

EXPLANATORY MEMORANDUM TO
THE BENEFIT CAP (HOUSING BENEFIT) (AMENDMENT) REGULATIONS
2013

2013 No. 546

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**

The instrument makes two provisions concerning the application of the benefit cap in Housing Benefit:

- 2.1 To disregard Housing Benefit from the cap calculation in certain cases where the person is living in supported accommodation (referred to as ‘exempt’ accommodation in current housing benefit legislation¹); and
- 2.2 To add a further exemption so that the benefit cap in Housing Benefit will not apply to a claimant who is receiving Universal Credit (itself subject to the benefit cap).

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

None

4. **Legislative Context**

These regulations amend the benefit cap provisions that will be inserted into the Housing Benefit Regulations 2006 by the Benefit Cap (Housing Benefit) Regulations 2012 (S.I 2012/2994)². The benefit cap provisions allow for the introduction of a benefit cap and require local authorities to reduce the amount of Housing Benefit in cases where the total benefit entitlement would otherwise exceed £500 per week for workless couple and lone parent households or £350 per week for workless single households³. The Regulations were approved in Parliament in November 2012 in accordance with the powers provided in clauses 96 and 97 of the Welfare Reform Act, and will come into force from 15 April 2013. A number of exemptions apply and the benefit cap will only affect claimants who fall under the working age housing benefit regulations and not the state pension credit housing benefit regulations.

1 A resettlement place; or accommodation provided by a non metropolitan county council, housing association registered charity or voluntary organisation where that body or person acting on their behalf provides the claimant with care, support or supervision. (Paragraph 4(10) of Schedule 3 of the HB and CTB (Consequential Provisions) Regulations 2006)

2 <http://www.legislation.gov.uk/ukxi/2012/2994/contents/made>

3 For the purposes of the benefit cap we define a household as a claimant, their partner and any children they are responsible for and who live with them.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 In the Autumn Statement on 5 December 2012 the Government announced that Housing Benefit paid to households in supported exempt accommodation will be disregarded from the benefit cap. The disregard will apply both to benefit cap cases under Housing Benefit from April 2013 and under Universal Credit. While this does not mean that these households are exempt from the benefit cap, by not including Housing Benefit in the calculation, the Government expects that the majority of these cases will no longer be affected by the cap.

Rationale

7.2 Various types of supported housing help people to live independently, move out of institutional care or provide emergency housing in a crisis. The costs are typically higher than for other types of housing and the level of Housing Benefit awarded is not subject to the Local Housing Allowance rules that otherwise limit the level of entitlement to Housing Benefit of people in privately rented accommodation.

7.3 The Government recognised the concern that applying the cap to supported exempt accommodation would have the effect of negating the policy of meeting rents in excess of the Local Housing Allowance. In addition representations were made that the cap would have an adverse impact on those who are not able to make an immediate behavioural change, such as moving house or moving into employment. These representations included particular concern about those claimants who are fleeing domestic violence into supported exempt accommodation.

7.4 Some claimants in supported exempt accommodation may still reach the threshold for the benefit cap even though help towards their housing costs will be disregarded for the purpose of the benefit cap. This is because the other welfare benefits they receive exceed the level of the cap. For those claiming Universal Credit, housing costs will be met in the short term through Housing Benefit payments. To avoid the cap being applied twice (because they will be receiving Housing Benefit alongside Universal Credit, which is itself subject to the cap) these cases will be exempt from

the cap in Housing Benefit. In these cases, the cap will be applied through Universal Credit.

- 7.5 The Government has announced additional funding for Discretionary Housing Payments in 2013-14 and in 2014-15 to support the short term needs of those affected by the cap, which originally included those in supported exempt accommodation. A proportion of this money (£10m from each year) will be used to support these changes, ensuring that those in supported exempt accommodation are helped directly. The Government is now providing additional funding for Discretionary Housing Payments of £65 million in 2013-14 and a further £35 million in 2014- 15.

- ***Consolidation***

- 7.6 An informal consolidated text of this instrument will be available to the public free of charge in due course 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/>

8. Consultation outcome

- 8.1 The Social Security Advisory Committee set out in their consultation report on Universal Credit and related regulations⁴ concerns about the possible adverse impact of the benefit cap on those in supported exempt accommodation. In changing the benefit cap regulations the Government has responded to the Committee’s recommendations, along with representations from refuges and other industry bodies.
- 8.2 The Department held a formal four week consultation, ending on 28 February 2013, with the local authority associations on draft regulations. The draft instrument was also shared with key stakeholders including National Housing Federation, Citizens Advice, Crisis and Shelter and the devolved administrations. The Department did not receive any responses to its consultation on the draft instrument.
- 8.3 The Department issued the circular HB/CTB U5/2012⁵ to make local authorities aware of these changes.
- 8.4 Some local authorities have made the point that the definition of supported exempt accommodation excludes accommodation owned by them and some accommodation owned by Housing Associations, for example where the care provider is a managing agent rather than the landlord. The definition of supported exempt accommodation is one carried forward from current provisions in Housing Benefit. We will keep the issue under review as we gather evidence of the early implementation of the Benefit Cap. The Government’s aim is to provide a flexible system to help meet

4 <http://ssac.independent.gov.uk/publications/command-papers/>

5 <http://www.dwp.gov.uk/docs/u5-2012.pdf>

the higher costs often associated with providing exempt accommodation. In the short term this help will be delivered broadly as now through local authorities under existing legislation. In the long term the Government is exploring the feasibility of a localised funding system.

- 8.5 There have been discussions with the Local Authority Association Steering Group, the Practitioners Operational Group and the Department for Work and Pensions/local authority IT Suppliers Forum to look at the practical implications of the changes, and to look at the type and level of support they require for successful implementation of these changes. The Department is continuing to work closely with these groups so that it can meet their needs.
- 8.6 These Regulations are not subject to statutory referral to the Social Security Advisory Committee (SSAC) as they will be made within 6 months of the commencement of the relevant enabling power. However, in recognition that this is a new area of policy, and the Secretary of State for Work and Pensions has asked the SSAC to scrutinise changes arising out of the Welfare Reform Act, full details were provided to the Committee. The Committee welcomes these changes.

9. Guidance

Guidance about the changes and their implementation is being developed for local authorities to assist them with the effective delivery of the changes. The guidance will be available alongside other guidance for local authorities on the Department's website⁶.

10. Impact

- 10.1 The Department estimates around 2,000 households at any one time in supported exempt accommodation will benefit from this measure.
- 10.2 There will be some impact on the public sector with one-off costs for local authority housing benefit and housing departments to implement these changes. The Department is working closely with the Department for Communities and Local Government to assess the financial impact of these changes on local authorities as part of its work to quantify the extent of any new burdens for local authorities.
- 10.3 There is no direct impact on the private sector or civil society organisations. The indirect impact of the changes contained in this instrument (for example, increased contact with advice centres) cannot be quantified with any degree of certainty at this stage as it is not possible to predict the behavioural responses of those affected by the benefit cap.

⁶ <http://www.dwp.gov.uk/local-authority-staff/>

10.4 A separate Impact Assessment has not been prepared for this instrument. The overarching impact assessment that covers the introduction of a benefit cap provided for by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I 2012/2994) is available at <http://www.legislation.gov.uk/uksi/2012/2994/impacts>

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Government will continue to monitor all aspects of benefit cap policy and has promised to publish a review in 2014 of the first year of the operation of the cap.

13. Contact

Pamela Chambers at the Department for Work and Pensions Tel: 020 7449 5086 or email: PAMELA.CHAMBERS@DWP.GSI.GOV.UK can answer any queries regarding the instrument.