certain circumstances, if the
- rent was affordable when tenancy started and neither claimant or partner have received HB in the previous 52 weeks, or
HB Reg 13 & (SPC) 13
 - following the death of certain individuals
- 4.1721 These two exceptions can apply to certain claimants who would otherwise be subject to a rent restriction under either the current regulation 13 or regulation 13 in paragraph 5(2) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.
- 4.1722 Each of the exceptions is considered in more detail below.

4.1723-4.1729

4.1730-4.1799

Rent affordable when tenancy started

4.1730 If you are satisfied that

- the claimant, or
- a member of their family, or
- if the claimant is a member of a polygamous marriage, and partners of the claimant and any child or young person for whom the claimant or a partner is responsible and who is a member of the same household, or
- any relative of the claimant or their partner who occupies the same dwelling (whether or not they reside with the claimant) provided they do not have a separate right of occupation

could have afforded the rent when the tenancy was taken up, and the claimant had no HB entitlement in the 52 weeks before the claim, the maximum rent restriction does not apply during the first 13 weeks of the HB award. See *The maximum rent* earlier in this chapter for more information.

HB Reg 13 & (SPC) 13

4.1731 During this 13 week period, there is no maximum rent and the eligible rent should be calculated under the *No rent officer referral rules* outlined above. From the 14th week, the maximum rent applies.

4.1732-4.1739

Following the death of certain individuals

4.1740 An HB claimant is temporarily exempt from certain rent restrictions **provided** they occupy the same dwelling that they occupied at the date of death of

- any member of their family, or
- if a member of a polygamous marriage, any partner and any child or young person for whom the claimant or a partner was responsible and who was a member of the same household, or
- any relative of the claimant or their partner who occupied the same dwelling as the claimant, whether or not they resided with the claimant, provided the relative had no separate right of occupation which would have allowed them to occupy the dwelling even if the claimant had left

4.1741 In these circumstances, the maximum applicable rent is the

- maximum rent that applied at the date of death, or
- reckonable rent that applied at the date of death if there was no maximum rent

4.1742 The temporary exemption is for the 12 months immediately following the date of the relevant individual's death.

4.1743-4.1799

4.1800 As part of the new scheme rules, the maximum rent for a young individual in the private sector is generally limited by the SRR. The rent officer determines the SRR, which represents the general level of rent for a single room with shared use of a room suitable for living in, kitchen, bathroom, and toilet facilities, but without board and attendance, in the locality.

HB Reg 13 & (SPC) 13

4.1801 When you refer a claim to the rent officer, indicate on the referral whether the claimant is or may be a young individual. Provided you do so, the rent officer will notify the SRR to you unless the SRR is equal to or higher than the claim-related rent

HB Reg 14 & (SPC) 14; para. 9 sch. 1 Rent Officers Order

4.1802-4.1809

Young people under 25

4.1810 For HB purposes, most single claimants under 25 years of age are classed as 'young individuals'. A single claimant is defined as a claimant who has neither a partner nor is a lone parent.

HB Reg 2 & (SPC) 2

4.1811 Special considerations apply to young people, especially with regard to

- the single room rate
- maximum rents
- when they are not treated as young individuals
- when they are exempt from the SRR rules, and
- claims dating from before 6 October 1997, see *A8 Savings provisions* later in this part

Each of these is considered in more detail below.

4.1812-4.1819

Young people and the Single Room Rent

4.1820 As part of the new scheme rules, the maximum rent for a young individual in the private sector is generally limited by the SRR. The rent officer determines the SRR, which represents the general level of rent for a single room with shared use of a room suitable for living in, kitchen, bathroom, and toilet facilities, but without board and attendance, in the locality.

HB Reg 13 & (SPC) 13

4.1821 When you refer a claim to the rent officer, indicate on the referral whether the claimant is or may be a young individual. Provided you do so, the rent officer will notify the SRR to you unless the SRR is equal to or higher than the claim-related rent

HB Reg 14 & (SPC) 14; para. 9 sch. 1 Rent Officers Order

4.1822-4.1829

4.1830-4.1840

Young people and maximum rents

- 4.1830 When determining the maximum rent for a young individual, you should generally compare the claim-related rent, less any ineligible amount for meals where appropriate, to the SRR.
- 4.1831 The **lower** of the two amounts is generally the maximum rent. See the detailed rules contained in HB regulation 13 and (SPC) regulation 13.
- 4.1832 When the rent officer determines an SRR, you should use it without taking any deductions from it, regardless of what charges are included in the contractual rent.

HB Reg 13 & (SPC) 13

4.1833-4.1839

Young people who are not young individuals

- 4.1840 Some single claimants under 25 are not included in the definition of 'young individual'. These are

HB Reg 2 & (SPC) 2

- tenants of an RSL (an RSL is a registered housing association in Scotland), see *Registered Social Landlords* earlier in this chapter
- young people under 22 years old and previously
 - subject to a care order under Section 31(1)(a) of the Children Act 1989 made either after they were 16 years old, or before they were 16 years old and which remains in force once they reach age 16. **Note:** This exclusion does not apply to a young person who was subject to a supervision order under Section 31(1)(b)
 - accommodated by an authority under Section 20 of the Children Act 1989. The young person does not have to have been housed in LA owned or run property – they only need to have been provided with their accommodation by the LA under this section of the Children Act
 - subject to a supervision requirement ended by a children's hearing under Section 70 of the Children (Scotland) Act 1995 which was made in respect of them and which continues after reaching 16 years old. **Note:** This exemption does not apply where the sole condition for the need for compulsory measures of supervision was that the child had committed an offence or the supervision requirement meant that they had to reside with a parent or guardian, or with a friend or relative of their parent or guardian
 - accommodated by an LA under Section 25 of the 1995 Act when they were 16 or 17 years old, or
- under 22 years old and in respect of whom a parental responsibilities order was made under Section 86 of the 1995 Act which continued after they had reached 16 years old

4.1841 Claims from young people previously accommodated by LAs should have their maximum rent determined under the new scheme rules, and the SRR should not be applied. Claimants in the first group may also be exempt from the new scheme rules, *Annex A* at the end of this chapter for more information.

4.1842 It is possible for a claimant to become a young individual, even though at the start of their claim they were not one, eg a claimant who was previously accommodated by an LA turns 22 years old. Treat this as a change of circumstances and re-determine HB using the SRR, as appropriate.

4.1843-4.1849

Young individuals exempt from the SRR restriction

4.1850 Three groups of young individuals are exempt from the SRR restriction. These are

- those who have their benefit assessed using the 'old scheme' rules
- the severely disabled, and
- those with non-dependants living with them

HB Reg 13 & (SPC) 13

4.1851 The last two exceptions are considered in more detail below. In relation to the first exception, see paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations and paragraphs 4-7 of *Annex A* at the end of this chapter for a summary.

4.1852-4.1859

Severely disabled

4.1860 A young individual who is severely disabled is exempt from the SRR provided

- they receive the higher or middle rate of the care component of Disability Living Allowance (DLA), and
- they do not have any non-dependants aged 18 or over living with them, (unless the non-dependant is also receiving AA or the higher or middle rate of the care component of DLA, or is blind), and
- nobody receives Carer's Allowance (CA) for caring for them

Note: This exemption does not require the award of a severe disability premium (SDP) in the claimant's HB applicable amount – they need only fulfil the requirements of the above paragraph. In practice the young individual usually gets an SDP in either their IS or their HB applicable amount.

4.1861-4.1909

- 4.1861 Currently IS notices to authorities do not indicate if a claimant's IS applicable amount includes an SDP. There are no plans to change this. However, because the requirements of paragraph 13 of Schedule 2 are tightly defined it is unlikely that there are many severely disabled young individuals who are not already exempt from the SRR, such as they are in accommodation provided by an RSL.
- 4.1862 However, be aware that the exemption exists and make all reasonable efforts to identify those affected, including using the Customer Information System (CIS), and asking claimants and the relevant DWP or Jobcentre Plus office(s).

4.1863-4.1869

Young individuals with non-dependants

- 4.1870 Young individuals who have one or more non-dependants living with them are not subject to the SRR determination. Instead their maximum rent is restricted to the LRR for accommodation of the appropriate size, ie accommodation which does not exceed the size criteria for the number of people occupying the dwelling as their home.
- 4.1871 In this context, non-dependant has the meaning prescribed in regulation 3 of the Housing Benefit (General) Regulations 1987. A person who is liable to make payments on a commercial basis to the claimant for their occupation of the dwelling is **not** a non-dependant. However, this would not be the case if that person has been treated as not liable to pay their rent through HB regulation 9(1). This means that a young individual who has boarders or sub-tenants is not exempt from the SRR.

HB Reg 3 & (SPC) 3

- 4.1872 Young individuals who are exempt from the SRR rules because of the severely disabled rule or the non-dependant rule are subject to the new scheme rules. Young individuals who are exempt from the SRR rules because of paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies to them have their benefit assessed using old scheme rules

4.1873-4.1899

Rent increases

- 4.1900 Tenants whose rent is restricted under the new scheme rules cannot have HB increased to take account of an increase in the contractual rent during the award period unless the increase can be treated as a relevant change of circumstance, see *Changes relating to a rent allowance* earlier in this chapter, when a referral must be made. However, when you next refer the case to the rent officer you will use the new contractual rent.

4.1901-4.1909

Excluded tenancies

4.1910 If the rent increases on an excluded tenancy you must consider the increase under regulation 12.

4.1911 If the increase results in an unreasonably high eligible rent, you can restrict it under regulation 12(7).

HB Reg 12 & (SPC) 12

4.1912 If the landlord is an RSL, you can only exclude the tenancy if you do not consider the rent to be unreasonably high. If you believe a rent increase by an RSL results in an unreasonably high rent, you should refer the case to the rent officer, and determine the maximum rent using regulation 13.

4.1913-4.1919

Joint occupiers

4.1920 For HB purposes joint occupiers are two or more people

HB Reg 12 & (SPC) 12

- occupying the same home
- who are each separately liable to make payments for their occupation

4.1921 The rent for each joint occupier is the proportion of rent each person is responsible for. You must decide what the proportion should be. This will normally be based on an equal division of the rent, but if you are satisfied this would not adequately reflect the actual division of rent, for example because one of the joint occupiers occupies an unequal share of the accommodation, you may adjust the amount accordingly.

4.1922 If a married or unmarried couple, or from 5 December 2005, a civil partnership couple or a couple who are living together as civil partners are joint occupiers

- only one is eligible for HB
- the eligible rent for the partner claiming benefit will be the total of the eligible rent paid by both partners

4.1923-4.1929

4.1930-4.1949

Shared rooms in multiple occupation accommodation

4.1930 If people are sharing a room, whether they all claim HB or not

- 1 confirm the charge for the room
- 2 apportion the charge between the number of occupants according to liability unless the charge is clearly based on bed spaces
- 3 deduct ineligible items, see Service charges earlier in this chapter

4.1931-4.1939

Hostels

Definition of hostel

4.1940 A hostel is a building

- which provides for anyone or for a category of people
HB Reg 2 & (SPC) 2
 - domestic accommodation which is not in separate and self-contained premises, and
 - board or facilities for preparing food adequate to the needs of those people, or both board and facilities, and
- which is
 - managed or owned by a registered housing association, or
 - funded wholly or in part by a government department or agency or LA and operated other than on a commercial basis, or
 - managed by a voluntary organisation or charity (but not a care home or independent hospital as defined in the Care Standards Act 2000) and provides care, support or supervision with a view to helping the residents become rehabilitated or resettled within the community

4.1941 The legal definition of a hostel is found in regulation 2 of the HB regulations.

4.1942 So, for example, a person running a bed and breakfast establishment on a commercial basis would not fall within the legislative definition of a hostel. This would apply even if the owner called the property a hostel. Only treat accommodation that comes within the definition set out in the regulations as a hostel.

4.1943 Many hostels get their funds from a variety of sources, including grants from LAs and voluntary organisations as well as residents charges. Some services may be provided free, for example, by volunteers. Always remember the charge made to the resident may not cover the full range of services available within the hostel.

4.1944-4.1949

What services are included in the hostel charge

- 4.1950 HB should be based only on the items included in the resident's charge. You must confirm which services are included in the hostel charge. If services are provided and funded by a third party and are not included in the resident's charge, do not include them for HB.
- 4.1951 If, for example, the resident's charge is intended to pay only for accommodation, fuel and eligible service costs, HB would be able to meet the full amount of the charge, less deductions for fuel, provided the charge was set
- at a reasonable level, or
 - at or below a market rent (excluding any support charges) for cases referred to the rent officer
- 4.1952 Do not deduct from the resident's charge the value of ineligible items funded from other sources.
- 4.1953 If you need to make a referral to the rent officer for a hostel case
- make sure that only services actually included in the charge are noted on the referral form
 - if the rent includes ineligible personal care and any other support charges, establish the value and deduct the charge before referring the case to the rent officer. For more information, see *Rent officer referrals and rent restrictions* earlier in this chapter
- 4.1954-4.1999

Payments on account

- 4.2000 Until the rent officer has notified their determination to you, you cannot calculate HB for cases which fall to be assessed under the new scheme rules. However, a payment on account of rent allowance must be made within 14 days of receiving all the necessary information from the claimant.
- 4.2001 In deciding the level of payment on account, use the Indicative Rent Levels (IRLs). IRLs show the maximum amounts allowable for payments whilst still protecting the authority for subsidy purposes.

HB Reg 93 & (SPC) 74

A4 - Eligible rent

4.2002-4.2049

4.2002 The rent officer provides IRLs each month for the following

- one room where a substantial part of the rent is attributable to board and attendance
- one room without board and attendance but with shared use of kitchen or toilet
- one room without board and attendance but with exclusive use of kitchen or toilet
- two rooms
- three rooms
- four rooms
- five rooms
- six rooms

4.2003 IRLs are exclusive of ineligible services except for non self-contained accommodation, which are inclusive of water charges, fuel and meals as appropriate. To avoid overpayments, consider deducting these charges from the IRL if you know they form part of the contractual rent. From 3 April 2000 the IRL does not include any support charges eligible under the transitional scheme. This means the payment on account could include an amount for these charges as well as the amount based on the IRL.

4.2004 Rent officers do not provide IRLs for dwellings with

- more than six rooms
- site rents
- mooring charges, or
- rental purchase agreements

You must use your judgement to decide a safe payment on account in these cases.

4.2005 The IRL for the number of rooms suitable for the claimant and their household will safeguard the HB subsidy position up to the Monday following receipt of the rent officer's determination. You should use the IRL that is current at the time they decide to make payments on account. If the maximum rent figure is less than the payment on account, you should take normal recovery action, see *HB/CTB Overpayments Guide*.

HB Reg 93 & (SPC) 74

4.2006-4.2049

Pre-Tenancy Determinations (PTD)

4.2050 A Pre-Tenancy Determination (PTD) enables a prospective tenant and the landlord to have an idea of the maximum rent which is likely to be used to calculate HB before they commit themselves to a tenancy agreement.

4.2051 Anyone who thinks they may claim HB can apply for a PTD provided they are

- considering renting from a private landlord, or
- already renting from a private landlord and are negotiating a new tenancy

4.2052 The landlord must sign the application form to show that they consent. LA tenants cannot apply for a PTD for their accommodation, and it is unlikely that housing association tenants will get their landlord's consent. This is because any determination would lead to a maximum rent in the event of a claim, even if you would not otherwise refer the case to the rent officer.

HB Reg 14 & (SPC) 14

4.2053 The rent officer will make all relevant determinations as for an HB claim, and send a copy of the decision to you, the prospective tenant and the landlord. The determinations remain valid for the property in the same way as those made for an HB claim.

4.2054 If, as a result of the PTD, the prospective tenant negotiates a reduced contractual rent and makes a claim for HB, calculate the maximum rent. If the new contractual rent, less all ineligible services, is

HB Reg 13 & (SPC) 13

- at or above the maximum rent in the PTD, use the PTD maximum rent to calculate HB entitlement. This will last until a new determination is sought from the rent officer
- lower than the maximum rent in the PTD, you should use the lower figure

4.2055 If the landlord withdraws consent, or the prospective tenant informs you that they no longer want to proceed, you must notify the rent officer that the application has been withdrawn.

4.2056-4.2059

When rent officers cannot make a PTD

4.2060 The rent officer cannot make a PTD if the tenancy is an 'excluded tenancy' under Schedule 2, see *Excluded tenancies* earlier in this chapter. If the rent officer has made a determination on a tenancy of the dwelling in question that the LA applied for less than 52 weeks before and the tenancy is substantially the same except for the amount of the rent, you would tell the prospective tenant that the maximum rent will be based on that rent officer determination.

HB Reg 14 & (SPC) 14

4.2061-4.2069

4.2070-4.2109

Existing tenancies

4.2070 An existing tenant who already receives HB can apply for a PTD for their current accommodation when the tenancy is due for renewal, but only if the existing determination will be over 12 months old when the next referral falls due. The tenant can seek a PTD up to a month before renewing the tenancy if the previous rent officer determination is at least 11 months old when they apply.

HB Reg 14 & (SPC) 14

4.2071-4.2099

Re-determinations

Re-determination sought by claimant

4.2100 If a rent officer determination is used to calculate HB, the claimant has the normal rights of review. There is no direct right of appeal against a determination of the rent officer, including those in a PTD.

4.2101 If a claimant requests a review, you must not seek a rent officer's redetermination as a matter of course. Regulation 16 requires that you request a redetermination from the rent officer when '*... the representations ... relate, in whole or in part, to a rent officer's determination or redetermination ...*'. This means that the claimant must be questioning the rent officer's determination as part of their request for a review, not the manner in which you have made their assessment.

4.2102 If the claimant disagrees only with your assessment, for example the claimant disagrees with the capital assessment or the application of the taper to income, do not request a redetermination. You should consider the request for review in the normal way.

4.2103 Claimants should be told that

- on redetermination, a rent officer can increase, confirm or reduce the original determinations, and
- they can only request one redetermination

4.2104 If there is any doubt about a claimant's intention to seek a redetermination, clarify the matter with the claimant before referring the case to the rent officer.

4.2105 The timelimit for a claimant to seek a redetermination is one month from receiving an award notification implementing a new rent officer's determination.

HB Reg 16 & (SPC)16

4.2106-4.2109

Re-determination sought by the LA

- 4.2110 Regulation 15 of the HB Regulations gives you the power to seek one redetermination of the current rent officer determination, if it was made in accordance with regulation 14. You can exercise this discretion once at any time during the life of the current rent officer determination, regardless of whether there is a change of claimant.
- 4.2111 If you decide to use this power, tell the rent officer that the redetermination is sought under regulation 15 of the HB Regulations.
- 4.2112 If you have sought a redetermination after written representations from the claimant, ie under regulation 16, you can still seek a further redetermination under regulation 15 provided you have not already done so.
- 4.2113 You can apply for a redetermination under regulation 15 in relation to each fresh rent officer determination.

4.2114-4.9999

Those not subject to the new scheme rules

Note: Claimants in categories 1-3 are assessed using the contractual rent with no rent officer referral. Claimants in categories 4-8 will be assessed under 'old' regulation 11 rules

- 1 Local authority tenants.
- 2 Tenants of registered housing associations, unless the case is referred to the rent officer because the rent is excessive or the accommodation is too large for the tenant's needs.
- 3 Any case that the LA is not required to refer to the rent officer for determination because the tenancy is of a type included in *paragraphs 4 to 10 of Schedule 2*, or it is of a type included in *paragraph 11 of Schedule 2* and the LA has not referred the case.
- 4 A place provided in a hostel that has been given assistance by way of a grant by the Secretary of State (similar to resettlement units) under section 30 of the Jobseekers Act 1995.
- 5 Accommodation provided by a non-metropolitan county council in England, a housing association, registered charity or voluntary organisation if that landlord, or someone acting for the landlord, also provides the claimant with care, support or supervision.

Continuing old Regulation 11 cases (pre-January 1996)

- 6 A person whose original claim was assessed prior to 2 January 1996 and has been continuously in receipt of HB at the same dwelling since that date. A change of dwelling due to fire, flood, explosion or natural catastrophe rendering the first dwelling uninhabitable is permitted. Certain breaks in the award are also permitted. See *paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006*. **Note:** Cases backdated to before that date are included in this exemption provided the claimant was in occupation of the dwelling on or before 1 January 1996 and was liable to pay rent.
- 7 The partner of somebody, whose original claim was assessed prior to 2 January 1996 and who has been continuously in receipt of HB at the same dwelling since that date (subject to permitted moves or breaks in the award), where the original claimant has died, been imprisoned, or has left the household, and the new claim is made within four weeks.
- 8 A member of the claimant's family or partners and children of a polygamous marriage who are members of the same household or any relatives of the claimant or partner living in the same dwelling of somebody, whose original claim was assessed prior to 2 January 1996 and who has been continuously in receipt of HB at the same dwelling since that date (subject to permitted breaks in the award or moves), where the original claimant has died, the new claim is made within four weeks, and the new claimant had no separate right of occupation of the dwelling.

Claimants in categories 9-11 are subject to the new scheme rules but not the SRR.

- 9 Care leavers – the SRR will not apply to a single claimant under 22 years of age who was the subject of a care order made under section 31(1)(a) of the Children Act 1989 which was made after he/she reached age 16 or made before 16 but continued after that age.

The SRR will also not apply to a single claimant under age 22 who was formerly provided with accommodation under section 20 of the Children Act 1989.

The equivalent legislation under Scottish law was sections 15, 16 & 44 of the Social Work (Scotland) Act 1968 until the Children (Scotland) Act 1995 came fully into force in April 1997. The relevant legislation under the Children (Scotland) Act 1995 is sections 25, 70 & 86.

- 10 Single claimants qualifying for the severe disability premium (ie. In receipt of middle or highest rate of DLA care component, lives alone and no one received ICA in respect of them) are exempt from the SRR since 6 October 1997.

- 11 Single claimants residing with a non-dependant are also exempt from the SRR. This new exemption came into force on 6 October 1997.

R v Macclesfield Borough Council Housing Benefit Review Board, ex parte Tamsamani

Background to this case

- 1 The case involved a claimant, who, together with his wife and five dependant children, moved from a four-bedroom house in Manchester to a property of a similar size in Styal one of the more desirable locations in the Borough of Macclesfield. Prior to the move the claimant applied for a Pre-tenancy Determination (PTD). The rent officer (RO) determined that the rent for the property was not significantly high, and did not determine a local reference rent (LRR).
- 2 Macclesfield LA restricted the amount of rent eligible for the calculation of HB in accordance with regulation 10(6B) of the HB regulations. In doing so the LA considered what was regarded as suitable accommodation in the Borough and what rent was being charged for such accommodation. The LA also took into account that the family had no connections with the area and the children were attending the same schools they attended before the move.
- 3 The claimant exercised his right to review of the decision and the matter came before Macclesfield Borough Council Housing Benefit Review Board (HBRB) on 4th March 1998. The HBRB confirmed the decision of the LA. As a result of further representations made to the HBRB, it was decided to have a fresh hearing into the matter. A second hearing took place on 21st May 1998. It was the decision which resulted from the second hearing which led to the application for Judicial Review. The decision was that HB should be restricted.
- 4 At Judicial Review the claimant contended that
 - regulation 10(6B) does not permit the HBRB to make a comparison with alternative accommodation, it requires consideration of the particular property, in considering what is the reasonable rent for the purposes of HB
 - the HBRB had failed to consider relevant and material factors when reaching its decision
 - the HBRB had failed to give proper and rational reasons for departing from the decision of the rent officer that the rent was not unreasonably high

The judgement

- 5 The judgement found that regulation 10(6B) clearly confers a wide discretion upon the LA to consider all the circumstances of the case. The judge decided that this included an ability to have regard to suitable alternative accommodation and the rent being charged for such alternative accommodation, particularly accommodation in the general locality of the property in question.
- 6 The second challenge was based on the written reasons of the HBRB. The contention was that the HBRB reasons for its decision failed to give details of the suitable alternative accommodation. The judge concluded, from the evidence, that while the written determination of the HBRB did not give a detailed account of each of the comparable properties, it should not be inferred that the relevant details were not available to, or not considered by the HBRB.
- 7 In the last challenge, the claimant contended that the HBRB had failed to give proper and rational reasons for departing from the determination of the RO. The judge found that the HBRB made it clear that they were not bound to accept the RO's PTD when deciding what was an appropriate level of HB for rental of suitable property by the applicant in the borough. The Court accepted the argument that it would not be a prudent expenditure of public money to pay HB at a level which would enable claimants to occupy properties in desirable areas at expensive rents when perfectly suitable properties were available at lower rents. The judge found that this was not a case where there was such an inadequacy in giving reasons as to create a flaw in the lawfulness of the decision making process. Consequently he dismissed the application.

The effect of the judgement

- 8 The judgement confirms that:
- you must act **reasonably** in determining a reasonable eligible rent;
 - you must **identify** and establish the relevant facts in the particular case, such as what is the current rent, do any of the occupants have any special housing related needs, etc
 - you must have regard to all the circumstances of the case and **evidence** of rents to substantiate your decision where alternative accommodation has been considered, such as dated advertisements for comparable properties, whether such properties would be available to HB claimants, the nature of the tenancy and the location, details of current applications for HB in respect of comparable properties, etc
 - you must be able to substantiate your determination, as to why the eligible rent is considered greater than is reasonable and why the restricted rent is considered appropriate; this would depend on the evidence gathered to demonstrate that comparable accommodation is available to the claimant

R v Swale Borough Council Housing Benefit Review Board, ex parte Marchant

- 1 On 17 December 1998 judgement was handed down in the case of *R v Swale Borough Council Housing Benefit Review Board ex parte Marchant*. This case involved a claimant who was separated from his partner with their three children living alternate weeks with each parent. The mother was in receipt of Child Benefit for all three children.
- 2 The judgement found that reference could be made to regulation 5(1) when determining the normal dwelling of any person whose status affects the claimant's entitlement to benefit. If the test is applied to each of the children, each child is to be treated as occupying the dwelling normally occupied as his home by himself and his family, ie his mother's home. He is not to be treated as occupying as his home any other dwelling, and that excludes the claimant's house. Accordingly, the children are not occupiers of his home and should not be taken into account in the application of the size criteria.
- 3 The effect of this judgement is to support and strengthen the view of the Department on the treatment of children who visit absent parents and, incidentally, any other visitors. It makes it clear that regulation 5, together with regulations 14 and 15, should be used to determine which home a person normally occupies for the purposes of referral to the rent officer and the application of the size criteria.
- 4 In addition the judgement confirmed that foster children might not count as occupiers and that the calculation of the fostering allowance should take account of this fact.

5-99

Commonly asked questions about 'Old scheme' rules

1 What should I do when being pressured to give an assurance that 'old scheme' rules will be applied to a certain case?

You are unable to make a decision or any declaration about the likely outcome of a future claim to benefit. This is particularly the case where the dwelling has not been acquired and the person therefore has not occupied it and where there can be no liability. LAs do not have power to make a decision on an award of HB in these circumstances. To do so would leave the authority open to litigation.

You have a responsibility to advise how the HB scheme works and when appropriate how the particular regulations may work in an individual's circumstances should a claim be made. You could give an indication of the likely outcome of a claim but this would have to be limited to known facts without any promises attached. You should therefore avoid the declaration that the 'old scheme' rules will apply to any subsequent liabilities, as maximum rent rules may later be applied to a subsequent award.

2 What if the level of rent charged is in multiples of or significantly higher than the rent officer's determination of a claim related rent?

It must be borne in mind that the Maximum rent rules, introduced by the same legislation as the 'Savings' provision, required that the eligible rent be restricted to the level of a rent officer's determination. This imposed a restriction on unreasonable rents to a market average, a market where profits are made.

In all situations where the rents are substantially higher than the rent officer's determination, you should request details of how the finance for the purchase of the relevant property has been arranged. A private landlord's rents are governed by what he can get in the local rental market. Therefore, where they have a mortgage, they will ensure that their repayments are the lowest they can find. Under normal circumstances, any loan for the purchase of the property would be expected to be of 20 to 25 years duration, or longer.

If the period over which the loan is due to be repaid is shorter than this, you should query the rationale for the shorter period. You should consider what factors or market forces are being brought to bear in determining the level of rent charged and the terms of the liability. If a major factor appears to be the constraints that are on LAs to limit the rent for those in prescribed groups with tenure types not readily available to new tenants in the private sector then HB regulation 9(1)(l) should be considered and the claim turned down.

HB regulation 9(1)(l) should not only be considered for those claims when it appears that the entire liability is seeking to take advantage of the HB scheme but also where the liability has been engineered to gain more HB than would otherwise be available or reasonable. This decision can be made regardless of whether the contrivance is due to the actions of the landlord or the claimant. (see Commissioner's decisions CH/58/2007 and CH/136/2007 at *Annex E* of this chapter).

LAs have told us of examples where the 'voluntary organisation' leases a property from a sister company or one with which it has a lease that inevitably results in a charge being made well above commercial levels. As with any consideration of a case with HB regulation 9(1) you must consider the dominant purpose behind the way that the liability is set up.

3 **Should I consider the accommodation needs of those who do not 'occupy' the dwelling when considering a rent restriction?**

'Old' regulation 13(3)(a) requires that the authority consider whether the claimant occupies a dwelling that is larger than is reasonably required by the claimant and others that occupy that dwelling. Within that same provision there is ability for the LA to consider a Rent Officer's determination as to whether the size of the property is reasonable having regard to suitable alternative accommodation occupied by a household of the same size.

Whether or not supported accommodation is excluded from referral, the Rent Officer's (Housing Benefits Functions) Order 1997, referred to in 'old' regulation 13(3)(a), contains a size criteria in schedule 2, which must be considered in all rent officers' determinations. It is reasonable to conclude therefore that the size criteria in the Rent Officer's Order should influence the size of property reasonably required by the claimant and others that occupy that dwelling. However, it is important to bear in mind that the size criteria applied by the rent officer are different from the test to be applied by the LA here. The test here is whether the dwelling is larger than the claimant reasonably needs, whereas the rent officer is simply applying a formula based on the number of occupants.

With regard to carers, there are various interpretations as to who can be said to occupy a home for the purposes of the Rent Officer referral. There is no explanation in the Housing Benefit regulations of who should be included. However, in paragraphs A4.1500 – A4.1549 of the HB/CTB Guidance Manual we give our opinion on who should be included in the referral to the Rent Officer as an occupier of the dwelling.

It is argued that the test of whether or not a person occupies the dwelling should be the same as that in regulation 7 of the Housing Benefit Regulations 2006. Unless a carer lives in the same dwelling as the claimant as their only home they cannot be said to 'occupy' the home for the purposes of 'old' regulation 13(3)(a).

When a carer occupies a room in a shared home, that room would not form part of the individual dwellings occupied by each of the tenants as they would have no access to it. Instead the cost of providing the room would be an element of the cost of providing care, support and supervision to those tenants.

4 **Are shared rooms in 'exempt accommodation' the same as communal rooms in 'sheltered accommodation'?**

An understanding of what is meant by 'sheltered accommodation' in paragraph 8 of schedule 1 to the HB regulations is critical to deciding if fuel and cleaning charges in respect of rooms within 'communal areas' are eligible for HB through paragraphs 1 and 5 of schedule 1. This area was looked at by Commissioner Levenson in CH/1116/2007; although not conclusive, the Commissioner made some useful comments in paragraph 5.

Help with the costs of fuel and cleaning for rooms in 'communal areas' are only eligible for those who live in sheltered accommodation. Otherwise help is only available for the costs of cleaning and heating areas of common access, excluding rooms.

While sheltered accommodation appears to commonly be a complex of self contained units with rooms such as lounges and dining areas of common access, the term 'sheltered accommodation' is not defined so it is the common meaning of the term that should be used.

However, you should also consider the context in which the term is used. In the time of schedule 1B there was a definition of 'supported accommodation' which was similar in structure to that of 'exempt accommodation'. The simultaneous existence of both terms 'supported' and 'sheltered' accommodation in HB legislation indicates that they are not necessarily the same thing.

Paragraph 5's effect is to make eligible a cost that is otherwise not eligible. Fuel charges are not usually eligible because in income-related benefits a person's applicable amount includes help with fuel charges for the home and to leave a charge for fuel in the rent would result in double provision. It is therefore reasonable to assume that the cost of fuel for rooms in communal areas is not one that is already met by the applicable amount. Therefore, as it is for communal areas, it follows that this extra help must be for areas that are additional to the person's actual dwelling.

While the tenants in shared homes would have communal/shared rooms, they arguably form part of their dwelling for HB purposes and are not living spaces additional to it. The context supports the argument that 'sheltered accommodation' for the purpose of paragraph 8 of schedule 1 to the HB regulations contains dwellings sufficient as such in themselves, arguably self contained, with additional communal rooms for which additional costs need to be met.

5 **How should I deal with a rent increase?**

Under old scheme rules as preserved for exempt accommodation, whether or not the authority refers the tenancy to the rent officer, any unreasonable rent increase is dealt with by HB regulation 13ZA, preserved for the purpose. It enables rent increases to be limited to once a year, if the LA considers that the increase has occurred unreasonably quickly following the last increase, and to a reasonable amount by comparison with increases for suitable alternative accommodation. It would only apply to rent increases during the period of the award once the original claim has been decided.

There is obviously a natural link between the term 'suitable alternative accommodation' in the saved forms of both HB Regulation 13 and 13ZA. However, the same factors as in regulation 13 for determining what suitable alternative accommodation is, do not have to be taken into account in regulation 13ZA. For example an authority would not have to consider whether a person should move, as that has already been decided at the point of claim or their first taking on the liability. Instead they are concerned with making a broad comparison with rents in the wider market. Arguably the provision envisages any increase in rent keeping track with the levels of increase for comparable dwellings, generally keeping in line with inflation or in line with changes in the market that have a recognisable cause.

6 Can I help with charges for security services?

As with any service charge, one for security services must first be treated as rent through HB regulation 12(1)(e) where it must be a condition of the right to occupy the dwelling. However, certain service charges are then made ineligible through HB regulation 12(3) and schedule 1. To be eligible these charges must effectively be connected with the provision of adequate accommodation as reflected in sub-paragraph 1(g) of schedule 1 to the HB regulations, which is for the LA to decide according to the facts of the claim.

There is no definition of adequate accommodation in the HB regulations; therefore it is the every day understanding of the phrase that should be used. The HB/CTB Guidance Manual, paragraph A4.174, points to the accommodation being adequate for any tenant rather than the particular tenant. An eligible service charge would therefore generally be one that relates directly to the fabric of the dwelling covered by the tenancy and not directly to the needs of the tenant in enabling them to live in it.

Neither HB regulation 12(3) nor schedule 1 is specific on the treatment of service charges for security services. It is therefore for an authority to draw its own conclusions as to whether a service is 'connected with the provision of adequate accommodation'. A distinction therefore needs to be made between the security of the individual within the dwelling and the security of the dwelling. Service charges connected with the former are not eligible while those for the latter arguably can be.

If a night security service is intended to protect the fabric of the premises from vandalism, arson and unauthorised entry by visitors, the service charge could arguably be connected with the provision of adequate accommodation. The argument being that without the provision of the night security service vandalism, broken windows and arson could result in the accommodation no longer being adequate for the residents to inhabit. This might be accepted as reasonable where the security services are not being delivered to the claimants personally.

It is thought that without these security services neither the residents' personal security or the structural integrity of the premises can be guaranteed. However, it is only the cost in proportion to the staff time spent in these activities that would be eligible for HB. You should therefore refuse to include in HB any service charges for services provided by the security services that relate to general counselling or support of the residents. For instance, if the security services assist the night worker in any of their duties for a few hours in each night, then the charge for that proportion of their services will not be eligible to be met by HB. The burden of demonstrating that all the service charges claimed as eligible service charges specifically relate to provision of adequate accommodation rests with the providers.

It is also important to note that it is not the cost of paying for certain staff that is eligible but the cost of the service they provide that is either eligible or not depending on whether the duty is connected with the provision of adequate accommodation. An authority should be satisfied what staff time is spent on what duty and how that has been costed.

The Commissioner's decision in CIS 1460/1995 is authority for the proposition that the individual needs of the residents are relevant to the question of what is adequate accommodation. Arguably the special needs and problems of the residents of the home cannot be ignored in relation to paragraph 1(g).

The Commissioner's decision in R(IS) 2/07 shows, in paragraph 28, how the providers must approach the calculation of the service charges for the night security service, and how the costs of these services should be apportioned between the Supporting People programme and HB.

A summary of relevant Social Security Commissioner's decisions

1 CH/1992/2002 (particularly paragraphs 22 to 27)

This decision looks at what constitutes suitable alternative accommodation for the rental comparison. The Commissioner did not find the tribunal's decision unreasonable that a dwelling did not have to be suitably adapted to meet the individual tenant's needs in order to be considered as suitable alternative accommodation for the rental comparison. The Commissioner took a pragmatic approach that, as the full cost of housing the individuals would be met from the public purse one way or another, a broad approach could be taken as to what was suitable alternative accommodation. The Commissioner did not find it unreasonable for 'suitable alternative accommodation' to include properties which, though not immediately suitable, could be made suitable in a reasonable space of time.

2 CH/3900/2005 (particularly paragraphs 16 to 20)

The decision looks at what is meant by 'provided by' when it comes to providing the accommodation within the definition of 'exempt accommodation'. The Commissioner, rejecting a broad interpretation of provided by, decided that the accommodation could not be considered to be 'provided by' the county council in this case just because it was instrumental in arranging the accommodation with a private landlord via a third party. He decided that it was not 'exempt accommodation' as the prescribed non-metropolitan county council was not the landlord.

3 CH/423/2006 (particularly paragraphs 51 and 52)

[http://www.osscc.gov.uk/judgmentfiles/j1988/R\(H\)_2-07_bvam.doc](http://www.osscc.gov.uk/judgmentfiles/j1988/R(H)_2-07_bvam.doc)

The decision looks at what is meant by 'on behalf of' when it comes to providing the care, support or supervision within the definition of 'exempt accommodation'. The Commissioner decided that the care, support or supervision could not be considered to be provided 'on behalf of the landlord just because they are a party to arranging the accommodation/care/support package for the tenant. 'On behalf of' required an interposition of the care/support provider for the landlord.

4 CH/3811/2006 (particularly paragraphs 29 and 32 to 34)

[http://www.osscc.gov.uk/judgmentfiles/j2150/R\(H\)_7-07_bvam.doc](http://www.osscc.gov.uk/judgmentfiles/j2150/R(H)_7-07_bvam.doc)

In this case where the landlord was a housing association, the Commissioner found that it was wrong to read in to the definition of exempt accommodation a requirement that the landlord be the main provider of care, support or supervision; nor was it possible to read into that definition a requirement that the care, support or supervision be provided pursuant to a statutory or contractual obligation on the part of the landlord. In order to satisfy the definition of exempt accommodation the care, support or supervision which the landlord provided must be more than minimal. On the facts of this case, the support provided by the landlord's tenant liaison officer to the claimant was minimal. In this case there was already a substantial care package in place negotiated between the local authority and the care provider.

5 **CH/58/2007**

In this appeal the circumstances of the tenancy had been re-arranged to create a landlord that is a 'voluntary organisation' in place of one which was a private sector landlord, with the expectation that the dwelling would become 'exempt accommodation'. The Commissioner did not find fault with the tribunal's decision that HB reg. 9(1)(l) did not apply in this case. He made the point that this regulation should not be applied where the landlord is taking advantage of the perceived shortcomings of the rent control mechanism in HB reg. 13. However, at paragraphs 36, 38, 41, 43 and 45 he accepted that these landlords could be motivated by profit making when making their commercially based decisions. The common factor of all the prescribed landlords being not for profit was not addressed by the Commissioner in his decision.

6 **CH/136/2007** (particularly paragraphs 53, 59 to 65 and 72)
<http://www.osspsc.gov.uk/judgmentfiles/j2241/CH%20136%202007-00.doc>

The Commissioner did not find fault with the tribunal's decision but in this case that decision was that HB reg. 9(1)(l) did apply. The situation was one where the leaseholder/landlord charged high rents on that half of the property for which they were only liable for a peppercorn rent to the freehold owner under a lease. The situation involved a profit making head landlord leasing property to a 'voluntary organisation', which was the leaseholder/landlord, with which they had close links. The Commissioner confirmed that 'the Council could look behind the precise terms of the tenancy to the structure behind it to identify any abuse'. One relevant factor was the insertion of an otherwise unnecessary intermediate landlord into the process (see para. 64).

7 **CH/1246/2007** (particularly paragraphs 26 to 31)
<http://www.osspsc.gov.uk/judgmentfiles/j2510/CH%201246%202007-01.doc>

The Commissioner did not accept the argument put forward that the care and/or support provider need only act in some capacity on behalf of the landlord for it to be 'exempt accommodation'. He confirmed that the care, support or supervision must specifically be provided by the landlord or on their behalf. He set aside the Tribunal's decision that the landlord did not provide care support or supervision but did not make a decision himself on this point leaving that to a joint Commissioner's hearing involving the same landlord with the appeals in CH 779.2007 and CH 2805.2007.

8 **CH/1289/2007** (particularly paragraphs 27 to 29)
<http://www.osspsc.gov.uk/judgmentfiles/j2219/CH%201289%202007-00.doc>

The Commissioner made it clear that in a building containing more than one dwelling but with the same landlord, it could not be automatically assumed that all the dwellings are 'exempt accommodation' just because the landlord provides support to tenants of the building. This is particularly the case where the need for support of individuals varies. It is the dwelling and not the building which is 'exempt accommodation'. It is possible that the building contains some dwellings which are 'exempt accommodation' while others are not, depending on the support needs of individual tenants. Furthermore a claimant's accommodation will not be exempt if no (or only minimal) care, support or supervision is provided to him by the landlord, however much care, support or supervision may be provided to other tenants of the landlord.

9 CH/3528 - 3560/2007

<http://www.osscsc.gov.uk/judgmentfiles/j2367/CH%203528%202006-01.doc>

The Commissioner firstly decided that where a charge is described as a service charge but does not relate to providing a service it is appropriate to consider whether it should be added to the core rent. The charges were for voids and long term maintenance. He went on to look at what constitutes 'suitable alternative accommodation' for each tenant. He said that there was an evidential burden on the local authority to show that the alternative accommodation they had found was able to meet the accommodation needs of the individual, rather than just being similar to what they already have. This had not been shown in all of the cases presented particularly those where particular accommodation needs could be identified from the substantial amount of information before the Commissioner. The decision requires an authority to have a detailed knowledge of a person's accommodation requirements and ensure that the accommodation identified as a suitable alternative meets those detailed needs, such as room sizes, wheelchair access etc.

10 R(IS) 2/07 CIS 2901/2004

[http://www.osscsc.gov.uk/judgmentfiles/j1767/R\(IS\)_2-07_bvam.doc](http://www.osscsc.gov.uk/judgmentfiles/j1767/R(IS)_2-07_bvam.doc)

This Commissioners decision explored in great detail how the cost of staffing should be separated between accommodation and support/care related costs. While this is an Income Support decision the only difference in the facts of the case is that the person was a leaseholder in sheltered housing rather than tenant, otherwise the considerations are the same as help with service charges within the other income related benefits refers to the HB service charge rules. Essentially it is not the cost of paying for certain staff that is eligible or not, but the cost of the service they provide depending on whether the duty is connected with the provision of adequate accommodation. The cost is worked out by reference to the number of hours spent providing the accommodation-related services. An authority should be satisfied what staff time is spent on what duty and how that has been costed to arrive at a figure that forms the eligible element of any charge.

11 CH/779, 1246/7 and 2805/2007

<http://www.osscsc.gov.uk/judgmentfiles/j2511/CH%200779%202007-01.doc>

Commissioner Turnbull looked at these three sets of appeals together as they all involved the same landlord. The issue was whether the level of support provided by the landlord was more than minimal in line with CH 423.2006 (see above). In paragraphs 19-21 the Commissioner states that providing support could differ from the provision of care and supervision in that, while it would need to be available to the tenant in their dwelling, the tenant need not actually take advantage of it for it to be accepted as support. However, in paragraph 24 the Commissioner agrees that there must be a degree of likelihood that the tenant will need the support for it to be accepted as such and any decision should take account of other available sources of support. In paragraph 232 the Commissioner gives his opinion that 'the word support connotes the giving of advice and assistance to the claimant in coping with the practicalities of everyday life'. However, that it did not extend 'to scrutinising the arrangements for the provision by some other body of care, support and supervision, with a view to remedying defects perceived by (the landlord), or to recommending improvements'.

Good practice notes for LAs when assessing RSL rents

- 1 LAs must make a decision under the regulations when assessing whether to refer an RSL case to the rent officer but you must not have a blanket policy of either referral or non-referral. However, set, uniform procedures for assessment of each case should be put in place for staff to follow, backed up by training and written guidance to achieve consistency and fairness.
- 2 You could, for example, set trigger rent levels for different bands of property: for instance, 1 bed, 2 bed, 3 bed properties in the area. RSL rents significantly above the trigger points could then be considered further for possible referral to the rent officer if it is felt the rent is unreasonably high in the particular circumstances.
- 3 Any trigger rent levels would have to be regularly reviewed by the authority to ensure they reflect movement within local housing markets. You could consider setting up liaison arrangements with your rent officers to get advice on the levels of trigger rents.
- 4 When making the decision about what is unreasonably high you need to look at the circumstances of the case, for example by comparing with locally available rents for similar types of accommodation. If you are satisfied the rent is reasonable according to set criteria, there would be no need to refer to the rent officer. Remember, LAs must make a decision regarding referral, see paragraph 3(1) of Schedule 2, but it must be made in a reasonable and justifiable way, following set procedures designed to ensure some consistency is achieved by an authority over time between individual cases with similar or the same accompanying factual circumstances
- 5 Also, as mentioned in the *HB/CTB Performance and Good Practice Guide - Working with organisations - Working effectively with landlords and minimising reposessions*, it is good practice to work closely with your RSL partners and to create a Service Level Agreement between both parties
 - letting them know what criteria you're using. This raises their confidence in the HB system, and
 - if appropriate, encouraging them to work with you on HALS-style schemes, which can be a cost-effective way of providing decent quality temporary accommodation, rather than relying on bed and breakfast
- 6 HB/CTB staff will need to liaise with other departments within the LA (notably Housing and Homelessness Sections) in developing and implementing procedures in regard to RSL referrals to the rent officer. This will help ensure effective delivery of corporate policy objectives, for example reducing reliance upon bed and breakfast accommodation for homeless households, while avoiding conflicts in policy delivery.