

EXPLANATORY MEMORANDUM TO
THE INCOME-RELATED BENEFITS (SUBSIDY TO AUTHORITIES)
(TEMPORARY ACCOMMODATION) AMENDMENT ORDER 2010

2010 No. 2509

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 this instrument

2.1 A reformed Housing Benefit subsidy scheme for claimants living in temporary accommodation was introduced in April 2010. It is based on Local Housing Allowance rates and controls the level of subsidy local authorities can receive from the Department for Work and Pensions in respect of Housing Benefit awards paid to these claimants. The scheme currently applies only to claimants in temporary accommodation that is leased or held on license from a private landlord by a local authority.

2.2 This instrument extends the current subsidy scheme, from 1 April 2011, to include claimants living in temporary and short term accommodation: leased or licensed by registered housing associations; owned by registered housing associations; and some local authority-run leased accommodation in Scotland and Wales. This instrument also fixes the Local Housing Allowance rates used in the formula to calculate subsidy at the January 2011 rates, which it is intended will be reviewed in 2012.

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

None

4. Legislative Context

4.1 Housing Benefit subsidy is the means by which local authorities can recoup, from the Department for Work and Pensions, their costs from making Housing Benefit payments. For claimants living in temporary accommodation where the local authority is the landlord (rent rebate cases), the local authority has discretion over the rents that are charged to their tenants and, consequently, the levels of Housing Benefit that may be awarded to those entitled to it. By controlling the maximum level of Housing Benefit subsidy available to local authorities, the Department is able to manage Housing Benefit expenditure in this area.

4.2 For claimants living in temporary accommodation where a registered housing association is the landlord (rent allowance cases), the local authority is currently required to refer rents to a Rent Officer only where it considers the rent to be unreasonably high or the property unreasonably large for the size of the household. Housing Benefit can be paid up to the eligible rent (less relevant deductions) and the full amount is payable in subsidy by the Department. This instrument enables the Department to place the same subsidy limits on these rent allowance cases (i.e. claimants in temporary or short term accommodation) as already apply to rent rebate claimants in temporary or short term accommodation. The changes will come into force from 1 April 2011.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the 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 The Department introduced new subsidy rules from April 2010, based on Local Housing Allowance rates, for claimants living in temporary accommodation. These changes were designed to control the rapidly increasing level of Housing Benefit expenditure in this area and encourage local authorities to charge a fair market rent based on the size and location of the property used. More reasonable rents could also encourage households into work. Extending these subsidy rules to include cases in housing association-run leasing schemes (and some other leased accommodation not currently affected) will ensure that the level of subsidy payable in similar types of accommodation is consistent. This will bring about greater fairness in terms of the level of funding available to different providers (registered housing associations, local authorities and other third party managing agents) operating in the leased accommodation sub-market. This approach should help to reduce Housing Benefit expenditure in this area overall by encouraging more providers to reduce their leasing and management costs and therefore achieve better value for money for the taxpayer.

7.2 The explanatory memorandum accompanying the Income-related Benefits (Subsidy to Authorities) (Temporary Accommodation) Amendment Order 2009¹ (No. 2580) is relevant and provides further background to the introduction of the new scheme with further explanation behind the method for the way in which subsidy is now calculated.

¹ <http://www.legislation.gov.uk/uksi/2009/2580/notes/contents?type=em>

7.3 Removing the reference to short-term leased accommodation in relation to cases in local-authority-run accommodation in Scotland and Wales will close a gap that exists, which allows cases in accommodation that has been leased for more than ten years in these countries to avoid any form of subsidy control. (In England, local authorities cannot hold an interest in leased accommodation outside of the Housing Revenue Account for more than ten years.)

7.4 Fixing the level of subsidy at January 2011 Local Housing Allowance rates, which the Government has committed to maintain until the end of March 2013, will help providers maintain existing lease agreements and negotiate new contracts with confidence in the level of funding available to them over the mid-term. This will also help maintain the supply and quality of temporary accommodation during a period when significant changes will be made to Local Housing Allowance rates for many households living in the private rented sector.

7.5 The level of Housing Benefit subsidy available in respect of temporary or short-term accommodation owned or leased by a registered housing association will be the same as currently applies to self-contained licensed and leased accommodation provided by a local authority. It will be the lowest of:

- the amount of Housing Benefit entitlement (weekly or part weekly); or
- the maximum weekly amount determined by the Local Housing Allowance rate in January 2011 (based on the applicable category of dwelling and the broad rental market area in which it is situated), less 10 per cent, plus £40 for London authorities (listed in Schedule 7) or £60 for non-London authorities to help towards management costs; or
- £500 where the property is located in one of the London broad rental market areas listed in Schedule 8 or £375 where the property is located elsewhere.

7.6 The level of Housing Benefit subsidy available in respect of non self-contained licensed accommodation and board and lodging accommodation provided by a registered housing association will be the same as it is currently where the local authority is the landlord. It will be the lowest of:

- the amount of Housing Benefit entitlement (weekly or part weekly); or
- the one bedroom (self-contained) Local Housing Allowance rate for January 2011 which is applicable to the broad rental market area in which it is situated; or
- the upper cap limit of £500 or £375 as applied above.

7.7 These subsidy arrangements apply in all cases where the accommodation has been made available to the household as temporary or short-term accommodation. This means accommodation that has been made available to discharge a statutory homelessness function or to prevent homelessness.

Consolidation

7.8 Informal consolidation of the instrument will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

8. Consultation outcome

8.1 A six-week consultation with local authority associations and other key stakeholders ended on 29 September 2010. Six weeks was felt appropriate as key stakeholders have been engaged on these reforms throughout their development. The Department received four responses from: the National Housing Federation Leased Accommodation Practitioners Group; London Councils and two individual local authorities (one in London and one in Scotland).

8.2 Most respondents were in favour of extending the subsidy scheme to ensure greater fairness. London Councils also welcomed the decision to fix subsidy levels based on January 2011 Local Housing Allowance rates. A local authority based in Scotland was particularly concerned that the changes could lead to a significant reduction in subsidy and sought to be made exempt from the changes, at least for one more year. Concern was generally raised that local authorities would be required to find alternative accommodation for a number of households in more expensive areas or in larger properties, or meet any subsidy shortfall themselves. This is likely although the extent to which private landlords will be willing to renegotiate lease payments downwards, thereby sustaining existing tenancies, is not clear at this stage. The National Housing Federation Practitioners Group estimated that up to a quarter of its members' stock could be at risk although it hoped that in many cases they would be able to renegotiate leasing costs with landlords.

8.3 The Government has given careful consideration to the possibility of offering some form of transitional protection in exceptional cases where leases had been entered into before these changes were announced. However, it was felt that such an approach would only postpone or delay the impact of the changes whilst creating a high degree of complexity. It would also reduce the potential savings to the taxpayer and could discourage private landlords from reducing rents.

9. Guidance

Full details of the new arrangements will be shared with all local authorities through a subsidy circular and a contact point is already available for anyone with queries.

10. Impact

10.1 There is no direct impact on business, charities or voluntary bodies.

10.2 There is a limited impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and Review

The Department will continue to monitor the impact of the proposed changes to HB subsidy. This will be carried out through regular monitoring of HB expenditure in this area, ongoing discussions with representatives of the local authority associations and through feedback from other government departments (i.e. Communities and Local Government and the devolved administrations) as well as individual local authorities and stakeholders such as members of the National Housing Federation. The Department will review these subsidy arrangements in 2012 ahead of making any announcement on subsidy levels in 2013/14 onwards.

13. Contact

Joe Stacey at the Department for Work and Pensions - Tel: 020 7449 5346 or email: joseph.stacey@dwp.gsi.gov.uk – can answer any queries regarding the instrument.