

EXPLANATORY MEMORANDUM TO
THE INCOME-RELATED BENEFITS (SUBSIDY TO AUTHORITIES)
AMENDMENT ORDER 2023

2023 No. 1040

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Work and Pensions (DWP) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Income-related Benefits (Subsidy to Authorities) Order 1998¹ (“the 1998 Order”) which makes provision for claims for, and the calculation and payment of, Housing Benefit subsidy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no items of special interest.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

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.

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.

6.2 Article 4 of, and Schedule 1 to, the Income-related Benefits (Subsidy to Authorities) Amendment Order 2023 (“the 2023 Order”) prescribe the amounts of subsidy paid to LAs towards those costs for the financial year ending (FYE) 2023. 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.

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

7. Policy background

What is being done and why?

- 7.1 Each year, local authorities (LAs) have a legal duty to administer and pay claims for Housing Benefit. A 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.
- 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.²
- 7.3 Schedules 1ZB, 1ZC and 4A to the 1998 Order are being re-enacted in their entirety because DWP have decided to substitute the Schedule in full to put them in permanently. Although they were substituted in full in the Income-related Benefits (Subsidy to Authorities) Amendment Order 2022 (“the 2022 Order”), the provision that inserted them from the 2022 Order only applied for the ‘relevant year’, causing them to expire at the end of the ‘relevant year’. It is for this reason that these Schedules and articles 5, 6 and 8 are not referenced in article 2 of the 2023 Order. DWP’s intention is that these will remain in the 1998 Order going forwards and not expire at the end of any ‘relevant year’. In future years, any amendments to the Schedule can be restricted to the relevant figures/years. Article 7 is not referenced in article 2 for the same reason as the amendment is to be a permanent change rather than being restricted to a particular ‘relevant year’.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Currently the 1998 Order prescribes the amounts of subsidy paid to LAs towards the cost of administering Housing Benefit for the year beginning 1st April 2021.
- 7.5 The 1998 Order prescribes additional funding provided to LAs for year beginning 1st April 2021, to participate in the Housing Benefit Award Accuracy Initiative, which requires LAs to carry out specific actions on cases to improve award accuracy.
- 7.6 The 1998 Order sets figures for the maximum average rent limits for the various local authorities (LAs) in Wales and specifies a rent rebate proportion figure for LAs in Wales, which is used to calculate the maximum subsidy payable for year beginning 1st April 2022.
- 7.7 The 1998 Order specifies additional funding provided to LAs for year beginning 1st April 2022, to administer the Verify Earnings and Pension scheme, which serves as an incentive to LAs to work towards reducing fraud and error in HB claims.

² Section 140F of the <https://www.legislation.gov.uk/ukpga/1992/5> allows for this.

Why is it being changed?

- 7.8 The 1998 Order is amended annually to set out how much subsidy the Department for Work and Pensions (DWP) pays to local authorities (LAs) in Great Britain for administering Housing Benefit in their respective areas and to retrospectively legislate for any Housing Benefit Subsidy policy changes.
- 7.9 Article 7 is to correct an oversight to remove a table referring to Schedule 4 paragraph 1 Part 5 of the 1998 Order that was updated in the Income-related Benefits (Subsidy to Authorities) Amendment Order 2006³. Paragraph 1 was removed in 2006 but the table remained. Due to this correction the 2023 Order will be issued free of charge to all known recipients of the 2006 Amendment Order.

What will it now do?

Amendments having effect for the purpose of determining the subsidy payable for the year beginning 1st April 2022

- 7.10 Article 3 ensures that the 1998 Order refers to the up-to-date version of the Housing Benefit Assurance Process (HBAP) which is a DWP framework used to assure Housing Benefit Subsidy is paid by LAs in accordance with relevant legislation.
- 7.11 Article 4 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.
- 7.12 Article 6 and Schedule 3 substitutes Schedule 1ZC to the 1998 Order and prescribes an additional amount of subsidy payable to 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 1st of April 2023

- 7.13 Article 5 and Schedule 2 substitutes Schedule 1ZB to the 1998 Order, setting out the additional amounts of subsidy to be paid to LAs participating in the Verify Earnings and Pensions (VEP) scheme. The VEP scheme enables LAs to use information provided by DWP, which is received by DWP from His Majesty's Revenue and Customs, to verify the earnings and pension details paid to Housing Benefit claimants in order to help prevent fraud and error.
- 7.14 Article 8 and Schedule 4 substitutes Schedule 4A to the 1998 Order. The substituted Schedule updates the rent rebate proportion figure from 0.528 to 0.44. This figure is used in part of the calculation to limit subsidy payable on high rents. It also sets out revised specified amounts "O" and guideline rent increases "P" used when calculating deductions from subsidy, relating to the application of the rent rebate subsidy limitation regime in Wales. This regime encourages LAs in Wales to control rent rebate expenditure and the level of rent increases. When a local authority (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

³ <https://www.legislation.gov.uk/uksi/1998/562/schedule/4>

rebate expenditure for the relevant financial year. The rent limits are set each year in Wales by the Welsh Government.

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 consolidated text of instruments is available to the public free of charge via The National Archives website.⁴

10. Consultation outcome

- 10.1 Formal targeted consultation regarding this Order has been carried out with Local Authority Association representatives during July 2023. All responses received were positive and in agreement with the Order, no adverse comments have been received

11. Guidance

- 11.1 Guidance relating to Housing Benefit subsidy arrangements and administration subsidy for the Financial Year Ending (FYE) 2023 was issued in circular S6/2022.⁵
- 11.2 Guidance relating to the Housing Benefit Award Accuracy Initiative for the FYE 2022 was issued in circular A5 2022.⁶
- 11.3 Guidance relating to Rent Rebate Subsidy Limitation for the FYE 2023 year was issued in circular S4/2023.⁷
- 11.4 Guidance relating to the Verify Earnings and Pensions scheme for the FYE 2023 year was issued in circular S7/2023.⁸
- 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 and is in the form of circulars setting out the amounts to be paid to each Local Authority.

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.

⁴ <http://www.legislation.gov.uk>

⁵ <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2022/s62022-housing-benefit-administration-subsidy-arrangements-for-english-scottish-and-welsh-local-authorities-for-the-financial-year-ending-march-202>

⁶ <https://www.gov.uk/government/publications/housing-benefit-adjudication-circulars-2022/a52022-housing-benefit-award-accuracy-initiative-for-financial-year-ending-march-2023>

⁷ <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2023/s42023-rent-rebate-subsidy-limitation-information-for-financial-year-ending-march-2024-wales-only>

⁸ <https://www.gov.uk/government/publications/housing-benefit-subsidy-circulars-2023/s72023-funding-for-the-verify-earnings-and-pension-service-for-the-financial-year-ending-march-2024>

12.3 A full Impact Assessment has not been prepared for this instrument because this instrument relates to an annual process of allocating and reconciling subsidies to local authorities (LAs), 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 Department for Work and Pensions (DWP) meets with representatives from local authorities (LAs) and Local Authority 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 Tracie Fairbrother at the Department for Work and Pensions, Telephone: 0788 046 1698 or email: tracie.fairbrother@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 Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.