

Rent Rebate Subsidy Limitation: Derogations 2011-2012, England

1. This note explains the policy and procedure for applications for a derogation from rent rebate subsidy limitation in 2011-2012.
2. The procedures detailed in this paper apply to England only.
3. The Local Government Act 2003 moved accountability for rent rebates from the Housing Revenue Account to the General Fund, but the effects of rent rebate subsidy limitation continue to fall on that account.
4. Final decisions on derogation applications will be a matter for the Department for Work and Pensions, and for the Department for Communities and Local Government.

General Policy

5. Ministers are prepared to consider granting full or partial exemption from rent rebate subsidy limitation for 2011-2012 where an authority can demonstrate that due to exceptional and unforeseeable circumstances outside its control, the authority needed to set the aggregate of its average weekly rent for 2011-2012 and those service charges deemed to have been un-pooled from rent in the Income-Related Benefits (Subsidy to Authorities) Amendment Order 2006 above the level at which rent rebate subsidy limitation applies, and it would face significant or complex financial difficulties in 2011-2012 in its Housing Revenue Account without a derogation. It should be noted that:
 - a. Authorities have had more than ten years to adjust their spending plans to take into account rent rebate subsidy limitation: problems that arise from the normal operation of the rent rebate subsidy limitation system will not be eligible for a derogation.
 - b. An authority's decision to keep rent increases down in prior years (e.g. by drawing on balances) or a decision to set a rent above guidelines in previous years is not regarded as reasonable grounds for a derogation.
 - c. The impact of changes in the calculation of subsidy entitlement as a consequence of the introduction of arrangements for the un-pooling and separate identification of service charges will not be considered as grounds for a derogation.
 - d. Changes arising from the removal of rent rebates from the HRA, or the 'pooling' of HRA surpluses, the abolition of the MRP, the changes in determining M&M

allowances, and other revised arrangements first introduced in the Housing Revenue Account (HRA) Subsidy Determination for 2004-2005 do not constitute grounds for a derogation.

6. Ministers are also prepared to consider granting full or partial exemption from rent rebate subsidy limitation for 2011-2012, where an authority has incurred costs that it could not reasonably foresee as a result of a large scale voluntary transfer, which are chargeable to the HRA and, as a consequence, the authority needed to set the aggregate of its average weekly rent and those service charges deemed to have been un-pooled from rent in the Income-Related Benefits (Subsidy to Authorities) Amendment Order 2006 above the level at which rent rebate subsidy limitation applies.

Criteria that will be applied to any application

7. Applications will be considered in the light of each authority's HRA income and expenditure over the previous three years and that proposed for 2011-2012. Each application will be considered on its merits, against the policy set out above. However, as a general guide, Ministers will look at the following considerations:
 - a. What action has the authority taken to try to keep within the subsidy limit?
 - b. Has the authority sufficient resources available to it to meet a reasonable level of expenditure in 2011-2012, bearing in mind past trends in expenditure and known commitments?
8. Account will be taken of commitments and contingent liabilities, and whether an authority can draw on other reserves. The Department for Communities and Local Government will compare an authority's balances with those of other authorities, and will have regard to the realism of an authority's estimates measured by the accuracy by which it has historically forecast end-year balances.
9. Ministers take the view that any increase in salaries falling to the HRA (including national and local salary awards and the cost of staff moving up salary scales) since 1996-1997 should be met from efficiency savings.
10. Ministers will assume that changes in overall management and maintenance expenditure per dwelling since 1996-1997 should reflect changes in an authority's HRA subsidy since then.
11. On capital expenditure Ministers will assume that: the level of revenue contributions to capital should be no greater in cash terms than in previous years.
12. Ministers will consider the extent to which authorities have used, or plan to use, the resources allocated to them to meet capital expenditure on housing. They will also have regard to the use made of retained HRA capital receipts.
13. If an authority obtained a derogation in some previous year, the Department for Communities and Local Government will have regard to the extent to which the latest estimates for income and expenditure for that year are in line with budget provision at the time the derogation was sought, and to whether any terms under which the derogation was issued have been met.

14. If:
- a. an authority's external auditor has issued, since 2004-2005, a public interest report under either section 15(3) of the Local Government Finance Act 1982 or section 8 of the Audit Commission Act 1998 that has a bearing on HRA expenditure or income; or
 - b. the authority has been subject to a Best Value, Housing Inspectorate or other inspection that has a bearing on HRA expenditure or income the authority will be expected to supply the Department for Communities and Local Government with a copy of the report(s) and provide details of the action being taken to resolve the issues identified. It will be assumed that any potential efficiency improvements identified in the report(s) will be realised by the authority and savings made.
15. Authorities will be expected to demonstrate a robust strategy for resolving the problem that had given rise to their application for a derogation, and should set out that strategy as part of their application.

Procedure

16. If a derogation is granted, it will apply for 2011-2012 only. Exemption from rent rebate subsidy limitation shall not be carried over into the following financial year (the same principle applied to derogations granted for previous years).
17. Applications should be made in the first instance to the Department for Communities and Local Government and copied to DWP. Administration of the policy for rent rebate subsidy limitation remains with the Department for Communities and Local Government, but final decisions on rent rebate expenditure, including derogations, fall to DWP.
18. The procedure for responding to applications will be similar to that employed for previous years. We will acknowledge all applications. Following this, there will normally be a two-stage process:
- a. Based on recommendations from the Department for Communities and Local Government, DWP will respond with a provisional decision, summarising the authority's case and the key facts and setting out the reasons for the DWP's decision.
 - b. It will be open to the authority to make further written representations where the DWP is minded not to grant the full derogation requested. The DWP will respond to any further representations with a final decision in the same format as for the provisional decision, but will take account of any relevant additional or revised information the authority has supplied and any further recommendations made by the Department for Communities and Local Government.
19. Authorities may now apply for a derogation from rent rebate subsidy limitation for 2011-2012. To help authorities, an electronic form for derogation applications is available. This sets out the information to be included with all applications. The Department for Communities and Local Government and DWP will consider only applications made on disk using this form.
20. Disks in Windows Excel format are available on request to Bryan Lea, Department for Communities and Local Government, Zone 1/J10, Eland House, Bressenden Place, London, SW1E 5DU, telephone 0303 44 43726.

21. The DWP policy contact is Aeon R Channer, LA Performance Division: Finance and Subsidy, 1st Floor, Caxton House, 6-11 Tothill Street, London SW1H 9NA, 0207 449 5378, aeon.channer@dwp.gsi.gov.uk.

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