

## EXPLANATORY MEMORANDUM TO

### THE INCOME-RELATED BENEFITS (SUBSIDY TO AUTHORITIES) AND DISCRETIONARY HOUSING PAYMENTS (GRANTS) AMENDMENT ORDER 2021

2021 No. 1031

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Income-related Benefits (Subsidy to Authorities) Order 1998<sup>1</sup> (“the 1998 Order”) which makes provision for claims for, and the calculation and payment of, Housing Benefit subsidy. This includes making corrections due to minor defects in the Income-related Benefits (Subsidy to Authorities) Amendment Order 2020 (S.I. 2020/976) (the “2020 Amendment Order”). It also amends the Discretionary Housing Payments (DHP) (Grants) Order 2001<sup>2</sup> (“the 2001 Order”) which sets out the financial arrangements for DHPs, and covers such issues as how authorities should submit claims, keep records and the frequency of the payment of the contribution. The 2001 Order amendments are being made to provide a legislative base for revised DHP estimate and claim arrangements commencing from 1 April 2021.

#### 3. Matters of special interest to Parliament

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

- 3.1 As the amendments made by this Order include corrections to the 1998 Order which are required due to minor defects in the 2020 Amendment Order, this Order will be issued free of charge to all known recipients of the 2020 Amendment Order.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument relating particularly to the 1998 Order is Great Britain. The territorial extent relating particularly to the 2001 Order is England and Wales.
- 4.2 The territorial application of this instrument relating particularly to the 1998 Order is Great Britain. The territorial application relating particularly to the 2001 Order is England and Wales.

#### 5. European Convention on Human Rights

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

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/1998/562/contents>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2001/2340/contents>

## **6. Legislative Context**

- 6.1 This Order amends the 1998 Order which provides for subsidy to be payable to local authorities (LAs) towards their costs for administering Housing Benefit. Amendments are made each year to the 1998 Order to meet changing circumstances and policy. This year's Order also makes corrections due to minor defects in the 2020 Amendment Order.
- 6.2 Article 3 of, and Schedule 1 to, this Order prescribe the amounts of subsidy paid to LAs towards those costs for the financial year ending (FYE) 2021. These amounts have already been paid to LAs in instalments throughout that year. The making of this Order enables LAs' final audited claims for subsidy to be finalised and settled.
- 6.3 This Order also amends the 2001 Order, which sets out the procedure by which the Secretary of State makes payments to LAs towards the cost of Discretionary Housing Payments (DHPs). The amendments are being made to provide a legislative base for revised DHP estimate and claim arrangements commencing from 1 April 2021.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Part 2 of this Order amends the 1998 Order. LAs have a statutory duty to administer and pay claims for Housing Benefit. Subsidy is paid by Department for Work and Pensions (DWP) to reimburse them for both the actual Housing Benefit that they pay and as a contribution towards the administration costs involved in processing and maintaining Housing Benefit claims. Additional payments encourage LAs to be active in reducing fraud and error in such claims.
- 7.2 In advance of the relevant financial year, DWP officials consult representatives of the LAs and subsequently notify them of arrangements for the forthcoming year. During the year subsidy is paid in instalments. Final audited claims are settled after the year has ended, following laying of this Amendment Order, which sets out the financial arrangements. Amendments to the 1998 Order can be made before, during or after the year to which they relate<sup>3</sup>.

Amendments having effect for the purpose of determining the subsidy payable for the year beginning 1 April 2020

- 7.3 Article 3 and Schedule 1 set out the amounts of subsidy due to each LA for that year towards their costs for administering Housing Benefit. A new Schedule 1 is inserted into the 1998 Order each year making provision for this. The amounts of subsidy are different for each LA and are calculated based on methodologies agreed with Local Authority Associations (LAAs).
- 7.4 Article 4 and Schedule 2 prescribe an additional amount of subsidy payable to Local Authorities (LAs) who opted to participate in the Housing Benefit Award Accuracy Initiative, which requires LAs to carry out specific actions on cases to improve award accuracy.

Amendments having effect for the purpose of determining the subsidy payable for the year beginning 1 April 2021

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<sup>3</sup>Section 140F of the [Social Security Administration Act 1992](https://www.legislation.gov.uk/ukpga/1992/5) (<https://www.legislation.gov.uk/ukpga/1992/5>) allows for this.

- 7.5 The amendments in Article 5(1) and (2) and Schedule 3 substitute Article 20A and the accompanying Schedule 4A of the 1998 Order with effect from 1st April 2020. Schedule 4A to the 1998 Order sets figures for the maximum average rent limits for the various LAs in Wales. It also specifies a rent rebate proportion figure for LAs in Wales, which is used to calculate the maximum subsidy payable. The substitutions made by Article 5(1) and (2) correct minor defects in the 2020 Amendment Order. They ensure that the substituted version of Schedule 4A applies permanently going forwards and reinstate provisions to enable the determination of the amount Q in paragraph 4 of Schedule 4A relating to the application of the rent rebate subsidy limitation regime in Wales.
- 7.6 Article 5(3)(a) amends the rent proportion figure in Wales from 0.574 to 0.682 for financial year ending (FYE) 2022. This figure is used in part of the calculation to limit subsidy payable on high rents.
- Article 5(3)(b) and Schedule 4 prescribe the table detailing the FYE 2022 weekly rent limits for Wales. These amendments are made with a view to encouraging LAs in Wales to control rent rebate expenditure and the level of rent increases for FYE 2022. When a LA in Wales increases its average weekly rent above the relevant limit set out in this instrument, they are liable to receive reduced subsidy on their Housing Benefit rent rebate expenditure for the relevant financial year. The rent limits are set each year in Wales by the Welsh Government.
- 7.7 From 2018, additional payments of subsidy have been paid to LAs administering Verify Earnings and Pensions (VEP) alerts relating to the earnings and pension paid to Housing Benefit claimants. The VEP scheme enables LAs to use information provided by Department for Work and Pensions (DWP), which is received by DWP from Her Majesty's Revenue and Customs, to verify the earnings and pension details of those claimants in order to help prevent fraud and error. Most LAs are participating in this scheme.
- 7.8 This Order continues the payments to LAs which are participating in this scheme. Article 6 substitutes paragraph 2 of Schedule 1ZB to the 1998 Order, setting out the additional amounts of subsidy to be paid to LAs participating in the VEP scheme in FYE 2022.
- 7.9 Article 7 and Schedule 5 make minor amendments. Those amendments are necessary as a consequence of the abolition of council tax benefit, in order to amend incorrect legislative references, to remove references to provisions which have been revoked and to ensure that the Order refers to the up-to-date version of the Housing Benefit Assurance Process.
- 7.10 Part 3 of this Order amends the 2001 Order. Article 8(3) amends article 2 to include amendments that are necessary as a consequence of the abolition of council tax benefit and the introduction of universal credit.
- 7.11 Article 8(4)(a) amends article 3 to remove dates that are no longer applicable for the purpose of submitting a claim and removes the requirement for local authorities (LAs) to provide an initial estimate claim, following a change to the process from 1st April. It also amends the requirements for the mid-year claim.
- 7.12 Article 8(4)(b) amends article 3 to remove any references to Scotland from the 2001 Order as Discretionary Housing Payments (DHPs) have been fully devolved to Scotland since April 2017.

7.13 Article 8(5) substitutes a new article 6 to clarify that an initial instalment payment of DHP may be made to a LA without reference to any claim submitted under article 3 of the 2001 Order.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

9.1 Informal consultation text of instruments is available to the public free of charge via The National Archive website.<sup>4</sup>

## **10. Consultation outcome**

10.1 Formal targeted consultation regarding this Order has been carried out with Local Authority Associations and Welsh Government representatives during July/August 2021. No adverse comments were received.

## **11. Guidance**

11.1 Guidance relating to Housing Benefit subsidy arrangements and administration subsidy for the Financial Year Ending (FYE) 2021 year was issued in circular S1/2020<sup>5</sup>.

11.2 Guidance relating to the Housing Benefit Award Accuracy Initiative for the FYE 2021 was issued in circular S8/2020<sup>6</sup>.

11.3 Guidance relating to Rent Rebate Subsidy Limitation for the FYE 2022 year was issued in circular S3/2021<sup>7</sup>.

11.4 Guidance relating to the Verify Earnings and Pensions scheme for the FYE 2022 year was issued in circular S6/2021<sup>8</sup>.

11.5 This guidance is directed at housing benefit managers and staff, fraud managers and staff and officers preparing subsidy claims and estimates. This guidance can be accessed on GOV.UK<sup>9</sup> and is in the form of circulars setting out the amounts to be paid to each local authority (LA).

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<sup>4</sup> <http://www.legislation.gov.uk>

<sup>5</sup> <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2020/s12020-2020-21-housing-benefit-administration-subsidy-arrangements-for-english-scottish-and-welsh-local-authorities>

<sup>6</sup> <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2020/s82020-housing-benefit-award-accuracy-initiative-funding-for-english-scottish-and-welsh-local-authorities-2020-to-2021>

<sup>7</sup> <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2021/s32021-rent-rebate-subsidy-limitation-information-2021-to-2022>

<sup>8</sup> <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2021/s62021-payments-for-the-verify-earnings-and-pension-service-2021-to-2022>

<sup>9</sup> <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2021>

11.6 Guidance relating to Discretionary Housing Payments (DHP) claims process can be found in the Discretionary Housing Payments guidance manual<sup>10</sup>.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the instrument relates to an annual process of allocating and reconciling subsidies to local authorities (LAs), as well as streamlining the existing DHP claim process to reduce the administration burden both on LAs and Department for Work and Pensions (DWP), with a low level of impact per business.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that the DWP meets with representatives from LAs and LA Associations at regular intervals throughout the year to discuss new, and review ongoing, policy and financial matters relating to Housing Benefit. Any issues of major concern are brought to the attention of DWP Ministers.

14.2 DWP is also committed to monitoring the impacts of its policies and to establishing the extent to which those policies have met their objectives.

## **15. Contact**

15.1 Carly Dykes at the DWP, Telephone: 07554 117061 or email: Carly-Joanne.Dykes@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Clare Elliott, Head of Local Authority Partnership, Engagement and Delivery division at the DWP can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince, Parliamentary Under-Secretary for State (Minister for Welfare Delivery) can confirm that this Explanatory Memorandum meets the required standard.

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<sup>10</sup> <https://www.gov.uk/government/publications/discretionary-housing-payments-guidance-manual/discretionary-housing-payments-guidance-manual#assurance-and-reporting-measures>