



The Housing Benefit Amendment Regulations 2009 (S.I. 2009 No. 614)

Report by the Social Security Advisory Committee under Section 174 (1)
of the Social Security Administration Act 1992 and the statement by the
Secretary of State for Work and Pensions in accordance with Section 174(2)
of that Act

*Presented to Parliament by the Secretary of State for Work and Pensions by
Command of Her Majesty*

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Statement by the Secretary of State for Social Security in accordance with section 174(2) of the Social Security Administration Act 1992

Introduction

1. The Government referred proposals regarding the draft Housing Benefit Amendment Regulations 2009 to the Social Security Advisory Committee on 7 January 2009 in accordance with Section 172 (1) of the Social Security Administration Act 1992.
2. The Government identified fairly early on following national rollout of the Local Housing Allowance scheme that there was an emerging issue with establishing rates for properties with six or more bedrooms. This is because:
 - rent officers have faced considerable difficulty in gathering evidence on lettings for six or more bedrooms due to a scarcity or even absence of larger properties in some areas; and
 - the nature of the property market for larger sized properties is such that rents often do not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider.
3. In addition, Local Housing Allowance rates for larger properties had reached unacceptably high levels in some areas. For example, Local Housing Allowance rates for larger properties in some inner London areas exceed £3,000 per calendar month and rates in excess of £2,000 per calendar month are not uncommon particularly in greater London and the South. These rates allow customers to claim for rents that the vast majority of people, even in well paid jobs, would not be able to afford without recourse to Housing Benefit. Some tenants may be encouraged to take on very high rents which would create disincentives for them to work. The Government announced the proposal to cap Local Housing Allowance levels at the five bedroom rate on 20 October 2008.
4. It is important to note that the availability of data for these types of property is limited nationally and the difficulties of arriving at median rates for these larger properties are not just restricted to London.
5. There is no upper limit to the size of property that a customer may be entitled to under the current design of the Local Housing Allowance. The criteria used to determine the number of bedrooms a family requires is based on the size and composition of the household. Where, according to the criteria, the household requires six bedrooms or more, the proposed regulations would cap the Local Housing Allowance at the rate for properties with five bedrooms from 6th April 2009. This would apply in the following circumstances:
 - all new claims and customers who move address would have their claims assessed at a maximum of the five bedroom Local Housing Allowance rate in their area; and

- existing customers would continue on their current rate of benefit until their claims were reviewed, usually at the anniversary point of their claim but would have a further 13 weeks transitional protection at their current rate of benefit prior to any reduction being made.
6. The Government believes this to be a fairer approach, ensuring that households who are dependent on Housing Benefit do not take on rents that their working peers would probably not contemplate. The change should not prevent customers from renting larger properties as many will still be accessible at the five bedroom rate.
 7. The Government is grateful both to the Committee for its report and to those who made representations to it. The arguments put forward by the Committee for not proceeding with the proposed regulations have been clearly expressed. However, after careful consideration, the Government has decided to proceed with the regulations but, in light of the Committee's recommendations, has decided that the transitional protection for existing customers should be increased from the 13 weeks originally proposed to 26 weeks.
 8. This statement sets out, in accordance with section 174(2) of the Social Security Administration Act 1992, the reasons why the Government has not felt it appropriate to accept the Committee recommendation in full on this occasion.

The Committee's Report

9. The Social Security Advisory Committee's report recommended that the Government does not proceed with the regulations. In its view, the introduction of the proposed changes will have a direct impact on larger families. These significant impacts will not only be felt by households with a number of children, but also extended family members living with them including disabled members. It will also disproportionately affect families from minority ethnic groups. The Committee did, however, recommend that should the Government decide to proceed it should ensure that customers who will be affected by the change are given ample notice and that transitional protection should be increased from 13 to 26 weeks.
10. The Committee reported that it and many of the respondents to the consultation believed that the changes were being introduced in response to sensationalist media representation. The Committee commented that it was inappropriate to change public policy and adversely affect a group of vulnerable people because of a few extreme cases.
11. The report suggested that there will be a direct impact on homelessness. It suggests that families will be forced to split up and the burden will still rest with local authorities who have statutory responsibilities to find appropriate accommodation for those in housing need in their local area. Furthermore, the Committee argued the impact of creating more single homeless people resulting from the separation of households has not been considered.
12. The Committee reported that the proposals do not take into account the genuine needs of customers who live in large households. The social cost of maintaining large families in overcrowded conditions will serve no public interest. The Committee confirmed that many respondents were concerned about the limited choices households would have through the introduction of these regulations. Large households would be restricted to accommodation in the social rented sector in areas already pressurised by the lack of social housing and amenities.
13. The Committee expressed the view that the changes will present a perverse incentive for families to separate and subsequently place a further burden on local authorities to provide more than one home for a single family unit. In particular, the Committee was concerned about the position of large households containing older relatives or young people. The Committee considered there is a risk that the number of older people seeking accommodation in care homes will increase and that young people will be encouraged to leave the family home. In both cases there would be an overall increase in the costs to the public purse and the changes would actively work against wider Government policies.
14. The Committee had particular reservations about the Equality Impact Assessment. It argued that these proposals will create indirect discrimination against black and minority ethnic families. The Committee

was not convinced that the mitigation presented to them in the Impact Assessment justified this discrimination. The Committee further pointed out that, in Northern Ireland, these proposed changes are likely to affect Catholic households disproportionately due to larger family size. This discrimination would be contrary to the Equality legislation in Northern Ireland. The Committee reported that respondents criticised the impact assessment. They pointed out that it states the changes will only involve a small number of customers. They suggest that there is limited quantitative evidence available to show the exact break down of the 5,000 households who will be affected by the proposed changes. Respondents acknowledged that although the numbers presented are small, this does not provide justification for ignoring the impact on them as changes will be significant for the customers affected and will lead to hardship and upheaval.

15. The Committee reported that respondents to the consultation felt that although the number of households affected by these proposals may be small the number of children living in them is likely to be higher than in other households. The Scottish Government estimated on the basis of the figures presented that 20,000 to 50,000 children may be affected by these changes. Respondents suggested that households would either have to pay the extra rent from their household income or move into smaller, overcrowded properties. They further suggest that this would result in negative impacts in relation to child poverty and potential knock-on effects on child health and children's educational outcomes. Some respondents suggested that these changes would encourage larger low income families to live in overcrowded conditions. This, they say is in direct contradiction to the Government's policy intention for child health. The Committee would welcome further work being carried out on establishing the effect of the changes on child poverty through overcrowding, the impact on income to pay for housing and how this affects health and life chances.
16. The Committee highlighted concerns raised by respondents that the changes would impact on disabled people as larger households often contain disabled people who are being cared for by other family members.
17. The Committee reported that respondents raised concerns at the suggestion that local authorities could use Discretionary Housing Payments to assist households affected by the changes as the use of this resource will place an extra burden upon limited local authority budgets for those payments.
18. The Committee recognised that there is a problem with setting rates for larger properties but expressed the view that the proposed method does not make for a more open and transparent system. It reported that respondents had commented that difficulty with establishing a median rate for these properties does not serve to justify capping the Local Housing Allowance rate for larger properties at the five bedroom rate. The Committee suggested that alternative options the Government had considered and rejected should be looked at again. For example,

tenancies for properties with six bedrooms or more could be referred to the rent officer for a determination of a reasonable market rent or rates for larger properties could be derived from existing Local Housing Allowance rates for smaller properties. This latter option they felt would be advantageous as it would use the mid-range data free from variations introduced by the luxury end of the market and would be drawn from a large sample base.

19. The Committee pointed out that respondents highlighted that a period of only 13 weeks transitional protection would threaten the position of households who were unaware of the change. The households who renewed a short assured tenancy for six months immediately prior to the date of their annual Housing Benefit review would end up with considerable rent arrears, face eviction and if they become homeless, have to be re-housed by the local authority. These households would be liable for 26 weeks rent, but only have protection for 13 weeks.

The Government response to the Committee

20. The Government acknowledges the concerns raised by the Committee and the respondents to the consultation but maintains its position that there must be a balance between protecting vulnerable customers and protecting the public purse. The Government considers that the proposal to cap the Local Housing Allowance at the rate for properties with five bedrooms strikes a balance between what a large family earning an average wage is likely to be able to afford for their rented accommodation and what it is reasonable for the Government to provide from the public purse to support those claiming Housing Benefit.
21. The Government does not accept that these changes are a result of media coverage. Early in the introduction of the Local Housing Allowance, rent officers had identified the issue of insufficient rental market evidence for larger properties which led to great difficulty in arriving at a median rate for the Local Housing Allowance. The need for change was apparent, and the Government was in the process of considering how best to address this concern. It is inconceivable that a working family on average earnings would be able to afford some of the rents payable under the Local Housing Allowance. Furthermore, paying high levels of Housing Benefit in respect of larger properties represents a significant barrier to employment given that the rent would be beyond the reach of any family on average earnings without continued recourse to the public purse.
22. The Government does not accept the Committee's assertion that the proposed changes will have a direct impact on homelessness. The proposal will provide the customer with advanced knowledge of their Housing Benefit entitlement. The Local Housing Allowance rate for five bedroom properties will be set at the median and this should give customers access to cheaper larger properties if they shop around. Customers will be in a position to take ownership of their financial circumstances and make an informed decision as to whether or not they

are in a position to cover the shortfall in the rent being asked, to consider whether they can renegotiate a lower rent or choose a less costly rent. This will also send a resounding message to unscrupulous landlords who would have to reconsider their rental charges.

23. These changes do not mean that customers with larger families will be unable to rent properties with more than five bedrooms and the evidence shows that a proportion of properties with six or more bedrooms will still be available at the five bedroom rate. An analysis of The Rent Service database of market rents for 2007/08 showed that in England overall, around 20% of the 6 or more bedroom properties were accessible at the five bedroom Local Housing Allowance rate. In Scotland and Wales the difference between Local Housing Allowance rates for five and six bedroom properties is relatively small.
24. Additionally, analysis of the present property size of all households (regardless of benefit entitlement) suggests that, of those who would be entitled to six or more bedroom properties under the proposed new rules, around 70 per cent may live in properties with less than six bedrooms.
25. In response to concerns on overcrowding, the Local Housing Allowance bedroom allocation criteria are more generous than the 'room standard' definition of the statutory overcrowding criteria. An indicative simulation suggested that the vast majority of six or more bedroom entitlements would have five or fewer rooms allocated under statutory overcrowding criteria. Consequently, the proposal to cap rates at five bedroom levels could have almost no impact on statutory overcrowding.
26. The Government recognises that there is a disproportionate impact on some groups. However, it stands by the mitigation presented in its Equality Impact assessment. The data available suggests that:
 - for the small numbers of cases involved there are still properties with six bedrooms or more available at the Local Housing Allowance rate for five bedroom properties;
 - there is a general scarcity of larger properties which suggests that around 70 per cent of larger families, regardless of benefit entitlement, may live in property sizes of less than six bedrooms. Indeed there is anecdotal evidence to suggest that some landlords are converting smaller properties into six or more bedroom dwellings by use of partitioning merely to take advantage of Local Housing Allowance rates; and
 - an analysis of The Rent Service database of market rents shows that nearly 60% of five bedroom properties have more than one living room which could be used as a bedroom and still leave adequate living room space.
27. In response to the issue raised in relation to larger families living in Northern Ireland, as the Committee recognises, these proposals do not extend beyond Great Britain. It is for the Northern Ireland Executive to consider whether there is a case to bring forward similar legislation.

28. In response to concerns on the impact on child poverty, we estimate that of the households entitled to six or more bedroom properties under the Local Housing Allowance at the end of 2009/10, under around 3,000 could have children living below the poverty line. However, non-dependents appear to be playing a fairly big part in determining entitlement to additional bedrooms for households in properties with six bedrooms or more where at least one member is claiming Housing Benefit. The proportion of Housing Benefit households entitled to five or more bedroom properties with children and no non-dependants make up only around a fifth of households entitled to five or more bedroom properties. From this we infer that the proportion of Local Housing Allowance households entitled to six or more bedrooms and with children but no non-dependents is likely to be similarly small.
29. The Impact Assessment used the best available data to estimate the number of customers that may be affected by the change and what the composition of this group may be. The Government has had to rely on survey data rather than more up-to-date and complete administrative data. The Department for Work and Pensions did not begin to receive administrative data returns on Local Housing Allowance until it became available in September 2008, and then for an incomplete set of local authorities. The Department is still in the process of quality assuring this data particularly the fields that relate to Local Housing Allowance and that are new to the dataset. It is likely that the Department's administrative data on Housing Benefit will be publishable at a national level later in 2009. However, it cannot be guaranteed that completion of all variables would be sufficient to inform a robust impact assessment of this issue. The only option for now is to use survey data to estimate the possible impacts.
30. The report highlights the impact on disabled people. Under the current system of calculating Housing Benefit according to Local Housing Allowance rules, customers with a disability who may require an additional room to house specialist medical equipment or a live-in carer are not entitled to additional bedrooms as a result of their disability. In these cases, local authorities may choose to use Discretionary Housing Payments to ensure that these customers can find accommodation that meets their needs. Overall, the data showed that 14% of Housing Benefit households had at least one person with severe disability (claiming the highest components of self care or mobility Disabled Living Allowance). But in general, there does not appear to be any significant association between bedroom size entitlement and severe disability to suggest that households with severe disability will be disproportionately affected by the policy change.
31. Local authorities may, in certain circumstances, choose to make Discretionary Housing Payments to customers which are intended to provide extra financial assistance when help with housing costs is needed. The Department provides local authorities in Great Britain with £20m

annually towards the total permitted limit of £50m. The Government is keeping the allocation of this funding under review to ensure that it is used as effectively as possible.

32. The Government considered carefully a range of options to address difficulties in setting Local Housing Allowance rates for larger properties. The option of individual referrals to rent officers was rejected because it lacks transparency. Larger families would not know what element of support they would be entitled to in advance and this is a key aim of the Local Housing Allowance. In addition, this will not reflect one of the key principles of the Local Housing Allowance to pay a benefit rate based on the area rather than a property specific rate. It could perpetuate the problem of giving benefit recipients access to properties that could not be afforded by low income workers, potentially creating barriers to entering work. The option of deriving rates for larger properties from those for smaller properties was also rejected as it would introduce extra complexity into the Local Housing Allowance system. The method of calculating these rates would not be transparent to customers and it should also be noted that property market for larger sized properties is such that rents may not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider. The derived rates would not reflect real market rents so that large families may not be in a more advantageous position with regard to accessing larger properties than they would be under the Government's proposals.
33. Capping the Local Housing Allowance at the rate for properties with five bedrooms is more transparent. It retains the simplicity of the Local Housing Allowance system as there are no separate arrangements for larger properties. It more accurately reflects the circumstances of low income workers who could not afford rents for properties with six or more bedrooms and it recognises that few customers entitled to a larger property are likely to be able to access one in the market. The cap should also go some way towards preventing landlords from profiting by charging very high rents to larger families regardless of the size of accommodation they are renting.
34. The Government does, however, accept that a longer period of transitional protection may be needed to allow people affected by the changes to stay in their existing property until the tenancy ends. To reflect this it will increase the period of transitional protection from 13 to 26 weeks.

The Committee's recommendations

The Committee made the following comments and recommendations in respect of the draft regulations.

(1) The Committee wishes to put on record its very strong concern about the reactive nature of these proposals. It seems that they have been prompted by media coverage of a small number of cases, and they

do not appear to the Committee to be a balanced and considered response to a problem that is not widespread. We are also most concerned about the potentially discriminatory consequences of the proposed cap on Local Housing Allowance for larger properties, and about what we find to be a lack of adequate mitigation presented to us to counter the likely negative impacts of these proposed changes.

Response: These proposals have not been prompted by media coverage; the Government was already aware and considering how best to respond to problems with establishing Local Housing Allowance rates for larger properties before the press coverage. The Government believes it has provided sufficient evidence that the mitigation is sufficient, including:

- the very small proportion of the caseload that will be impacted by this change;
- that larger sized accommodation is still available to rent at the five bedroom Local Housing Allowance rate. We are not actually preventing customers from living in larger properties;
- that these rules reflect what actually happens now. The majority of larger families, including those not on benefit, do not live in properties with more than five bedrooms; and
- Discretionary Housing Payments may be available in some cases.

(2) That these proposed regulations do not proceed.

Response: The Government does not accept that the proposals should not proceed. Clearly, we need to take urgent action to rectify the very high levels of benefit some families are receiving and have carefully considered the options available. The Government believes that the proposals represent the most fair and transparent way of supporting families, regardless of their family size.

(3) That alternative options set out in the report are considered in more detail, and that more detailed analysis is carried out to assess their feasibility; and that additional investigation of the evidence base is carried out to ensure robust data are available to inform any alternative proposals.

Response: A derived rate would not necessarily reflect the rental market and not achieve the aim of making larger properties accessible. In some cases the derived rate could be higher than the current Local Housing Allowance rate for properties with six bedrooms or more. Using individual referrals to the rent officer is not a practicable solution. The Impact Assessment used the best available data. The Department for Work and Pensions is working to quality assure and improve administrative data returns on the Local Housing Allowance from local authorities, which could potentially supplement the analysis already carried out. However, this data is only likely to be publishable later in 2009 and it cannot be guaranteed that completion of all variables would be sufficient to inform a robust impact assessment of this issue.

(4) If the Government decides to proceed with the proposals as they stand, we recommend that the period of transitional protection should be increased to a minimum of six months.

Response: The Government accepts this recommendation. We recognise that customers who are adversely impacted may need to find alternative accommodation and that many tenants take six month tenancies.

(5) That before these measures are introduced steps are taken by the Department and Local Authorities to identify all existing households that are likely to be affected by the capping of HB. These households should then be notified immediately to allow them to plan how they will cope with the situation they may face when their HB is reviewed. In addition, the Department should work with Local Authorities and other stakeholders to ensure that full information about the changes is made publicly available in accessible formats to all those likely to be affected by these changes.

Response: The Government accepts this recommendation in principle. The Department for Work and Pensions is in the process of developing guidance and a new leaflet for local authorities for use to ensure that these changes are implemented effectively. Although it is a local authority responsibility to advise individual customers of changes affecting their benefits, we will be issuing advice that suggests they should do so as soon as possible.

(6) That the Department works with Local Authorities and other stakeholders to monitor and assess the impact of the proposed changes, in particular on homelessness and upon black and minority ethnic families.

The Local Housing Allowance is subject to a review over the first two years of its operation. The impact of this proposal will be monitored within the scope of this review subject to any limitations of the available data.

Conclusion

35. The Government has considered the Committee's report and recommendations carefully, but for reasons outlined in its response intends to proceed with the changes to larger properties in the private rented sector. Despite being unable to accept the Committee's main recommendation, that the regulations in relation to capping Local Housing Allowance level at the five bedroom rate should not proceed, the Government intends to address the concern expressed that the 13 week transitional protection is inadequate. The Government has decided to make changes to the original proposals and extend the transitional protection period to 26 weeks.

36. The Government is once again grateful to the Committee, and the interested parties who responded to the consultation exercise, for their consideration of the draft regulations and their comments on them. The regulations, revised as described, are now laid in draft before Parliament.

From the Chairman

The Rt Hon James Purnell MP
Secretary of State for Work and Pensions
Caxton House
London SW1H 9DA

6 March 2009

Dear Secretary of State

**REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE
UNDER SECTION 174(2) OF THE SOCIAL SECURITY
ADMINISTRATION ACT 1992 ON THE PROPOSED HOUSING
BENEFIT AMENDMENT REGULATIONS 2009**

1. Background

1.1 At the Committee's meeting on 7 January 2009, officials from the Department for Work and Pensions presented proposals for the Housing Benefit Amendments Regulations (2009) for our consideration. A detailed Explanatory Memorandum (EM) and a supplementary EM setting out the Department's position (attached as Appendices 1 and 2) accompanied these proposed draft regulations.

1.2 Following discussions with officials, we decided to take these regulations on 'formal referral' for the preparation of this report. On 12 January we published a press release inviting comments on the proposals to reach us by 6 February 2009.

1.3 We received 25 responses. Details of the organisations and individuals who responded are at Appendix 3. We are grateful to those who responded and to officials of the Department for Work and Pensions for their assistance.

2. The proposals

2.1 The Secretary of State for Work and Pensions proposes the following amendments to regulations:

- to cap the maximum amount of Local Housing Allowance (LHA) for all dwellings with 6 or more bedrooms at the 5-bedroom rate, for all customers who make a new claim for Housing Benefit (HB), or move address in the private rented sector, from 6 April 2009; and

- existing customers in receipt of HB assessed according to LHA rates for more than five bedrooms, will continue to receive the same amount until their cases are reviewed (usually at the one year anniversary point of their claim). HB will then be assessed according to the five bedroom LHA rate, although transitional protection will apply for up to 13 weeks at the higher rate of benefit.

3. Summary of the Department's Position

3.1 The Government proposes to amend existing regulations that legislated for the national roll out of the LHA. Under these proposals, levels of HB for properties with more than five bedrooms will be set at the maximum level of the five bedroom LHA rates from April 2009. These rates will be applied to new customers and customers moving home. Existing customers already in receipt of LHA for a property with more than five bedrooms will continue to receive the same amount until their cases are reviewed, usually at the anniversary point of their claim. These customers will be given 13 weeks of transitional protection at their current rate of benefit.

3.2 Currently a median rate of HB, within the Broad Rental Market Area (BRMA), is determined for customers living in the private rented sector whose benefit is assessed according to LHA rules. A median rate is determined for properties of different sizes, with no upper size limit. With the introduction of the proposed changes, customers will no longer be entitled to LHA rates calculated from the rents for properties with more than five bedrooms.

3.3 These proposals have arisen due to concerns raised by the Rent Services in Scotland, England and Wales. Due to the small number of properties of this size available for let, it has been difficult to determine the LHA rates for these properties.

3.4 Rent Officers gather information for each BRMA and set the LHA rates. Where Rent Officers are unable to collect sufficient lettings data within a BRMA to arrive at a reliable median, they can extrapolate information from other, similar, areas. Rent Officers must have a range of rents from which to determine a median. Rates for properties of 6 bedrooms or more are requested on an individual basis by Local Authorities.

3.5 Gathering evidence in respect of larger properties is problematic for a number of reasons, including the small number of these properties available for let and the varied price and range of these properties in the market.

3.6 The criteria used to determine the appropriate size of property is based on the number of bedrooms, with the entitlement worked out as follows:

One bedroom for:

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex

- Any two children under the age of 10, regardless of sex
- Any other child

There is no upper limit to the size of property that a customer may be entitled to under the current LHA design. In future, it is proposed that customers will be paid the maximum level of benefit set for five bedroom properties but may still be able to find larger sized accommodation within these rates of benefit.

3.7 Although the intention is to cap rates at the five bedroom rate for all customers, it is recognised these changes may disproportionately impact black and minority ethnic groups due to the relatively high percentage of these customers entitled to larger properties. However, overall, indicative estimates suggest that the measures may affect less than one percent of the households whose benefit is assessed according to LHA rules.

3.8 In terms of potential impacts on child poverty, it is recognised that households with children living in properties with more than five bedrooms may also be particularly affected by the proposed changes. It is roughly estimated that the measures may affect up to 3,000⁴ households with children living below the poverty line.

3.9 The Department's position is set out in detail in the attached Explanatory Memorandum (see Appendix 1).

4. The Committee's View

4.1 The Department's plans for the introduction of a cap on HB assessed according to LHA rules, for privately rented properties with more than five bedrooms, were outlined to us in a presentation by officials at our regular business meeting on 7 January 2009. We identified a number of concerns about these proposals.

4.2 First, we noted that these proposed amendments appear to have been initiated following recent media attention surrounding a single example of a large family in receipt of HB housed in a substantial property in Ealing, West London. We recognised that the level of HB paid in respect of this property represents both a significant barrier to employment (given that the rent would be beyond the reach of any family on average earnings), and that this had attracted some public and parliamentary criticism. However, cases like this appear to be unusual and we questioned whether the proposed measures are a proportionate response to a situation that might have been predicted, given that it arises from the design of the LHA itself.

4.3 Secondly we questioned whether these proposed regulations represent the most equitable, efficient and effective policy response when the Department's supporting supplementary EM (see Appendix 2), indicates that while less than one percent of households will be negatively affected by these changes, the impacts will be keenly felt and have potential effects that might work against the policy objectives of other parts of government. In particular, it would appear that any money 'saved' may

⁴ The Department has pointed out to us that these are extremely tentative estimates and should be read accordingly.

well be offset by the additional costs associated with re-housing families who lose their accommodation as a consequence of being unable to pay their rent when their HB has been reduced. Moreover, they will disproportionately affect families with dependent children and certain black and minority ethnic groups.

4.4 We have always supported the policy objective of designing a Housing Benefit system that allows customers to make real and responsible choices about the accommodation they will occupy and the rent that they will pay. However, our initial examination of these proposals led us to conclude that these regulations would not achieve this policy objective. Accordingly, we asked for further information about other policy options that had been considered to set a LHA rate for houses with more than 5 bedrooms. This information is attached as Appendix 2.

4.5 Having considered all the information provided by the Department, we came to the view that these measures represent an over-hasty, and disproportionate, response to a relatively small-scale problem. In addition, the potential impacts of the proposed changes did not seem to us to have been properly thought through. Accordingly, we decided that it was appropriate that these Regulations should be taken on formal referral.

5. Summary of Responses to the Consultation

5.1 We are grateful to the many respondents to our consultation for the full, considered and very detailed analyses of the implications of these proposed changes. A number of respondents had clearly given a great deal of time and thought to their responses, and we were struck by the strong consensus in their views. These responses provided us with comprehensive information to support and inform our consideration of the proposals, and the Committee is very grateful for the work which has gone into the production of these documents, many of which are available on the responding organisations' web sites. Of the 25 responses received, only one individual respondent offered views in support of these proposals. Respondents focussed upon five main aspects of the regulations:

- the rationale for introducing these changes;
- the nature of the Transitional Protection;
- the potential for discrimination against minority ethnic households;
- the impact upon child poverty; and
- the impact upon households containing disabled people

The rationale for the change

5.2 Many respondents observed that these changes are prompted by sensationalist media coverage of a very small number of cases in the London area, where families who have been accepted as homeless were rehoused in expensive private accommodation. Some respondents also pointed out that in the evaluation of the LHA pathfinders, the issue of large properties had not been raised and that there had been no indication until

very recently that the application of the LHA to larger properties had proved problematic.

5.3 Respondents suggest that the fact there are so few properties for private rental with more than 5 bedrooms, creating a difficulty in assessing a representative median rent for these properties, does not serve to justify capping the LHA. Many respondents put forward alternative proposals (see paragraph 5.15 below) for dealing with the housing costs of families who require large properties, and a number of their suggestions resemble the alternatives considered by the Department that are outlined in Appendix 2.

Transitional Protection

5.4 Respondents highlighted that a period of only 13 weeks for transitional protection will threaten the position of households who are unaware of the change. Households who renew a short-hold assured tenancy for six months immediately prior to the date of their HB review would end up with considerable rent arrears, face eviction and the possibility that if they become homeless they would have to be re-housed by the Local Authority. These households would be liable for 26 weeks rent, but have protection for only 13 weeks.

5.5 It was suggested that if these regulations are introduced, all existing households that are likely to be affected by the capping of LHA need to be identified and notified immediately to allow them to plan how they will cope with the situation they will face when their HB entitlement is reviewed.

5.6 Respondents also raised concerns about the use of Discretionary Housing Payments to assist households affected by the capping. The use of this resource will place an extra burden upon limited Local Authority budgets. At the same time, concern was expressed about how Local Authorities would handle the re-housing of large families who become homeless as a consequence of the proposed changes. Local Authorities may have no choice but to 'fast track' these households into appropriate social housing, or expensive temporary accommodation and could face criticism as a consequence. However, given that there is a severe shortage of large properties in the social housing stock, it is inevitable that most properties used for re-housing will be sourced from the private sector. There is a risk that households will then either be re-housed in overcrowded conditions, or split up and re-housed at greater expense to the HB budget and the public purse. The consequences of homelessness will also increase the administrative and financial burden on local services more generally.

Impact Assessment

5.7 Respondents criticised the Equality Impact Assessment. This states that the changes will involve only a small number of households. There is limited quantitative evidence available to show the exact breakdown of the estimated 5,000 households affected and although the numbers presented

are small, the changes will have a significant effect. The small numbers of people involved do not of themselves provide a justification for ignoring the impact upon them. It was asserted that these changes will be significant for the households affected and will lead to hardship and upheaval. The changes will impact adversely and disproportionately upon black and minority ethnic groups as they are more likely to be in larger households which contain multi-generational families.

5.8 Respondents pointed out to us that if also implemented in Northern Ireland these proposed changes are likely to affect Catholic households disproportionately. Any resulting discrimination could be contrary to the equality legislation in Northern Ireland.

5.9 Respondents did not find the mitigation presented for the discrimination identified by the Department to be convincing. They stated that it was unacceptable for the disproportionate impacts of the proposed measure upon a relatively small section of the population to be effectively ignored.

The impact upon child poverty

5.10 There were also concerns about the impact of the proposed measures on households with children. While the estimated number of households affected by these proposals may be small (5,000), the numbers of children living in them is likely to be higher than in other households. The Scottish Government estimates, on the basis of the figures presented to us, that as many as 20,000 to 50,000 children could be affected across the UK by these proposed changes (we understand that these figures are based on there being between four and ten children in households living in properties with six or more bedrooms).

5.11 Faced with a capping of their LHA, families will either have to pay the extra rent from their household income or move into smaller, potentially overcrowded, properties. This would result in negative impacts in relation to child poverty, and potential knock on effects on child health and childrens' educational outcomes.

5.12 In addition, some respondents suggested that these changes will encourage larger, low-income families to live in overcrowded conditions. This is in direct contradiction to the Government's policy intentions in relation to child health.

The impact upon households containing disabled people

5.13 Respondents also highlighted the impact these changes would have on disabled people, as larger households often contain disabled people who are being cared for by other family members. Such households may split up, resulting in higher levels of public expenditure to provide the necessary care in other accommodation.

General impacts on family life

5.14 More generally, respondents were concerned about the negative impacts of the proposed changes upon those living in large households and on their family life. The choice would be overcrowding or the separation of the household. Either outcome would be to the detriment of family life and work directly against other Government policies.

Options

5.15 Respondents had mixed views on the alternatives for establishing rents for larger properties for HB purposes. Some favoured a formula-based approach, calculating the rent as for a five bedroom property, plus a proportion for extra bedrooms. Others favoured an individual approach, departing from the flat rate principle of the LHA and requiring Rent Officers to establish individual rents for larger properties.

6. The Committee's Conclusions

6.1 The introduction of the proposed changes will have a direct impact on larger families. These significant impacts will be felt not only by families with a number of children (with possible consequences for child poverty), but also by members of the extended family living with them, including disabled and/or elderly members. They will also disproportionately affect families from black and minority ethnic groups.

6.2 Sensationalist media coverage appears to have led to these proposals, and we take the view that it is inappropriate to change public policy and adversely affect groups of potentially vulnerable people in response to the reporting of what appears to be a very small number of cases. We also do not accept that the evidence presented to us justifies the potential for indirect discrimination towards black and minority ethnic households and specific religious groups.

6.3 We believe that the proposed changes to regulations are likely to have a direct impact on homelessness. Families may be forced to split up and the burden of re-housing will still rest with Local Authorities who have statutory responsibilities to find appropriate accommodation for those in housing need in their local area. Furthermore, the impact of creating more vulnerable single homeless people (who might not be eligible for statutory assistance) resulting from the separation of households seems not to have been considered.

6.4 In other instances, families may live in properties that are smaller than they require and these proposals appear not to have taken into account the social cost of maintaining large families in overcrowded conditions.

6.5 We recognise that setting LHA rates for this type of accommodation may present some difficulties and that wide regional and local variations (in London and the larger cities, for example) may create particular

problems. However, the option currently being proposed does not make for a more open and transparent system and the proposed amendments will neither make entitlement to HB easier to understand, nor simplify the processing of claims.

6.6 There is a lack of suitable accommodation in both the private and the social housing sectors. We believe that there is a real risk that Local Authorities already facing a shortage may, if demand increases during the current recession, have to resort to using unsatisfactory and expensive temporary accommodation, such as hostels and bed and breakfast establishments, to house the members of large homeless families.

6.7 We are also disappointed that no consideration appears to have been given to the impact of these proposed changes on a number of aspects of the wider Government agenda. The right to decent affordable housing and treating citizens in a fair and consistent way, for example, underpin a number of current policies. The consequences for, and impacts of these policies on restricting the benefit entitlements of larger families have not been addressed and one of the underlying assumptions, that larger families will find smaller properties that can be 'stretched' through the use of additional communal space to meet their needs seems to sanction overcrowding.

6.8 We have also considered the potential impacts of these proposed measures, should they be taken forward in Northern Ireland. Under S75 of the Northern Ireland Act 1998, the DSD (NI) has to have due regard to the need to promote equality of opportunity between persons of different religious beliefs and we are concerned that these proposals may have a greater effect on Catholic households in Northern Ireland. We would wish to seek reassurance from the DSD that the S75 duty has been (or will be) addressed in any consideration of the application of these proposals in Northern Ireland.

6.9 Finally, we would draw attention again to the very limited evidence base used to develop and assess the impacts of these proposals. We would strongly suggest that further work should be carried out to improve and develop both the equality and child poverty impacts associated with these measures throughout the UK

6.10 We have given careful consideration to the alternatives that the Department considered in its investigation of the ways in which unreasonably expensive and/or large properties might be handled in the LHA system. We feel that two of these offer a better solution than the proposal to cap HB of larger properties.

6.11 Option two of the Department's policy appraisal, which was considered and rejected, provided that: *'if the customer is able to find a property with 6 or more bedrooms a reasonable market rent will be determined by an individual referral to the rent officer'* The reason given for the rejection of this option was that it lacked transparency. In our view, this is not the case and given the small number of customers targeted by

these changes, this system would not appear to be unduly onerous to operate.

6.12 Option three, provided for a percentage increase to be added to the rental amount for properties with more than five bedrooms. This appears to us to offer a sensible and transparent method of ‘capping’ rates of Local Housing Allowance. A proposed ‘Derived Rate’ could be used for calculating rents for larger properties, using existing LHA rates from smaller properties. We suggest that this would provide visible proof that value for money for the tax payer is being sought. At the same time, this option would be advantageous as it would use mid-range data free from variations introduced by the luxury end of the market and would be drawn from a large sample base. This approach has been suggested to us by CoSLA and we believe that it would provide a formula which would be transparent and credible. This option would also negate the need for larger households to downsize and risk overcrowding.

6.13 A further option that might be considered would involve a formula providing for HB to be capped at the LHA rate for a five bedroom property with an addition of the equivalent of the LHA shared room rate for each additional member of the household who would be entitled to occupy a room. We believe that all these options merit further consideration.

7. The Committee’s Recommendations

In making these recommendations, we wish to put on record our very strong concern about the reactive nature of these proposals. It seems to us that they have been prompted by media coverage of a small number of cases and they do not appear to us to be a balanced and considered response to a problem that is not widespread. We are also most concerned about the potentially discriminatory consequences of the proposed cap on Local Housing Allowance for larger properties and about the lack of adequate mitigation presented to us to counter the likely negative impacts of these proposed changes.

(i) We recommend that these proposed regulations do not proceed.

(ii) We further recommend that the other options set out above are considered in more detail, and that more detailed analysis is carried out to assess their feasibility; and that additional investigation of the evidence is carried out to ensure robust data are available to inform any alternative proposals.

Should you decided to proceed with the proposals as they stand, we further recommend:

(iii) that the period of transitional protection should be increased to a minimum of six months;

(iv)that before these measures are introduced steps are taken by the Department and Local Authorities to identify all existing households that are likely to be affected by the capping of LHA. These households should then be notified immediately to allow them to plan how they will cope with the situation they may face when their HB is reviewed. In addition, the Department should work with Local Authorities and other stakeholders to ensure that full information about the changes is made publicly available in accessible formats to all those likely to be affected by these changes; and

(v)that the Department works with Local Authorities and other stakeholders to monitor and assess the impact of the proposed changes, in particular on homelessness and upon black and minority ethnic families.

Richard Tux

List of Social Security Advisory Committee (SSAC)

Chair: Sir Richard Tilt

Members: Mr K Akuffo
Mr L Allamby
Mrs B Campbell
Dr A Erskine
Mr R Exell
Ms A Garnham
Professor E Kempson
Ms M Reith
Ms P Smail
Professor J Walker
Professor R Walker
Mr S Bartlett

**Gill Saunders
Social Security Advisory Committee
New Court
48 Carey Street
London WC2A 2LS**

Date: 17 December 2008

Dear Gill,

The Housing Benefit Amendment Regulations (2009)

The Secretary of State proposes to amend existing regulations that legislated for the national rollout of the Local Housing Allowance (LHA). Under these proposals, levels of Housing Benefit will be capped at a maximum level of the five bedroom LHA rates from April 2009.

The proposed amendments would apply:

- To customers who make a new claim for Housing Benefit or move address in the private rented sector from 6 April 2009.
- Existing customers in receipt of Housing Benefit assessed according to LHA rates for more than five bedrooms will continue to receive the same amount until their cases are reviewed (usually at the anniversary point of their claim). Housing Benefit will then be assessed according the five bedroom LHA rate, although transitional protection will apply for up to 13 weeks at the higher rate of benefit.

The Committee is asked to consider the proposed amendments. A copy of the draft regulations is attached at Annex B, and these are explained in the Explanatory Memorandum attached at Annex A (much of the background material in this document is duplicated in the EIA).

A Keeling version of the relevant provisions in the existing regulations showing the effect of the proposed amendments for new customers is also attached at Annex C. In addition to these amendments, a new regulation, 12L, provides for the treatment of existing customers. (These represent the changes shown against the Housing Benefit (Local Housing Allowance and Information Sharing) Regulations 2007. Identical amendments are proposed for the Housing Benefit (State Pension Credit (Local Housing and Information Sharing) Amendment Regulations 2007)).

Equality Impact Assessment

An equality impact assessment of these proposals contained in these regulations is attached at Annex D. This is intended to be a stand-alone document which the Department intends to publish.

We welcome the opportunity to hear the Committee's views on these proposals at its January meeting.

Yours sincerely

Penny Higgins
Housing Benefit Strategy Division

Amendment to Local Housing Allowance regulations

Social Security Advisory Committee Explanatory Memorandum

Proposal

1. The Secretary of State for Work and Pensions proposes to amend the Local Housing Allowance (LHA) regulations so that Housing Benefit (HB) will be paid at the maximum level of the five bedroom LHA rates for customers in the private rented sector.
2. These proposals were announced by the Secretary of State, James Purnell, on 20 October 2008.

Description of Changes

Current position

3. The LHA was introduced for HB customers in the de-regulated private rented sector who make a new claim or move address from 7 April 2008. LHA is a new way of calculating maximum HB based on area and family size. Individual referrals to the rent officer are no longer required for any claims made since 7 April.
4. In LHA cases HB is paid to the tenant rather than the landlord in most circumstances. Customers are able to keep any excess benefit up to a maximum of £15 per week that is over and above the cost of their rent. As previously, if rent is higher than their LHA entitlement they must make up the difference from other sources of income.

Setting Local Housing Allowance rates

5. LHA rates are set by rent officers in the national rent services in England, Scotland and Wales. Rates are set within a series of Broad Rental Market Area (BRMAs) which are determined by rent officers and are intended to reflect the areas in which people live and enjoy services and the rental values within those areas. BRMAs are similar to 'localities' used for pre-LHA cases and the boundaries are currently identical for both.
6. A review of locality areas was undertaken by rent officers in part in preparation for the LHA and the number of localities have reduced due to changes in the way that people enjoy access to health and education services as well as retail and recreational facilities. The reason for such changes are many and varied but improvements in

public and private transport and the demand of consumers for improved products and greater choice are contributory factors.

7. Rent officers gather a range of lettings information for each BRMA and set LHA rates at the median rent level for each property size, which enables customers to rent accommodation in around 50% of the properties within a given area. Where rent officers are unable to collect sufficient lettings data within a BRMA to arrive at a reliable median, they can extrapolate information from other, similar, areas. There is no specific definition in legislation of what constitutes 'sufficient' data and this is a matter for the professional judgment of rent officers. However rent officers must have a range of rents from which to determine a median.
8. Rent officers automatically provide monthly LHA rates to local authorities for different sizes of properties up to and including 5 bedrooms. Rates for properties of 6 bedrooms or more are requested on an individual basis by local authorities. Local authorities then use these rates to assess maximum entitlement to HB for customers in the de-regulated private rented sector.

How is entitlement to bedroom size set?

9. The criteria used to determine the appropriate size of property is based on the number of bedrooms with the entitlement worked out as follows:

One bedroom for

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex
- Any two children regardless of sex, under the age of 10
- Any other child

10. There is no upper limit to the size of property that a customer may be entitled to under the current LHA design.

The proposed change

11. The proposal is to cap LHA levels at the rate of five bedroom properties.
12. The change will apply to all new claims from April 2009 and those who change dwelling. Those already in receipt of the LHA for more than five bedrooms will continue to receive the same amount until a new maximum rent (LHA) determination is made when they will have their case reviewed. We propose benefit will be set at the five bedroom LHA rate appropriate for their area. However, in order to ensure customers currently receiving a higher level of benefit are given adequate notice of potential changes in their benefit levels, the Department proposes

that customers will be given 13 weeks of transitional protection at their current rate of benefit prior to any reductions being made.

The Issue

13. This proposal has arisen following concerns raised by the three national rent services in England, Scotland and Wales who have reported difficulties in determining LHA rates for larger properties. This is because there are simply not the properties available to rent of this size to gather sufficient market data to arrive at a LHA rate that accurately reflects the availability of properties within a given BRMA.
14. The issues rent officers have experienced in setting LHA rates have been attributed to:
 - There is a dearth of evidence – rent officers have faced considerable difficulty in gathering evidence on lettings for 6 or more bedrooms. The rent services believe this is due to less availability of properties of this size for rent as well as a slower turnover of these properties in the market. In some BRMA's these properties simply may not exist.
 - For larger properties, the data is not only scant, but there is a high degree of variance. For example, The Rent Service gathered data which showed that 6 bedroom properties in London showed rents range from £277 to £9000 per week. This wide data range, coupled with limited data availability, means that median rates will be highly variable.
 - The nature of the property market for larger sized properties is such that rents often do not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider.
 - Often where larger properties do exist, they are aimed at the luxury end of the market – this impacts substantially on median levels and is not reflective of the properties that are usually available to most people, even those in well paid work. It also means that some tenants may be encouraged to take on very high rents which may impact on work incentives at the point where they move off HB.
15. This issue was highlighted in the media recently where one family was receiving around £12,000 per calendar month in HB to live in a luxury 7 bedroom property in London. This exceptional circumstance represents only a handful of cases where extremely high levels of benefit are in payment.
16. The impact of the LHA is subject to review over the first two years of its operation. Although we have no statistical evidence yet available, anecdotal evidence from the rent services and local authorities suggests that some landlords are raising rents to match LHA rates more generally. For the very high rates for larger properties in London in particular, this could result in unscrupulous landlords seeking to

benefit from the scheme by setting rents far above the market value for their particular property.

Impact on customers

17. A small minority of customers will be impacted by the proposal to cap LHA levels at five bedroom rates. We estimate that less than 1% of the private rented sector caseload are entitled to benefit at rates for properties of more than five bedrooms and this is estimated to correspond to an LHA caseload of fewer than around 5,000 at the end of 2009/10. Of these, many are already living in properties of less than six bedrooms.
18. With the proposed changes, new customers will know in advance the level of benefit they are entitled to as rates of up to five bedrooms are published by The Rent Service and by local authorities. This change does not mean that customers with larger families will be unable to rent properties of more than five bedrooms. Rather, customers will be paid the level of benefit set for five bedroom properties and can choose how best to rent accommodation that is most suitable for their families.
19. For existing customers, they may see a drop in benefit when they reach the anniversary point in their claim when their claims will be reviewed and reassessed according to the five bedroom LHA rate within their BRMA. However, we propose that all customers will enjoy a period of 13 weeks transitional protection at the higher rate of benefit.
20. We have no evidence available on how customers living in larger properties have secured particular accommodation. This could, for example, have resulted from a private arrangement between landlord and tenant. We acknowledge that some families living in properties with six or more bedrooms are doing so following intervention from local authorities within their obligation to house homeless families and that these local authorities may still need to re-house these families should accommodation be withdrawn.
21. These proposals should still allow families to rent accommodation that is appropriate to their family size. An analysis of The Rent Service database of market rents for 2007/2008 suggested that in England overall, around 20% of the 6 plus bedroom properties should be accessible at the five bedroom LHA rate. This compares with 50% of six or more bedroom properties affordable at the current LHA rate set at the median market rent level.

Impact on local authorities

22. The Department will work closely with local authorities over the next few months to support them in implementing changes to the scheme. Early indications suggest that the vast majority of implementation activity for the Department and local authorities will need to centre around communications for local authorities and other key stakeholders. We are working with local authority association representatives to ensure we are providing support in the most

appropriate way, but anticipate the most pressing activity will be working with local authorities to ensure customers currently living in larger properties are identified and contacted in advance of these changes. The Department will develop a range of other communication products including a new set of leaflet templates for individual use by local authorities to advise customers that five bedroom rates will be the maximum; new guidance and training material for local authorities, changes to the DWP website, communications to key stakeholder groups including landlord representative bodies, voluntary sector groups such as CAB and Shelter and local authority housing departments.

23. The Department is undertaking a comprehensive consultation exercise with stakeholders in relation to these proposals, including local authority associations, voluntary sector groups, landlord associations, race relation groups. A full list of stakeholders consulted is attached at annex one.

Diversity and equality

24. The Department has considered these changes in light of its disability, race and gender equality duties. A full Equality Impact Assessment has been carried out.
25. Whilst these proposed changes will be applied to all customers, it is recognised that the impact for certain ethnic minority groups could be greater. This is because there is a disproportionately high percentage of customers living in larger properties who are from an ethnic minority background. We estimate that of the customers who may be affected by the change (fewer than 5,000) by the end of 2009/10, fewer than 2,000 will be non-white customers.
26. For disabled customers, whilst there is still a possibility that customers entitled to a property with more than five bedrooms also have a member of the household with severe disability that requires additional bedroom space is a possibility, this risk can be considered small.
27. There are a number of factors that help mitigate the risks of an adverse impact to customers who are currently entitled to benefit for properties with more than six bedrooms. For example, in some areas, there is little difference between the rates for five bedroom properties and larger sized properties. For existing customers, the Department proposes they will receive 13 weeks transitional protection at their current rate of benefit, following the new LHA determination. Where the determination is because a linked person in the customer's household has died, the current protection on death provisions will apply. In addition, the Department is working closely with local authorities to develop a programme of communications to ensure that customers, landlords and other key stakeholders are aware of these proposals in advance.

Impact on Operations

28. Overall, the impact on operations will be small as the proportion of the caseload affected will be very small.

National rent services

29. The Department anticipates this proposal will result in a positive operational impact for the rent services. This is because, currently, rent officers determine LHA rates for properties with more than five bedrooms on request by local authorities. This proposal will negate the need to assess rates for these larger properties. However, the impact will be small as we estimate this change affects less than 1% of the caseload.

Local authorities

30. The small number of customers affected will reduce the potential impact on local authority operations. Local Authority representatives have suggested that this proposal can be implemented with no essential IT changes.
31. The Department is working with a small group of local authority association representatives to progress the implementation activities that will be required, including the changes to communication products, training and guidance material and managing the impact for existing customers.

Child Poverty

32. Almost all of the HB households entitled to 5 or more bedroom properties (and hence by inference those entitled to 6 or more bedroom properties) have one or more children in them and more than half of these households are estimated already to be living below the poverty line (i.e. have net equivalised disposable household income before housing costs of less than 60% of the median household income). We estimate that of the households entitled to 6 or more bedroom properties under the local housing allowance by the end of 2009/10, under around 3,000⁵ could have children living below the poverty line. However, non-dependents appear to be playing a fairly big part in determining entitlement to additional bedrooms for the group of HB households (at least one member of the household claiming HB) entitled to 6 or more bedrooms. The proportion of HB households entitled to 5 or more bedroom properties with children and no non-dependants make up only around a fifth of households entitled to 5 or more bedroom properties. From this we infer that the proportion of LHA households entitled to 6 or more bedrooms and with children but no non-dependents is likely to be similarly small. We are unable to

⁵ These are extremely tentative estimates and should be read accordingly

quantify any *increase* in child poverty from this policy change, however, given the number of customers involved we anticipate any overall negative impact will be small.

Complexity

33. Currently, local authorities request rates for six or more bedrooms if they have a relevant case to assess. These rates are not published and rent officers do not provide these as a matter of course. Therefore, capping rates at five bedrooms represents a simplification for local authorities who will no longer have to seek rates from the rent services on these cases. In addition, this should make the system simpler for customers to understand as all rates will be made available in advance.

Monitoring

34. The LHA is subject to a review over the first two years of its operation. The impact of this proposal will be monitored within the scope of this review subject to any limitations of the available data.

Timing

35. The Department proposes to bring these amendments into force from 6 April 2009.

Local Housing Allowance – Larger Properties

Equality Impact Assessment

Name of strategy/project/policy/process/function:

1. Amendments to Housing Benefit (HB) regulations which legislated for the national rollout of the Local Housing Allowance (LHA), introduced from 7 April 2008.

Name and contact details of the officer(s) responsible for the assessment:

2. Marie Savage - 01772 234056
Mohammed Yar (Analysis) - 020 7449 5372

Purpose and aim(s) of the proposal or change:

3. The Department proposes to cap benefit levels at the five bedroom LHA rate for all new claims and those who change dwelling, irrespective of bedroom entitlement. LHA customers already in receipt of HB for a property with 6 or more bedrooms will continue at the same rate until the first anniversary of their claim when they will have their case reviewed.

Background to the proposal/change:

4. The LHA was introduced for HB customers in the de-regulated private rented sector who make a new claim or move address from 7 April 2008. Essentially, the LHA is a new way of calculating HB based on the area in which a customer lives and household size and composition. LHA is designed to be fairer than HB, as it is based on set rates of benefit and ensures that tenants in similar circumstances in the same area receive the same amount of financial support for their housing costs.
5. There is no upper limit to the size of property that a customer may be entitled to under the current LHA design. The criteria used to determine the appropriate size of property is based on the number of bedrooms with the entitlement worked out as follows:

One bedroom for:

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex
- Any two children regardless of sex, under the age of 10
- Any other child

The number of living rooms, kitchen and bathrooms is ignored for the purpose of this calculation.

6. LHA rates are set by rent officers in the national rent services in England, Scotland and Wales. Rates are set within a series of Broad Rental Market Areas (BRMAs) which are also determined by rent officers and are intended to reflect the areas in which people live and enjoy services and the rental values within those areas. Rent officers gather a range of lettings information for each BRMA and set LHA rates at the median rent level for each property size, which should enable customers to afford the rent in around 50% of the properties within a given area. Where rent officers are unable to collect sufficient lettings data within a BRMA to arrive at a reliable median, they can extrapolate information from other, similar, areas.
7. Rent officers automatically provide monthly LHA rates to local authorities for different sizes of properties up to and including 5 bedrooms. Rates for properties of 6 bedrooms or more are requested on an individual basis by local authorities. However, the national rent services have reported that there is far less rental data available for larger properties and that, even allowing for extrapolation, rent officers have had real difficulties in arriving at LHA rates for larger sized properties.
8. The key issue for rent officers is that there is little reliable lettings evidence available for properties of this size, and where properties do exist they will often be in the top end of the property market. The degree of variance in rents is considerable for larger properties in London. This has led to exceptionally high LHA rates in some London BRMAs for the small number of cases entitled to larger properties.
9. The Department identified fairly early on in operation of the LHA scheme that there was an emerging issue with rates for properties with 6 or more bedrooms. The need for change was highlighted because of sudden media attention in the specific case in Ealing where an excessively high rent (around £12,000 pcm) was being paid for a 7 bedroom property. However, it is important to note that the availability of data for these types of property is limited nationally and the difficulties of arriving at median rates for these larger properties are not just restricted to London.
10. However, given that in a handful of cases the level of rents payable had reached proportions that the vast majority of people, even in well paid jobs, would not be able to afford, the Department recognised that urgent action was needed.

Who will benefit mainly from this proposal or change?

11. This proposal aims to ensure that benefit rates are paid at a level that provides a fair deal to both customers and to the taxpayer by ensuring that excessively high rates of benefit cease for new claims and gradually phase out for existing claims. In keeping with a key objective of the LHA to promote fairness, it is not sustainable that some of our customers on benefits are able to live in properties at the luxury end of

the market, which would not be affordable for the majority of people in work.

12. The changes may ultimately benefit HB customers living in the private rented sector as they may keep rents at more realistic and affordable levels thus easing the transition into work where applicable.
13. The changes should also go some way to preventing private landlords from charging excessive rents to larger families regardless of the size of the accommodation they are renting.

Impact of the proposal or change

14. Analysis of the possible impact of this proposed change on HB customers in the private rented sector and particular subgroups has been carried out using Family Resources Survey (FRS) data.
15. It should be noted that it has not been possible to isolate certain groups, such as households in receipt of HB in the private rented sector so that the estimates are necessarily only indicative. Please refer to annex one for further information about the data sources and methods used.

General Impact

16. Households entitled to properties of six or more bedrooms form a very small subgroup of all households. It can be expected that households entitled to 6 or more bedroom properties will be large households (minimum household size 6 for single adults) which often comprise large, extended families with children.
17. According to the FRS, the proportion of households entitled to different sized properties decreases as the number of bedrooms increase. Only a very small proportion (under 1%) are likely to be entitled to properties with 6 or more bedrooms and this is estimated to correspond to an LHA caseload of fewer than c.5, 000 at the end of 2009/10.

Impact on equality legislation population subgroups

18. In this section, analysis has been carried out to assess the possible impact of this proposed change on vulnerable groups with emphasis on those related to the components of the Equality Duties. Mitigation factors are included in one separate section (from paragraph 30 below) as many of the mitigation steps apply to all of the equality components rather than specific areas.

Disability equality duty

19. The following components of the Disability Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Eliminate harassment.
- Promote equality of opportunity for disabled people.
- Promote participation in public life.

However, there is a possibility that the following component could be impacted:

- Eliminate unlawful disability discrimination.

Risk

20. Under the current system of calculating HB according to LHA rules, customers with a disability who may require an additional room to house specialist medical equipment or a live-in carer are not entitled to additional bedrooms as a result of their disability. In these cases, local authorities may choose to use discretionary housing payments (DHPs) to ensure that these customers can find decent accommodation that meets their needs.
21. Although very uncommon, capping LHA rates at the five bedroom rates, may mean that a household with a severely disabled family member and a bedroom entitlement over 5 bedrooms may feel they are further restricted to the type of property they can rent. They could regard this as discrimination on disability grounds.
22. Overall, the data showed that 14% of HB households had at least one person with severe disability (claiming the highest components of self care or mobility DLA). (Table A) But in general, there does not appear to be any significant association between bedroom size entitlement and severe disability to suggest that households with severe disability will be disproportionately impacted by the policy change.

Table A: Bedroom entitlement for housing benefit households by severe disability status of the household, Great Britain

Bedroom size entitlement	Severe disability		All (=100%)
	None with severe disability	Someone with severe disability	
	%	%	%
1	84	16	100
2	90	10	100
3	88	12	100
4	85	15	100
5+	89	11	100
All (%)	86	14	100

Notes:

- three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- Severe disability relates to any member of the household

23. In the Housing Benefit subgroup, the sample of households entitled to 6 or more bedrooms is too small to analyse. Therefore, we have looked at the percentage of households with entitlement to five or more bedroom properties to then estimate the characteristics of households with entitlement to 6 or more bedrooms. Under this assumption, it is broadly estimated that of the fewer than 5,000 LHA caseload entitled to larger properties at the end of 2009/10, only a few hundred (around 11%) households at most will be entitled to a property of this size and have someone with severe disability living with them. Of these, a smaller number still will have a disability that requires them to need either specialist medical equipment or a full time carer. Of those customers who do rely on a full time carer, the carer may already be a member of the household and accounted for within the bedroom entitlement calculation. Although specific data is not available on the exact number of customers who are likely to be affected, given the customers affected will need to be currently entitled to more than five bedrooms; *plus* be severely disabled, *plus* require either specialist equipment or a full time carer that does not actually live in the household, we consider the risk to be very small.

Gender equality duty

24. The following components of the Gender Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Eliminate unlawful discrimination.
- Eliminate harassment.
- Promote equality of opportunity between men and women.

25. This finding is supported by the evidence from the FRS data. Overall, around three-fifths of households were male and two-fifths female (head of household male or female) but for HB households, around three-fifths had female heads of household, apparently due to the relatively large number of lone parents on HB. A similar proportion of HB households entitled to more than five bedrooms were headed by females. (Table B). There is a larger percentage of female-headed households than male-headed households so that the impact will be greater on females, however, compared to the HB population as a whole there is not a disproportionate percentage of female-headed households entitled to larger properties.

Table B: Bedroom entitlement for housing benefit households by sex of head of household, Great Britain

Bedroom entitlement	Sex		
	Male	Female	All (=100%)
	%	%	%
1	50	50	100
2	23	77	100
3	25	75	100
4	25	75	100
5+	34	66	100
All (%)	39	61	100

Notes:

- (1) three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- (3) Gender relates to the head of the household.

26. Taking the percentage of households with entitlement to five or more bedrooms headed by females as a guide to the characteristics of households with 6 or more bedrooms, it is roughly estimated that of the fewer than 5,000 LHA caseload entitled to larger properties at the end of 2009/10, fewer than 3,000 affected households will be headed by females. These figures are broadly indicative due to data limitations.

Race Equality Duty

27. The following components of the Race Equality Duty are not considered to be impacted, either positively or negatively, by this proposed change:

- Promote equality of opportunity.
- Promote good relations between persons of different racial groups.

However, there is potentially a possibility that the following component could be impacted:

- Eliminate unlawful discrimination.

Risk:

28. Overall, of all HB households (at least one member of the household claiming HB) around 10% can be classified as non-white households, which is broadly consistent with the ethnic composition of the general population (Table C). However, the proportion of non-white HB households entitled to different sized properties increases progressively as the number of bedrooms increases, varying from around 7% for 1-bed property entitlement to around 37% for entitlements to 5 or more bedrooms.

Table C: Bedroom entitlement for HB households by ethnic group of head of household, Great Britain

Bedroom entitlement	Ethnic group		
	White	Non-white	All
	%	%	%
1	93	7	100
2	87	13	100
3	84	16	100
4	80	20	100
5+	63	37	100
All (%)	90	10	100

Notes:

- (1) three years FRS data (2004/05 to 2006/07) and weighted counts used to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector.
- (3) Ethnicity relates to the head of household.

29. These figures demonstrate there is likely to be a disproportionate percentage of customers from minority ethnic groups entitled to six or more bedroom properties, raising concerns of indirect discrimination although the proportion of non-white households entitled to larger properties is still smaller than the proportion of white households. Taking 5 or more bedroom characteristics as a guide to 6 or more bedroom characteristics, it is roughly estimated that of the fewer than c.5,000 larger properties LHA caseload under about 2,000 will be non-white customers at the end of 2009/10. The Department recognises this disproportionate impact on ethnic minority groups, but considers this to be justified and proportionate due to the mitigation factors that are set out in the following section, including the small number of customers that will be affected and the size of properties that most families currently occupy.

Mitigation

30. Analysis in the preceding section has highlighted the potential customers that might be impacted by the policy change to cap LHA rates at 5 bedrooms. But in practice this will be alleviated by a number of factors and the number of customers actually affected by the change may be substantially lower than the maximum figures noted above.
31. In some areas there is little difference between the rates for 5 bedroom properties and larger sized properties. An analysis of The Rent Service database of market rents for 2007/08 showed that in England overall, around 20% of the 6 or more bedroom properties were accessible at the 5 bedroom LHA rate. This compares with the 50% of 6 or more bedroom properties that should be affordable at the current LHA rate set at the median market rent level. Most of the BRMAs on the dataset,

however, had fewer than 10 tenancies on properties with 6 or more bedrooms suggesting that a wider issue may be the general lack of availability of larger properties. This leads to the national rent services to calculate LHA rates for larger properties by extrapolating from other BRMAs. However, anecdotal evidence suggests that some landlords are converting smaller properties into 6 or more bedroom dwellings by use of partitioning to take advantage of LHA rates.

32. Most households entitled to larger properties are therefore unlikely to be able to find suitably sized accommodation and are likely to live in smaller sized properties due to the scarcity and unavailability of larger sized properties. Others may simply choose to live in a smaller sized property. An analysis of the present property size living conditions of all households (regardless of benefit entitlement) suggests that of those entitled to 6 or more bedroom properties, around 70 per cent may live in property sizes of less than 6 bedrooms (Table D). This could imply that the cap at five bedroom rates may have little impact on the present property size living conditions of LHA households entitled to 6 or more bedrooms because of availability issues.

Table D: Distribution of bedroom entitlement by bedrooms occupied, Great Britain

Bedroom entitlement	Bedrooms occupied						All (=100%)
	1	2	3	4	5	6+	
	%	%	%	%	%	%	%
1	17	32	39	9	2	0	100
2	2	28	51	16	3	1	100
3	0	7	61	25	5	1	100
4	0	3	47	38	9	2	100
5	0	2	37	31	25	6	100
6+	1	2	22	30	16	29	100
All	11	27	45	14	3	1	100

Notes:

- (1) three years FRS data, 2004/05 to 2006/07, combined to derive percentages
- (2) All tenures combined and both HB and non-HB households included
- (3) Some anomalous results such as households entitled to 6 or more bedrooms living in only 1 bedroom may possibly occur due to survey recording error.

33. Furthermore, many 5 bed properties will have more than one reception/living area, which may open up the potential for the use of additional rooms as bedrooms. An analysis of The Rent Service database of market rents shows that nearly 60% of 5 bedroom properties have more than one living room e.g. 7 or more bedrooms plus living rooms. (Table E) So although a family may be entitled to 6 or more bedrooms and have their LHA rate capped at the 5 bedroom rate, most of the 5 bedroom properties on the market will have six or more rooms available, possibly to be used as bedrooms even after

allowing for one living room. It is possible that the properties with more living rooms may be the more expensive 5 bedroom properties, but this will not always be the case and some should be in reach of LHA customers.

Table E: Comparison of number of bedrooms to number of bedrooms plus living rooms in 4 and 5 bed properties

Bedrooms plus living rooms	Number of bedrooms	
	4	5
	%	%
4 or fewer	0	0
5	43	1
6	45	40
7	10	35
8	1	19
9 or more	0	5
All (=100%)	100	100

Source: Market evidence data

Notes: Column percentages may not add to 100 due to rounding

34. Generally, the LHA bedroom allocation criteria are more generous than the room standard part of the statutory overcrowding criteria. An indicative simulation suggested that the vast majority of 6 or more bedroom entitlements may have 5 or fewer rooms allocated under statutory overcrowding criteria so that the proposal to cap rates at five bedroom levels could have almost nil impact on statutory overcrowding
35. Many of the households entitled to 6 or more bedroom properties have non-dependants living with them and the current LHA policy partially subsidises accommodation for the non-dependants as non-dependant deductions, if any, are generally smaller than the value of the additional bedrooms. Again the analysis of the FRS data shows that of HB households entitled to 5 or more bed properties, about four fifths have one or more non-dependants living with them. (Table F) It must be noted that this result relates both to HB tenants in the social sector and HB tenants in the private sector and there may be a slightly higher proportion of households with non-dependants in the social sector than in the private sector. However, it can be expected that the policy change overall may affect even fewer households than estimated if some non-dependants are able to play a greater role in paying for their accommodation.

Table F: Bedroom entitlement for HB households by non-dependant status of the household, Great Britain

Bedroom entitlement	Non-dependants in household		
	No Non-dependant	Non-dependant	All (=100%)
	%	%	%
1	100	0	100
2	75	25	100
3	70	30	100
4	43	57	100
5+	18	82	100
All	87	13	100

Notes:

- (1) three years FRS data, 2004/05 to 2006/07, combined to derive percentages
- (2) Table relates to all households where at least one member is claiming housing benefit, whether they are renting in the private or the social sector
- (3) Non-dependents refer to adult household members not related to head of household through 'spouse' or 'cohabitee' relationships. Note that this definition may differ slightly from the legal definition for the purposes of housing benefit claims

36. Existing customers will receive 13 weeks transitional protection to remain on their current rate of LHA, following the anniversary point of their claim. LAs will write out to customers prior to the implementation of the policy change to advise those in receipt of LHA rates for properties over 5 bedrooms and that transitional protection will apply for a fixed period.

37. To minimise these risks further local authorities may, in certain circumstances, choose to make a Discretionary Housing Payment (DHP) to customers, which are intended to provide extra financial assistance when help with housing costs is needed. They can be made where there is a shortfall between the customer's HB and their eligible rent. (Payments are made entirely at the discretion of the Local Authority concerned, and are subject to an annual cash limit).

Consultation and involvement

38. The Department is currently consulting with local authority associations, the devolved administrations and key voluntary sector groups. This consultation will conclude on 30 January 2009.

Changes made

39. No changes have been made to the policy since the initial assessment.

Next steps

40. The LHA scheme is currently being monitored as part of the commitment to a review of the scheme after 2 years of operation. Diversity issues will be included in the current monitoring arrangements for the whole scheme and findings will be reported in the 2 year review subject to limitations of the available data.

Data sources and methods

Although the FRS is a very large survey in general terms, the current sample sizes do not allow detailed analysis of very small subgroups such as households entitled to 6 or more bedroom properties, along with further breakdowns by disability and minority ethnic group. Consistent with the FRS publication practice for small subgroups, three years' FRS data (2004/05, 2005/06, 2006/07) were combined to attempt to address the issue of small sample sizes and the detailed FRS categories had to be aggregated into broader categories.

Specifically, instead of being able to focus on households renting in the private sector and claiming HB, we have had to consider the characteristics of reported HB customers in both the social and private rented sectors and use these to approximate what the impact of the policy might be on private sector HB customers alone. Given that housing benefit claimants in the social rented sector are more numerous than claimants in the private rented sector, their characteristics are likely to dominate the analysis. This will be particularly important where the characteristics of social and private tenants differ. We do know that social tenants tend to have larger proportions of those with disadvantages and those with overlapping disadvantages. Where this is the case, there is the possibility that conclusions from the analysis may be affected to some extent. In addition, we have had to group together households entitled to 5 bedrooms with those entitled to 6 or more bedrooms to approximate the characteristics of households entitled to the largest properties.

Further definitions of the variables used and the terminology adopted were:

- Ethnic group - two categories, white and non-white
- Household with severe disability– households where at least one member was receiving the highest care or mobility components of disability living allowance
- Bedroom entitlement – 5 categories, 1,2 ,3 ,4 ,5 and higher (as 6 or more bedroom entitlement sample sizes too small)
- HB household – households where at least one member receives HB, whether they are renting in the private or social sector.

The unit of analysis used was household and household classification by ethnic group and sex was defined according to the status of the head of the household. This contrasts with disability where we considered whether any member of the household may have a severe disability.

2009 No.

SOCIAL SECURITY

The Housing Benefit Amendment Regulations 2009

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - 6th April 2009

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2), (3), (5) and (6), 137(1) and 175(1), (3), (4) and (6) of the Contributions and Benefits Act 1992⁽⁶⁾.

[The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it⁽⁷⁾.]

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Housing Benefit Amendment Regulations 2009 and shall come into force on 6th April 2009.

Amendment of the Housing Benefit Regulations 2006

2.—(1) The Housing Benefit Regulations 2006⁽⁸⁾ shall be amended as follows.

(2) Before regulation 13⁽⁹⁾ insert—

“12L.—(1) **This regulation applies where—**

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 6th April 2009;
- (b) the category of dwelling for which that maximum rent (LHA) was determined corresponded to a category of six or more bedrooms; and
- (c) on or after 6th April 2009 the relevant authority is required to determine a maximum rent (LHA) by virtue of—

⁽⁶⁾1992 c. 4. Section 130A was inserted by s. 30 of the Welfare Reform Act 2007 (c. 5). Section 137(1) is an interpretation provision and is cited for the meaning of “prescribed”. Sections 175(1) and (4) were amended by Schedule 3, paragraph 29 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

⁽⁷⁾See sections 170 and 172(1)(b) of the Social Security Administration Act 1992.

⁽⁸⁾S.I. 2006/213.

⁽⁹⁾Regulation 13 was substituted by S.I. 2007/2868.

- (i) regulation 13C(2)(d)(i) (change of a category of dwelling), where it has not received notification of the death of a linked person; or
 - (ii) 13C(3) (anniversary of the LHA date).
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent that applied immediately before 6th April 2009; or
 - (b) the amount of the eligible rent which applied immediately before 6th April 2009.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before 6th April 2009, it will continue to apply until, on or after 6th April 2009, the first of the following events occurs—
- (a) the end of 13 weeks after the determination of the maximum rent (LHA) referred to in paragraph (1)(c) expires;
 - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined) because the claimant has become entitled to a smaller category of dwelling;
 - (c) the relevant authority is required to determine an eligible rent following a change of dwelling; or
 - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).
- (4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.
- (5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

(3) In regulation 13D⁽¹⁰⁾ (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c), at the end add “to a maximum of five bedrooms”; and
- (b) omit paragraph (7).

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽¹¹⁾ shall be amended as follows.

(2) Before regulation 13⁽¹²⁾ insert—

“12L.—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 6th April 2009;
- (b) the category of dwelling for which that maximum rent (LHA) was determined corresponded to a category of six or more bedrooms; and
- (c) on or after 6th April 2009 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 13C(2)(d)(i) (change of a category of dwelling), where it has not received notification of the death of a linked person; or
 - (ii) 13C(3) (anniversary of the LHA date).

(2) Where this regulation applies, the claimant's eligible rent is—

⁽¹⁰⁾Regulation 13D was inserted by S.I. 2007/2868.

⁽¹¹⁾S.I. 2006/214.

⁽¹²⁾Regulation 13 was substituted by S.I. 2007/2869.

- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent that applied immediately before 6th April 2009; or
- (b) the amount of the eligible rent which applied immediately before 6th April 2009.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before 6th April 2009, it will continue to apply until, on or after 6th April 2009, the first of the following events occurs—

- (a) the end of 13 weeks after the determination of the maximum rent (LHA) referred to in paragraph (1)(c) expires;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined) because the claimant has become entitled to a smaller category of dwelling;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

(3) In regulation 13D⁽¹³⁾ (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c), at the end add “to a maximum of five bedrooms”; and
- (b) omit paragraph (7).

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Regulation 2 amends the Housing Benefit Regulations 2006. Paragraph (3) amends regulation 13D so that the appropriate category of dwelling is limited to a maximum of five bedrooms.

Paragraph (2) provides transitional protection for some claimants whose housing benefit is calculate by reference to a local housing allowance rate for a property with six or more bedrooms.

Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

⁽¹³⁾Regulation 13D was inserted by S.I. 2007/2869.

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Social Security Advisory Committee
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Telephone:020 7449 5329

Date: 9th January 2009

Dear Gill,

The Housing Benefit Amendment Regulations (2009)

As you are aware, the Secretary of State proposes to amend existing regulations that legislated for the national rollout of the Local Housing Allowance (LHA). Under these proposals, levels of Housing Benefit will be capped at a maximum level of the five bedroom LHA rates from April 2009.

On 7 January 2008, the draft regulations were discussed at the Committee's meeting. Members agreed that the proposals should be formally referred and also requested further information on the options that had been considered before arriving at a model to cap LHA levels at the five bedroom rate.

I now enclose a short supplement to the Explanatory Memorandum which gives a high level explanation of options considered.

I hope this is helpful.

Yours sincerely

**Penny Higgins
Housing Benefit Strategy Division**

Amendment to Housing Benefit regulations
Proposal to cap Local Housing Allowance levels at five bedroom rate
Supplementary explanatory memorandum

Introduction

1. This memorandum is intended to supplement information already provided on the proposal to cap LHA levels at a maximum of the five bedroom rate for customers in the private rented sector. It addresses questions from the Social Security Advisory Committee members about what other policy options were considered to set LHA rates for properties with 6 or more bedrooms.
2. Prior to the issues of exceptionally high rates of LHA in payment for some large properties being highlighted in the media, the Department had considered alternative options for setting LHA rates for large properties in order to address difficulties in setting rates for such properties. The options considered are outlined here.

Options considered

Option 1: Capping all LHA rates at 5 bedroom rates

3. This option is the proposed amendment to LHA for larger properties that has been put forward in draft regulations and has been discussed in detail in the information already provided to the Social Security Advisory Committee.
4. The proposal supports the aims for a more transparent system, compared to the current system, as there will only be the set of rates up to and including 5 bedrooms which, as now, will be published on The Rent Service website and by local authorities. This option also retains the simplicity of the LHA system as there are no separate systems for larger properties. In addition, it would more accurately reflect the circumstances of low income workers who could not afford rents for properties with 6 or more bedrooms and it would recognise that few customers entitled to a larger property are able to access one in the market. It should also go some way towards preventing landlords from profiting by charging very high rents to larger families regardless of the size of accommodation they are renting.

Option 2: Capping LHA rates at 5 bedroom rates, with concession

5. This option is the same as option 1, but provides the concession that if the customer is able to find a property with 6 or more bedrooms a reasonable market rent will be determined by an individual referral to the rent officer.

6. The option was rejected because it lacks transparency as larger families may not know what element of support they would be entitled to in advance – a key aim of the LHA. It could also give benefit recipients access to properties that could not be afforded by low income workers, potentially creating barriers to entering work.

Option 3: Technical derivations of additions for extra bedrooms

7. Under this option the applicable 5 bedroom rate would be used as the base for calculating LHA rates for properties with 6 or more bedrooms, but an additional amount would be added for each extra bedroom entitlement above 5 bedrooms. Various options were considered for deriving additional amounts of benefit for each extra bedroom by analysing the LHA rates for smaller properties.
8. This option was rejected as it would introduce extra complexity into the LHA system. It would constitute a different system for larger properties and the method of calculating these rates may not be transparent to customers. It should also be noted that property market for larger sized properties is such that rents may not increase proportionately in line with the number of bedrooms – floor area and location may be more important factors to consider. In addition, the derived rates would not reflect real market rents so that larger families still may not be able to access suitably large accommodation. It would also not recognise the scarcity of properties for rent with 6 or more bedrooms and, like option 2, would give benefit recipients advantages over low income workers potentially reducing incentives to return to work.

Conclusion

9. On balance it was determined that our proposed option had the most advantages in terms of ensuring fairness both to the customer and the taxpayer.
10. The Committee has decided to consult on the Department's proposals. This supplementary memorandum provides additional information in response to questions from the Committee in parallel to that consultation.

Appendix Three

List of organisations SSAC consulted on proposed amendments

- Advice Services Alliance
- Advice UK
- Age Concern
- Association of Chief Executives of Voluntary Organisations (ACEVO)
- Barnardo's
- Chartered Institute of Housing
- Child Poverty Action Group
- Citizen's Advice
- Citizen's Advice Scotland
- Convention of Scottish Local Authorities
- Disability Action
- Disability Alliance
- Housing Corporation
- Housing Directorate Welsh Assembly Government
- Joseph Rowntree Foundation
- Local Government Association
- London Councils
- London Welfare Rights Group
- National Association of Welfare Rights Advisers (NAWRA)
- Oxfam
- Scottish Council of Voluntary Organisations (SCVO)
- Scottish Executive
- Shelter
- Welsh Local Government Association



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