

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND UNIVERSAL CREDIT (SUPPORTED
ACCOMMODATION) (AMENDMENT) REGULATIONS 2014

2014 No. 771

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

This instrument widens the scope of the existing protection from the unintended consequences of the benefit cap for those in supported housing.

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

None.

4. Legislative Context

This instrument amends provisions¹ that prevent the housing costs of those living in what legislation defines as “exempt accommodation” from being included in the calculation of the benefit cap. This is achieved through replacing that term with “specified accommodation” which widens the scope of the previous provision to include a wider variety of supported housing and providing for those housing costs in Housing Benefit rather than Universal Credit.

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?

¹ <http://www.legislation.gov.uk/uksi/2013/546/contents/made>

7.1 Ministers announced in September 2012 that, for the long term, they intended to explore the feasibility of a localised solution to providing help with the housing costs of supported housing and in the short term to provide help outside Universal Credit with these housing costs for those in “exempt accommodation”.

7.2 The Housing Benefit Regulations provide that, when calculating the amount of welfare benefits a claimant receives in order to apply the benefit cap, the amount of Housing Benefit included is nil.

The Universal Credit Regulations exclude the housing costs of those living in “exempt accommodation” (within the meaning of paragraph 4(10) of schedule 1 to the Consequential Provisions Regulation) so that those costs are met by way of Housing Benefit. Cases where a claimant is entitled to Universal Credit are excluded from the benefit cap provisions in Housing Benefit, as the cap will have already been applied to the non housing costs element.

7.3 The amendments extend these measures to protect those in supported housing who are not already covered by the definition of “exempt accommodation” and who are most likely to be affected by the benefit cap. This will include accommodation where the housing costs are particularly high, due to the cost of providing and managing specialist supported housing.

7.4 There are now four categories of supported housing included in the protection:

- Accommodation which comes within the existing definition of “exempt accommodation”. This effectively protects those in supported housing where the landlord is of a specified type (for example, a housing association or a registered charity) and also provides care, support or supervision to the relevant claimant, or has it provided on their behalf;
- Supported accommodation where the landlord is a specified third or social sector provider and care, support or supervision is provided to residents, but where the accommodation falls outside the existing “exempt accommodation” definition because the care isn't provided by the landlord or on their behalf. In order to fall within this category, the property must be provided by one of the third or social sector landlord types specified, and the claimant must have been admitted to the dwelling to meet a need for care, support or supervision, and be receiving such care, support or supervision ;
- Third and social sector refuges, including local authority refuges, where the claimant is accommodated there because they are fleeing domestic violence
- Local authority hostels providing care support or supervision.

7.5 To allow for us to develop a robust system of confirming whether Universal Credit claimants are entitled to Housing Benefit in respect of their housing costs, the amendments taking these cases out of Universal Credit come into force on 3rd November 2014.

8. Consultation outcome

8.1 The Social Security Advisory Committee agreed that the Regulations should not be referred to it for formal consultation.

8.2 In accordance with section 176(2)(b) of the Social Security Administration Act 1992, the Department wrote formally to the local authority associations to advise them of the proposed changes..

8.3 Only the Convention of Scottish Local Authorities (COSLA) responded, making three points: all local authority supported housing should come within the definition of "specified accommodation"; ensure that all those in "specified accommodation" are exempt from the Removal of the Spare Room Subsidy in the same way as supported "exempt accommodation"; remove the requirement that people are "placed" in "specified accommodation".

8.4 The instrument applies to Great Britain. DWP recognises that there is regional variation. The Regulations do provide protection for refugees and hostels provided by local authorities, which were the main concerns of other stakeholders who gave their views. DWP considered that there were substantive risks to effective targeting of resources if the scope of the Regulations went wider than that.

8.5 We would not typically expect supported accommodation to provide a tenant with more rooms than required. The Housing Benefit rules are different to those that apply to social sector housing and to which the Removal of the Spare Room Subsidy applies. Further, the rules for working out the amount of rent eligible for help for supported "exempt accommodation" already include the possibility of a reduction where the person's dwelling is unreasonably large, relying on the same size criteria that are the basis for the Removal of the Spare Room Subsidy.

8.6 The draft regulations were amended in response to other comments regarding the use of the word "placed", substituting "admitted" as a more flexible description of how a person may enter relevant accommodation.

8.7 No other formal consultation was undertaken on the changes contained in this instrument but the Department engaged with key stakeholders on an informal basis over the last year. These included the National Housing Federation, Chartered Institute of Housing, Sitra, Homes and Communities Agency, Mencap,

HomelessLink, Women's Aid, Housing and Support Alliance and the Scottish and Welsh Governments.

8.8 The Department held meetings with representatives of the sector to understand the impact of personal benefits on the funding in this sector and to assist with an interim solution to cover the supported housing originally intended to be treated as "exempt accommodation" but which were not included in the definition, as well as local authority provision.

8.9 The draft instrument was also shared with our key stakeholders for their comment.

9. Guidance

Comprehensive guidance about the changes and their implementation is being developed for local authorities to assist them with the effective delivery and communication of the changes. This guidance will be made available through the standard web-based products with which the Department communicates with Housing Benefit managers.

10. Impact

10.1 The instrument protects potentially vulnerable service users from unintended impacts of welfare reform. Existing regulations protect those in supported "exempt accommodation" (SEA) from having their housing costs included in the Benefit Cap. However, we are now aware that there are significant numbers of claimants in supported accommodation who are not covered by the SEA exemption. As a result the exemption is being extended to a wider group of those in supported accommodation, with the new exempt group defined under the heading of "specified accommodation".

10.2 The supported accommodation sector is one where it is difficult to get detailed information. Where data exist it is not clear that consistent definitions have been used and the data sources may not cover the whole sector. Published data or research on the size of the supported housing sector varies from 170,000 to 410,000 individuals². The main difference between these two sources of estimates appears to be to what extent sheltered accommodation for older people is included in the definition of the supported sector. Estimates of the amount of supported housing for those of working age from the same sources are in the range of 110,000-130,000.

10.3 Until the amendment to the Universal Credit Regulations comes into force on 3rd November 2014, some claimants in supported accommodation may have their housing costs included in the benefit cap calculation. The number of people

² Lower bound from: "*Exempt and Supported Accommodation*", DWP Research Report 714..
Upper bound from: *Statistical Data Return 2012/13*, Homes and Communities Agency

already receiving Universal Credit who move into supported accommodation has been very small: three cases occurred up to October 2013. For the time being, because of the way that Universal Credit is being extended, the number of people doing so will remain small and would receive help through the housing element of UC (the LA can consider a Discretionary Housing Payment where there is any shortfall).

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This is a short term measure pending a more thorough examination of the role of a personalised benefit in the funding of supported housing. The longer term review will consider the feasibility of a localised solution.

13. Contact

13.1 Darrell Smith at the Department for Work and Pensions (Tel: 020 7449 7345) or email: darrell.smith@dwp.gsi.gov.uk can answer any queries regarding the instrument.