Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

1st Floor, Caxton House, Tothill Street, London SW1H 9NA

HB/CTB A25/2010

**ADJUDICATION AND OPERATIONS CIRCULAR**

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| **WHO SHOULD READ** | All Housing Benefit (HB) and Council Tax Benefit (CTB) staff |
| **ACTION** | For information |
| **SUBJECT** | The Housing Benefit (Amendment) Regulations 2010 and The Rent Officers (Housing Benefit Functions) Amendment Order 2010 |

Guidance Manual

The information in this circular affects the content of the

* HB/CTB Guidance Manual. Please annotate this circular number against paragraphs A4.1060, A4.1070, A4.1150, A4.1370, A4.1500
* Local Housing Allowance Guidance Manual which will be revised for April 2011

Queries

If you

want extra copies of this circular/copies of previous circulars, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>

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The Housing Benefit (Amendment) Regulations 2010 and the Rent Officers (Housing Benefit Functions) Amendment Order 2010

Introduction

1 This circular contains details of the provisions contained in the Housing Benefit (Amendment) Regulations 2010 No 2835 and the [Rent Officers (Housing Benefit Functions) Amendment Order 2010 No 2836](http://www.legislation.gov.uk/uksi/2010/2836/contents/made) that were laid before Parliament on 30 November 2010.

2 Together the two instruments make changes to the Local Housing Allowance (LHA) arrangements and provide for an additional bedroom for a non-resident carer in the size criteria for all private rented sector cases.

3 The Regulations can be viewed free of charge, either on [DWP’s website](http://www.dwp.gov.uk/whats-new/), or via the website of the Office of Public Information. The explanatory memorandum that is published with the Regulations can also be viewed on the [Office of Public Information website.](http://www.opsi.gov.uk/si/sis30-11)

Coming into force

4 Subject to parliamentary approval, the provisions in the Housing Benefit (Amendment) Regulations 2010 will come into force on **1 April 2011**. They amendthe Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. (The HB Regulations).

5 The Rent Officers (Housing Benefit Functions) Amendment Order 2010 comes into force from **18 March 2011** and amends the Rent Officers (Housing Benefit Functions) Order 1997 and the Scottish equivalent (The Rent Officers Order).

*Rent Officers (Housing Benefit Functions) (Scotland) Order 1997*

Summary of the changes

6 Together the two statutory instruments make the following changes.

Calculation of the maximum rent (LHA)

7 From 1 April the way that the maximum rent (LHA) is calculated is changed so that

* the £15 weekly HB excess that some customers can receive is removed
* the maximum LHA rate is for a four bedroom property instead of a five bedroom property
* LHA weekly rates in any area cannot be more than
* £250 for a one bedroom property
* £290 for a two bedroom property
* £340 for a three bedroom property
* £400 for a four bedroom property
* LHA rates are set at the 30th percentile of rents in the area rather than at the median so that about 3 in 10 properties for rent in the area should be affordable to people on HB rather than every 5 in 10 properties as now

8 The changes will affect new customers from 1 April 2011. Existing customers will normally be affected from the anniversary of their claim but they could receive up to nine months transitional protection.

9 In addition to the transitional protection for existing customers the Government is providing an increase to the Discretionary Housing Payments funding for local authorities (LA) of £10 million in the financial year 2011/12 and £40 million from 2012/2013 onwards bringing the total funding to   
£60 million a year. The Government has also allocated a further £50 million over the period from April 2011 to March 2015 to support the implementation of these measures. This will provide targeted support to help meet the housing needs of customers. We will be providing information at a later stage on the allocation of these funding streams.

Direct payment provisions

10 The amendment Regulations also extend from 1 April 2011 the circumstances in which HB may be paid directly to the landlord for cases assessed under the LHA arrangements. Payment can be made to the landlord if the LA considers it will assist the customer to secure a new tenancy or retain an existing tenancy.

Additional bedroom for a non-resident carer

11 Both statutory instruments allow for an additional bedroom for a   
non-resident carer in the size criteria for all private rented sector cases when the customer or their partner is a person who requires over night care.

Minor amendments

12 The statutory instruments also make minor amendments to both the HB Regulations and the Rent Officers Order to remove provisions relating to larger properties.

Changes to the way in which the maximum rent (LHA) is calculated

13 In this section references to the HB Regulations include both the HB Regulations 2006 and the HB (Persons who have attained the qualifying age for state pension credit) Regulations 2006 except where the regulation numbers differ.

Current provisions

14 For cases assessed under the LHA arrangements the eligible rent to be included in the HB calculation is determined by reference to the maximum rent (LHA). Regulation 13 (D) of the HB Regulations makes provision for the maximum rent (LHA) to be calculated by reference to the LHA rate determined by the rent officer for the broad rental market area and the category of dwelling which applies to the customer at the relevant date. The categories of dwelling are set out at regulation 13D(2) as follows

* one bedroom shared accommodation (applies to under 25s and people aged over 25 who live in shared accommodation)
* one bedroom self-contained accommodation (applies to customers aged 25 and over who occupy self-contained accommodation; care leavers under 22; cases where a severe disability premium applies and couples without dependants)
* a dwelling with the number of bedrooms to which the customer is entitled according to the composition of their household up to a maximum of five bedrooms. Regulation 13D(3) sets out the bedroom entitlement as one bedroom for each of the following
* every adult couple
* any other adult aged 16 or over
* any two children of the same sex
* any two children regardless of sex under age 10
* any other child

15 Regulation 13D(6) provides that if the customer’s contractual rent (cap rent) is less than the LHA rate which applies to them the maximum rent (LHA) is the lower of the cap rent plus £15 or the LHA rate.

16 Schedule 3B of the Rent Officers Order places a requirement upon rent officers to determine LHA rates for categories of properties up to five bedrooms and currently requires for rates to be set at the median of rents achieved for private rented properties in each broad rental market area.

The amendments

17 The amending instruments change the current provisions in the following way.

18 Regulation 2(6) and 3(6) of the HB (Amendment) Regulations 2010 amend regulation 13(D) from 1 April 2011 as follows

* it replaces the maximum number of bedrooms to be allowed in any case to four bedrooms
* provides for an additional bedroom in any case where the customer of their partner is a person who requires overnight care (see paragraphs   
  33-42 below)
* limits the maximum rent (LHA) to the cap rent2 where the LHA rate exceeds the cap rent

*2HB Regulation 13(D)12 provides a definition of the cap rent which is normally equal to the contractual rent or the customer’s share of the contractual rent in joint tenancies*

19 Amending Regulations 2(11) and 3(11) change Regulation 12I of the HB Regulations to remove the £15 excess provision from the transitional protection calculation for cases in the LHA pathfinder LAs.

20 The Rent Officers (HB Functions) Amendment Order 2010 articles 2 and 4 amend Schedule 3B to the Rent Officers Order from 18 March 2011 to

* remove the requirement to determine LHA rates for five bedroom properties
* introduce maximum weekly rates as follows
* £250 for a one bedroom property
* £290 for a two bedroom property
* £340 for a three bedroom property
* £400 for a four bedroom property
* change the method for calculating the LHA rate so that it is based on the rent at the 30th percentile of rents achieved in the broad rental market area

21 These changes to the way in which the maximum rent (LHA) is calculated mean that the majority of HB customers who are assessed under the LHA arrangements will see a reduction in their eligible rent.

How the reductions in LHA rates will be applied

22 The provisions of regulation 12D of the HB Regulations will apply. This means that the changes to the way in which the maximum rent (LHA) is calculated will apply to all customers who make a new claim from   
1 April 2011.

23 The changes will normally apply to existing customers from the anniversary of their claim but they could apply sooner if there is a change in the size of their household that affects the size of dwelling to which they are entitled or if they move. However, existing customers can get transitional protection for a further nine months from the date that that the changes apply to them under a new HB regulation 12M inserted by amendment Regulations 2(5) and 3(5) (see paragraphs 24-29). However, the transitional protection will not apply to the loss of the £15 excess.

Transitional Protection

24 Regulations 2(5) and 3(5) of the HB Amendment Regulations 2010 insert new regulation 12M which provides up to nine months transitional protection to existing customers who see a reduction in their eligible rent. The transitional protection will apply to customers

* who have their eligible rent determined by reference to the maximum rent (LHA) immediately before 1 April 2011, and
* who have a new maximum rent (LHA) determined on or after the 1 April 2011 either because they
* become entitled to a larger category of dwelling (HB regulation13C(2)(d)(i)), or
* have reached their anniversary date

and the new maximum rent (LHA) determined on or after the 1 April 2011 is lower than the eligible rent which applied immediately before 1 April 2011.

25 In these cases the eligible rent will either be the eligible rent which applied immediately before 1 April 2011 or, if the customer previously had an excess, the amount of the contractual/cap rent3which was used in the determination of the maximum rent (LHA) on or after 1 April 2011.

3*HB Regulation 13D(12)*

26 Transitional protection will not apply to customers who become entitled to a smaller category of property in between 1 April 2011 and their anniversary date.

27 The transitionally protected eligible rent determined under regulation 12M(2)(b) will continue to be used in the HB calculation until the

* nine month period has expired
* customer becomes entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the transitionally protected eligible rent
* customer becomes entitled to a smaller category of dwelling
* customer changes address
* death of a linked person and the customer has their eligible rent determined in accordance with regulation 12D(3) (protection on death)

28 In cases where the transitional protection expires after nine months the eligible rent will be the maximum rent that would have applied but for the transitional protection under regulation 12M(2)(b) and the provisions of regulation 12D will apply as normal.

29 **Annex A** contains examples of the way in which transitional protection will apply.

Direct Payment Provisions

30 For cases assessed under the LHA arrangements the default position is for benefit to be paid to the customer. LAs must make payment direct to the landlord in the circumstances prescribed in HB Regulation 954 when

* payments are being made to the landlord from another income-related benefit to clear arrears (Regulation 95(1)(a))
* the customer is in arrears equivalent to 8 weeks with rent (Regulation 95(1)(b))

4*Regulation 76 of the Housing Benefit (Persons who have attained   
the qualifying age for state pension credit) Regulations 2006*

31 LAs also have discretion in Regulation 96(3A)5 to make payment to the landlord where the

* LA considers that the claimant is likely to have difficulty in relation to the management of his financial affairs. For example, due to drug dependency or because of a serious medical condition such as Alzheimer’s disease (Regulation 96(3A)(b)(i))
* LA considers that it is improbable that the customer will pay his rent for example the LA knows from past experience that the tenant is likely to abscond with the rent payment (Regulation 96(3A)(b)(ii))
* customer has previously had payments made to the landlord under Regulation 95 (arrears)

5*Regulation 77 Housing Benefit (Persons who have attained the   
qualifying age for state pension credit) Regulations 2006*

32 Amendment Regulations 2(8) and 3(8) expand this discretion to make payment direct to the landlord where the LA considers that it will assist the customer in securing or retaining a tenancy. This new provision provides a more explicit and wider statutory basis for the guidance which we have issued previously in paragraph 5.61 of the Local Housing Allowance guidance manual in relation to homelessness prevention work. It is also intended to provide landlords with an incentive to reduce rents to a level that is affordable to customers.

Additional bedroom for non-resident carers

33 Previously, there was no provision for the HB assessment to include a room that was used by a non-resident carer staying overnight with a customer. This contrasts with the way that a customer with a resident carer is treated where the bedroom used by their carer is included when considering the size criteria.

34 From 1 April 2011, there will be a new provision that permits an extra bedroom to be included in the HB assessment for tenants in the private rented sector who have care provided by someone who lives elsewhere. This will apply where a customer or their partner has a need for overnight care and has a bedroom that is used by a carer or carers for overnight stays as part of caring for the customer or partner.

35 The Housing Benefit (Amendment) Regulations 2010 make the following changes to the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

36 The size criteria at Regulation 13D(3) only take account of those who live in the customer’s dwelling as their home. Therefore where the carer lives elsewhere or care is provided by a team of carers a sleepover bedroom is not included.

37 The amendment Regulations will allow funding for an additional bedroom where the customer or their partner has an established need for overnight care that care is provided by someone outside of the household and where the customer occupies a property with an additional bedroom that is used for this purpose. Although the numbers are likely to be very small, it is possible that there will be some customers who live in a four bedroom or larger property who meet the criteria but who will not benefit from this change.

38 This change is achieved by the insertion of a definition of ‘a person who requires overnight care’ at Regulation 2 and an insertion to Regulation 13D to allow for an additional bedroom where the customer and/or their partner satisfies this definition. A corresponding change has been made to the size criteria in the Rent Officers Order for private rented sector cases that are not subject to the LHA arrangements (see below).

39 Amendments have also been made to Regulation 14(8) (requirement to refer to rent officers) paragraph 2(3) of Schedule 2 (excluded tenancies) and Regulation 114A(9)6 which set out the information that is required to be sent to the rent officer. These changes ensure that the relevant information is passed onto the rent officer in order for them to take a non-resident carer into account where appropriate in their determination. However, it avoids triggering a new rent officer referral where, for example the customer is already a person requiring overnight care and his partner then also becomes a person requiring overnight care. As entitlement remains at one extra room there is no need for a rent officer referral. Similarly, if both the customer and their partner require overnight care and one of them ceases to require it, then they still get the extra room so there would be no need for a rent officer referral.

*6 Regulation 95A(9) Housing Benefit (Persons who have attained   
the qualifying age for state pension credit) Regulations 2006*

40 The change to the HB size criteria rules (both under the LHA arrangements and the maximum rent rules) to include a bedroom that is used by a non-resident carer, or team of carers, for overnight stays will apply in the following circumstances

* the customer is a tenant in the private rented sector
* a carer who does not live in the tenant’s property stays overnight to provide care
* the overnight care is provided for the customer or partner - it will not apply to other members of the household and only one extra room is allowed
* there is a spare bedroom that is used by a carer or team of carers for overnight stays

41 In order to establish whether an extra bedroom can be included in the assessment LAs will need to be satisfied that

* overnight care is required
* the care is in fact provided
* they have a bedroom available for the carer’s use

How the change will be applied

42 The change will apply to all HB customers who satisfy the qualifying criteria from 1 April 2011. For existing customers there is no time limit on the period for which arrears can be awarded provided that the qualifying conditions are met, but the changes are not retrospective so cannot be applied before   
1 April 2011. This means that customers who are in receipt of benefit as of   
1 April 2011 and who are subsequently identified as being entitled to the extra room rate for an overnight carer, will be entitled to arrears from that date even if their award is not revised or superseded until a later date.

43 For existing claims, the application of this change will trigger a new rent officer referral or a new maximum rent (LHA) determination. This will set a new anniversary date for cases assessed under the LHA arrangements or the annual rent officer referral date for pre-April 2008 claims.

Further guidance

44 We will be issuing further guidance to assist LAs with the implementation of these changes. This will include guidance on the additional room for non-resident carers and new direct payment provision. We will also be issuing further good practice guidance on Discretionary Housing Payments and we will also amend the LHA Guidance Manual. We will alert you to publication of these materials in future editions of HB Direct.

Contacts for enquiries

45 For enquiries relating to the LHA arrangements please contact [Eugene.Okonkwo@dwp.gsi.gov.uk](mailto:Eugene.okonkwo@dwp.gsi.gov.uk)

46 For enquiries relating to the additional bedroom for non-resident carers please contact D[ave.Jones@dwp.gsi.gov.uk](mailto:dave.jone@dwp.gsi.gov.uk) or [Richard.Grennan@dwp.gsi.gov.uk](mailto:Richard.Grennan@dwp.gsi.gov.uk)

Transitional protection examples

Key

ER Eligible rent

≥ Higher than or equal to

< Lower than

Anniversary date cases

Straightforward cases – no other transitional protection

Customer’s rent ≥ LHA rate

Normally where the customer’s rent is equal to or higher than the existing LHA rate, it will be more than the new LHA rate.

10.05.10 Customer claims HB. He is entitled to a 4 bedroom dwelling.

Rent = £155

Applicable LHA = £150

Maximum rent (LHA) = £150

ER1 = £150.

10.05.11 LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £155

Applicable LHA = £125

Maximum rent (LHA) = £125

This is < ER1 so regulation 12M applies.

ER = lower of £150 (ER1) and £155 (rent) = £150

10.02.12 Protection under regulation 12M ends.

ER = £125

Customer’s rent < LHA rate

In these cases the customer will currently benefit from an excess. With the introduction of the cap and the 30th percentile calculation he may find his rent is higher than the new LHA rate.

Customer’s rent < new LHA rate

10.05.10 Customer claims HB. He is entitled to a four bedroom dwelling.

Rent = £120

Applicable LHA = £150

Maximum rent (LHA) = £135

ER1 = £135

10.05.11 LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £130

Applicable LHA = £125

Maximum rent (LHA) = £125

This is < ER1 so regulation 12M applies.

ER = lower of £135 (ER1) and £130 (rent) = £130

10.02.12 Protection under regulation 12M ends.

ER = £125

Customer’s rent > new LHA rate

10.05.10 Customer claims HB. He is entitled to a four bedroom dwelling.

Rent = £130

Applicable LHA = £150

Maximum rent (LHA) = £145

ER1 = £145

10.05.11 LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £130

Applicable LHA = £125

Maximum rent (LHA) = £125

This is < ER1 so regulation 12M applies.

ER = lower of £145 (ER1) and £130 (rent) = £130

10.02.12 Protection under regulation 12M ends.

ER = £125

Cases with other protection

Customer receives transitional protection under regulation 12M and there is a death within 12 months

This illustrates how the customer will still be protected but under regulation 12D(3) rather than 12M from the date of death.

10.05.10 Customer claims HB. He is entitled to a four bedroom dwelling.

Rent = £130

Applicable LHA = £150

Maximum rent (LHA) = £145

ER1 = £145

10.05.11 LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £130

Applicable LHA = £125

Maximum rent (LHA) = £125

This is < ER1 so regulation 12M applies

ER = lower of £145 (ER1) and £130 (rent) = £130

13.09.11 A member of the customer’s household dies and category of dwelling reduces to three bedrooms. Regulation 12M no longer applies

LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £130

Applicable LHA = £95

Maximum rent (LHA) = £95

Regulation 12D(3) applies and ER = £130

10.02.12 Had there been no death, the protection under 12M would have end

13.09.12 Protection under regulation 12D(3) ends.

LA also determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £130

Applicable LHA = £95

Maximum rent (LHA) = £95

ER = £95

13 week protection in place on 01.04.11

Where the customer is getting the 13 week protection on 1 April 2011, he could fall within regulation 12M when the LA determines the anniversary rent. However, this just puts him in the same position as a claimant who did not have 13 week protection.

07.02.11 Customer loses his job and claims HB. He is entitled to a four bedroom dwelling. He has not claimed HB within the past 52 weeks and could meet his rental liability when he entered into the tenancy.

Rent = £180

Applicable LHA = £150

Maximum rent (LHA) = £150

Regulation12D(5) applies so ER = £180

09.05.11 Protection under regulation12D(5) ends.

The eligible rent is the maximum rent (LHA) that would have applied but for the transitional protection (i.e. the maximum rent (LHA) determined on 07.02.11.

ER1 = £150

07.02.12 LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £180

Applicable LHA = £125

Maximum rent (LHA) = £125

This is < ER1 so regulation 12M applies

ER is lower of £150 (ER1) and £180 (rent) = £150

07.11.12 Protection under regulation 12M ends.

ER = £125

Protection on death in place on 01.04.11

This is similar to 13 week protection cases and the customer could fall within 12M when protection on death ends.

08.11.10 Customer claims HB. He is entitled to a four bedroom dwelling.

Rent = £140

Applicable LHA = £150

Maximum rent (LHA) = £150

ER = £150

07.02.11 A member of the customer’s household dies and category of dwelling reduces to three bedrooms.

LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £140

Applicable LHA = £105

Maximum rent (LHA) = £105

Regulation 12D(3) applies and ER1 = £150

07.02.12 Protection under regulation 12D(3) ends.

LA determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £140

Applicable LHA = £95

Maximum rent (LHA) = £95

This is < ER1 so regulation 12M applies

ER is lower of £150 (ER1) and £140 (rent) = £140

07.11.12 Protection under regulation 12M ends.

ER = £95

Increase in category of dwelling

Straightforward cases – no other transitional protection

This is only likely to apply where the 30th percentile calculation reduces the LHA for the next category of dwelling below the median rent for the old category of dwelling, or where LHA rates are capped.

07.02.10 Customer claims HB. He is entitled to a three bedroom dwelling.

Rent = £420

Applicable LHA = £425

Maximum rent (LHA) = £425

ER1 = £425

10.05.11 Customer’s category of dwelling increases to four bedrooms. LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £420

Applicable LHA = £400 (cap applies)

Maximum rent (LHA) = £400

This is < ER1 so regulation 12M applies.

ER = lower of £425 (ER1) and £420 (rent) = £420

10.02.12 Protection under regulation 12M ends.

ER = £400

Customer receives transitional protection under regulation 12M and there is a death within 12 months

This illustrates how the customer will still be protected but under regulation 12D(3) rather than 12M from the date of death.

07.02.10 Customer claims HB. He is entitled to a three bedroom dwelling.

Rent = £420

Applicable LHA = £425

Maximum rent (LHA) = £425

ER1 = £425

10.05.11 Customer’s category of dwelling increases to four bedrooms. LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £420

Applicable LHA = £400 (cap applies)

Maximum rent (LHA) = £400

This is < ER1 so regulation 12M applies.

ER = lower of £425 (ER1) and £420 (rent) = £420

13.09.11 A member of Customer’s household dies and category of dwelling reduces to 3 bedrooms. Regulation 12M no longer applies.

LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £420

Applicable LHA = £340

Maximum rent (LHA) = £340

Regulation 12D(3) applies and ER = £420

13.09.12 Protection under regulation 12D(3) ends.

LA also determines new maximum rent (LHA) by virtue of regulation 13C(3).

Rent = £420

Applicable LHA = £340

Maximum rent (LHA) = £340

ER = £340

13 week protection in place on 01.04.11

Where the customer is getting the 13 week protection on 1 April 2011 he could fall within regulation 12M when the LA determines the anniversary rent. However, this just puts him in the same position as a claimant who did not have 13 week protection.

07.02.11 Customer loses his job and claims HB. He is entitled to a 3 bedroom dwelling. He has not claimed HB within the past 52 weeks and could meet his rental liability when he entered into the tenancy.

Rent = £450

Applicable LHA = £425

Maximum rent (LHA) = £425

Regulation 12D(5) applies so ER = £450

09.05.11 Protection under regulation 12D(5) ends.

The eligible rent is the maximum rent (LHA) that would have applied but for the transitional protection (i.e. the maximum rent (LHA) determined on 07.02.11.

ER1 = £425

13.09.11 Customer’s category of dwelling increases to four bedrooms. LA determines new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i).

Rent = £450

Applicable LHA = £400

Maximum rent (LHA) = £400

This is < ER1 so regulation 12M applies

ER is lower of £425 (ER1) and £450 (rent) = £425

13.06.12 Protection under regulation 12M ends.

ER = £400