

**EXPLANATORY MEMORANDUM TO  
THE HOUSING BENEFIT (TRANSITIONAL PROVISIONS) (AMENDMENT)  
REGULATIONS 2014**

**2014 No. 212**

**1.** This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument makes amendments to The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (the “Regulations”).

<http://www.legislation.gov.uk/uksi/2006/217/contents/made>

2.2 The Regulations contain transitional and savings provisions relating to housing benefit. This instrument amends paragraph 4 of Schedule 3 to the Regulations, which provides for transitional protection for certain housing benefit claimants. The amendment provides that this protection does not apply to a case where the local authority is required to determine a maximum rent (social sector) by virtue of regulation A13 of the Housing Benefit Regulations 2006 <http://www.legislation.gov.uk/uksi/2006/213/contents/made>.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Background**

4.1 In 1996 changes to the housing benefit scheme were introduced. However, transitional protection was provided to claimants in certain types of supported accommodation and for certain existing housing benefit claimants and their families (namely those who had been in continuous receipt of housing benefit since at least 1 January 1996 and who continued to occupy the same dwelling (subject to certain exceptions)). When the housing benefit rules were changed in 2006, this transitional protection was preserved.

4.2 The Housing Benefit (Amendment) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/3040/contents/made> introduced a new calculation for eligible rent in respect of tenants in the social sector. The policy intention was that this should apply (with minor exceptions) to all working age social sector tenants, regardless of the length of time they had occupied their property; and the length of time they had been in receipt of housing benefit.

4.3 However, the Department has been alerted that some tenants who have been in receipt of housing benefit continuously since at least 1 January 1996 and who have occupied the same property continuously, are seeking to have their housing benefit entitlement decided in accordance with the transitional provisions in the Regulations instead of the Housing Benefit (Amendment) Regulations 2012. The effect of this is, they argue, that their housing benefit should not be reduced if they are under-occupying their property. This was not the policy intention. As such, the amendment restores the policy intention that the

transitional protection afforded by the Regulations does not apply to a case where the local authority is required to determine a maximum rent (social sector). The regulations come into force on 3<sup>rd</sup> March 2014.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 We have been alerted to a technical issue with the relevant legislation which potentially allows social sector tenants who have been in the same property since 1 January 1996, and who have been in receipt of Housing Benefit (HB) continuously since then to argue that the legislation relating to the removal of the spare room subsidy does not apply.

7.2 Until 1996 HB was based upon the claimant's actual rent. There were controls where the rent was unreasonably high or the dwelling unreasonably large. These were based upon rent officer determinations, but did not need to follow them, and restrictions could not be imposed upon certain groups of vulnerable claimants unless it was reasonable for them to move and there was alternative suitable accommodation available. The rules were changed in 1996 largely as a result of the de-regulation of the private rented sector as landlords were able to obtain high rents from claimants on HB. Rent allowance cases became subject to more stringent controls which took rent officer determinations as the basis for the eligible rent calculation.

7.3 When the rules were changed in 1996, generous transitional protection was included for anyone in receipt of HB at the time of the change until they moved (subject to a move due to natural disasters, fire etc) or until they ceased to be entitled to HB (subject to exceptions in relation to welfare to work). The protection can also be inherited once on the death of the claimant in respect of the same dwelling (essentially by the same kinds of people who can benefit from protection on death under current rules).

7.4 The same legislation also provided the more generous provisions for "exempt accommodation", and these provisions were relied upon to exempt this type of accommodation from the removal of spare room subsidy (RSRS).

7.5 The transitional protection provisions in respect of pre-1996 tenancies do not make a distinction between rent allowance and rent rebate cases (they are framed by reference to an individual being in receipt of HB). However the 1996 changes did not practically affect rent rebate cases so tenants in social sector properties did not need to take advantage of the transitional protection.

7.6 The provisions only effectively became relevant to tenants of social sector properties following the introduction of the RSRS. The fact that the transitional protection provisions do

technically extend to tenants in social sector properties has now been raised by claimants as an argument to escape the RSRS. This amendment restores the policy intention that the transitional protection for pre 1996 cases does not apply to a case where the local authority is required to determine a maximum rent (social sector).

- **Consolidation**

7.7 "Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk) . An explanation as to which instruments are maintained on each site is available [here](#)."

## **8. Consultation outcome**

We have consulted the Social Security Advisory Committee and the Local Authority Associations and they have had an opportunity to comment on the amendments.

## **9. Guidance**

Comprehensive guidance has been issued to local authorities in the form of an urgent bulletin to provide advice on the action to take on pre 1996 tenancies that may be covered by the transitional protection and further guidance will be issued prior to the regulations coming into force to provide effective support for advisers and decision makers.

## **10. Impact**

10.1 There is no impact on business or civil society organisations

10.2 It is anticipated that there may be new administrative burdens for Local Authorities who administer Housing Benefit to identify affected cases. We will in due course negotiate this with the Local Authority Associations.

10.3 An Impact Assessment has not been produced for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 In addition to the Department's own ongoing monitoring of the policy, it is commissioning independent monitoring and evaluation to explore the effects of the introduction of size criteria in the social rented sector in general. This will consist of some primary field research into the impacts of the changes, which is expected to be undertaken over a two year period from April 2013 to March 2015. Initial findings are expected to be available to Parliament and published in accordance with the Department's publication protocols in early 2014 with final reporting in late 2015. The research methodology and scope will be finalised in consultation with contractors and key stakeholders once the initial

commissioning work has been undertaken over the summer. The measurement of the success criteria will be finalised in consultation with contractors and key stakeholders once the commissioning work has been completed.

12.2 The evaluation is likely to include a range of social landlords in local authorities across England, Scotland and Wales. Different types of authorities including a range of urban, rural and county district local authorities will be included; they will be selected to cover a range of different housing market demands. This approach should ensure that the effects of the introduction of size criteria can be explored fully and offer a sound insight into the experiences of tenants. The evaluation and monitoring will include the impact of the measures on:

- Supply of accommodation
- Rural areas
- People unable to share rooms such as couples and disabled children
- Vulnerable individuals
- Financial status
- Health and wellbeing
- Family life, particularly where the family has multiple problems.

### **13. Contact**

Beverley Walsh at the Department for Work and Pensions Tel: 0113 232 7608 or email: [beverley.walsh@dwp.gsi.gov.uk](mailto:beverley.walsh@dwp.gsi.gov.uk) can answer any queries regarding the instrument.