

# *Housing Benefit Local Housing Allowance Guidance Manual*

## *Amendment 4*

**To:** All holders of the Housing Benefit Local Housing Allowance Guidance Manual

**Subject:** Amendment to the Housing Benefit Local Housing Allowance Guidance Manual

**Content:** This amendment gives information on

- the definition of mobile homes
- what to do with board and attendance cases at go-live date for Big Bang LAs
- size criteria where tenants have a partner or household member who have no recourse to public funds, eg persons from abroad
- single claimants aged under 25 years in receipt of Severe Disability Premium
- the affect on the LHA rate of a
  - claimant reaching the age of 25
  - child reaching the age of 10 or 16
- the treatment of care leavers under the age of 22
- what LA's should do where there is a change of address for single claimants aged 25 years and over or couples with no non-dependent children
- excess benefit, ie it cannot be used to reduce arrears for a claimants previous landlord
- DWP deductions to cover rent arrears for existing tenants
- consideration of review period
- clarification of what happens at the end of the 13 week protection
- transitional protection
  - when the claimant dies or moves out leaving partner in the household
  - discretionary housing payments
- anniversary dates and leap years
- clarification of
  - supported accommodation
  - excess benefit and it's affect on the calculation of other benefits
  - anniversary dates
  - evidence
  - protection
- nine new LAs joining the LHA scheme
- change of circumstances and the LHA rate
- consideration of rent deposit guarantee as evidence of vulnerability

**Action:** Remove the pages listed below and insert the replacements as instructed. When you have incorporated the amendments

- on the record of amendments sheet, note your initials and the date next to **4**
- circulate this sheet to staff who use this guide

<b>Remove</b>		<b>Insert</b>	
<b>Contents</b>	[2]	<b>Contents</b>	[2]
<b>Chapter 1, An overview of Local Housing Allowance</b>			
Paras 1.20 - 1.99	[2]	Paras 1.20 - 1.99	[3]
<b>Chapter 2, Establishing the maximum rent</b>			
Paras 2.00 - 2.99	[5]	Paras 2.00 - 2.199	[6]
<b>Chapter 3, Length of LHA award</b>			
Paras 3.00 - 3.99	[4]	Paras 3.00 - 3.199	[6]
<b>Chapter 4, Paying Local Housing Allowance</b>			
Paras 4.00 - 4.99	[2]	Paras 4.00 - 4.99	[2]
<b>Chapter 5, Identifying vulnerable tenants</b>			
Paras 5.30 - 5.99	[3]	Paras 5.30 - 5.99	[3]
<b>Chapter 6, Identifying people who are unlikely to pay their rent</b>			
Paras 6.40 - 6.99	[2]	Paras 6.40 - 6.99	[2]
<b>Chapter 7, Protection rules</b>			
Paras 7.00 - 7.99	[4]	Paras 7.00 - 7.99	[5]
<b>Chapter 8, Appeals and redeterminations</b>			
Paras 8.49 - 8.99	[1]	Paras 8.49 - 8.99	[1]
<b>Appendices</b>			
Appendix 5	[3]	Appendix 5	[3]

Corporate Document Services  
7 Eastgate  
Leeds

September 2005

# Housing Benefit Local Housing Allowance Guidance Manual

## *Record of amendments*

- 1 Amendments are serially numbered so that holders can check they have received the full series.
- 2 Incorporate amendments immediately and record that you have done so below.

<b>Serial number</b>	<b>Initials</b>	<b>Date</b>	<b>Serial number</b>	<b>Initials</b>	<b>Date</b>
<b>1</b>			<b>21</b>		
<b>2</b>			<b>22</b>		
<b>3</b>			<b>23</b>		
<b>4</b>			<b>24</b>		
<b>5</b>			<b>25</b>		
<b>6</b>			<b>26</b>		
<b>7</b>			<b>27</b>		
<b>8</b>			<b>28</b>		
<b>9</b>			<b>29</b>		
<b>10</b>			<b>30</b>		
<b>11</b>			<b>31</b>		
<b>12</b>			<b>32</b>		
<b>13</b>			<b>33</b>		
<b>14</b>			<b>34</b>		
<b>15</b>			<b>35</b>		
<b>16</b>			<b>36</b>		
<b>17</b>			<b>37</b>		
<b>18</b>			<b>38</b>		
<b>19</b>			<b>39</b>		
<b>20</b>			<b>40</b>		

# *Abbreviations*

<b>BRMA</b>	Broad Rental Market Areas
<b>CTB</b>	Council Tax Benefit
<b>DWP</b>	Department for Work and Pensions
<b>GP</b>	General Practitioner
<b>HB</b>	Housing Benefit
<b>IRL</b>	Indicative Rent Level
<b>IS</b>	Income Support
<b>JSA</b>	Jobseeker's Allowance
<b>JSA(IB)</b>	income-based Jobseeker's Allowance
<b>LA</b>	Local Authority
<b>LHA</b>	Local Housing Allowance
<b>LRR</b>	Local Reference Rent
<b>RSG</b>	Revenue Support Grant
<b>RSL</b>	Registered Social Landlord
<b>SP</b>	Supporting People
<b>SRR</b>	Single Room Rent

# Glossary

Give the following terms used in this manual the meanings set out below. When the definition is specified in the Social Security Administration Act (SSAA) 1992, the Social Security Contributions and Benefits Act (SSCBA) 1992, or the regulations under the Acts, a reference is given. The definition of a word in inverted commas can be found under its own entry in this Glossary.

<b>Authorised authority</b>	a housing authority, local authority, charging or levying authority, as appropriate.	<i>S.134 and 139 SSAA</i>
<b>Big bang approach</b>	would transfer the entire caseload on the start date.	
<b>Broad Rental Market Area</b>	is an area <ul style="list-style-type: none"> <li><b>a</b> comprising two or more distinct areas of residential accommodation, each distinct area adjoining at least one other in the area</li> <li><b>b</b> within which a person could reasonably be expected to live having regard to the facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of public and private transport, to and from facilities and services of the same types and similar standard, and</li> <li><b>c</b> containing residential premises of a variety of types, and within the range of each type a variety of tenancies.</li> </ul>	
<b>Child</b>	a person under the age of 16.	<i>S.137(1)SSCBA</i>
<b>Claim-related rent</b>	is the lowest figure produced by these three tests <ul style="list-style-type: none"> <li><b>a</b> <b>Significantly high test:</b> the rent may be higher than the property is worth. If the rent officer decides that the rent is significantly higher than the landlord could expect to get on the open market, they decide what a reasonable figure would be.</li> <li><b>b</b> <b>Over-large test:</b> the rent may be too high because the property is larger than the claimant needs. In these cases, the rent officer decides what a reasonable rent would be if the property were of the size needed.</li> </ul>	

continued

<b>(Claim-related rent)</b>	<b>c</b> <b>Exceptionally high test:</b> deals with rents that are realistic by market standards but are higher than would be reasonable to expect the taxpayer to fund. In these cases, the rent officer sets a figure that is not exceptionally high by the standards of the neighbourhood.	
<b>Claimant</b>	means a person claiming benefit.	<i>HB Reg 2(1) CTB Reg 2(i)</i>
<b>Contractual rent</b>	the contractual rent is the rent which the tenant is contractually liable to pay to the landlord.	
<b>Couple</b>	means two people of opposite sexes living together	
<b>Date of claim</b>	means the date the claim is made or treated as made.	<i>HB Reg 72 CTB Reg 62</i>
<b>Decision</b>	an LA's ruling on any matter under the regulations connected with a HB or CTB claim. However, Rent Officers still make determinations regarding the amount of rent payable.	
<b>Dwelling</b>	means residential accommodation.	
<b>Eligible rent</b>	the amount of rent which may be used to determine the amount of any rent allowance or rent rebate.	
<b>Family</b>	a married or unmarried couple with or without children or lone parent with a child or children	<i>S.137(1) SSBA</i>
<b>Housing Benefit</b>	is used to cover both a rent rebate and a rent allowance	<i>HB reg 2(1)</i>
<b>Indicative Rent Level</b>	Indicative rent levels are provided each month by the rent officer and give an approximation of the level of rent for various types and sizes of property in a particular area.	
<b>Landlord</b>	the person a claimant is liable to pay rent to.	
<b>Local Reference Rent</b>	the local reference rent (LRR) is a figure which represents a broadly average rent in the locality where the claimant lives, for a property with the same number of rooms needed by the claimant. It is defined as a mid point between the highest and lowest markets after removing exceptionally high and low rents.	
<b>Married couple</b>	a man and a woman who are married to each other and are members of the same household.	<i>S.137(1) SSCBA</i>
<b>Maximum Rent</b>	the maximum rent will be the Local Housing Allowance the claimant is entitled to, based on the area in which the claimant lives. Also known as the standard local rate.	<i>HB reg 2(1)</i>

<b>Non-dependant</b>	anyone who lives with the claimant, <i>except</i> members of the claimant's "family", <i>but including</i> any of the claimant's (or their partner's) grown-up children who live with them claimant; a joint occupier of the accommodation; a tenant or a sub-tenant of the claimant; or someone who is paid by a voluntary or charitable organisation to care for the claimant or the claimant's partner and the claimant or the claimant's partner pay for the services provided.	<i>HB Reg 3(1)</i> <i>CTB Reg 2(1)</i>
<b>Occupier(s)</b>	the person(s) whom the Pathfinder authority is satisfied occupy the "dwelling", to which the claim or award relates, as their home.	
<b>Partner (of the opposite sex)</b>	If a claimant is a member of a 'married couple' or an 'unmarried couple', the other member of that couple or if the claimant is 'polygamously married' to two or more members of the claimant's household, any one of them.	
<b>Person affected</b>	a person who is <ul style="list-style-type: none"> <li><b>a</b> a claimant</li> <li><b>b</b> a claimant's appointee, or someone with Power Of Attorney</li> <li><b>c</b> the local authority</li> <li><b>d</b> the landlord (in the case of a decision on direct payments of HB), or</li> <li><b>e</b> a person from whom the local authority decides that an overpayment of HB or CTB is recoverable.</li> </ul>	
<b>Phased approach</b>	would transfer existing claimants onto the LHA scheme when their rent would ordinarily be referred to the rent officer. For <ul style="list-style-type: none"> <li><b>a</b> <b>Pensioners</b> (all cases from your respective go-live date), the earlier of when you <ul style="list-style-type: none"> <li><b>i</b> would routinely refer to the rent officer, ie 52 weeks after your last referral under existing rules, or</li> </ul> </li> </ul>	

continued



<b>Significantly High Rent Determination</b>	the rent officer determines whether the referable rent is significantly higher than the rent which the landlord might reasonably have been expected to obtain for the specified tenancy and, if it is significantly higher, determines a lower level and notifies it to the local authority. Formerly known as the reasonable market rent.	
<b>Single Room Rent</b>	the single room rent (SRR) is the rent officer's determination of the average cost of a single room without board and attendance, in the area in which the claimant resides but with the shared use of a toilet and either a shared kitchen or no kitchen.	<i>HB Reg 11(13)</i>
<b>Size-Related Rent Determination</b>	if the dwelling exceeds the size criteria for the occupiers, the rent officer determines a notional rent for a dwelling of the appropriate size (determined in accordance with the size criteria in the Rent Officer's Order) and, when applicable, notifies it to the local authority.	<i>HB Reg 11(13)</i>
<b>Studio</b>	means self-contained accommodation where the tenant has exclusive use of one room, cooking and washing facilities.	

*Contents*

**An overview of Local Housing Allowance**

About this chapter ..... 1.00

Background to the LHA scheme ..... 1.01

Aims of the LHA scheme ..... 1.10

Scope of the LHA scheme ..... 1.20

Treatment of Crown tenants ..... 1.23

Definition of mobile home ..... 1.28

Implementation details ..... 1.40

Phased start approach ..... 1.50

Working Age claimants - go-live  
date to 4 April 2004 ..... 1.55

Working Age claimants - go-live  
date from 5 April 2004 ..... 1.60

Pensioners - all cases from the  
relevant go-live date ..... 1.65

Board and Attendance cases ..... 1.80

**Establishing the maximum rent**

About this chapter ..... 2.00

The size criteria ..... 2.10

Size criteria where tenants have a partner or  
household member who have no recourse to public  
funds, eg persons from abroad ..... 2.15

Joint tenants ..... 2.20

Joint tenants with a shared non-dependent ..... 2.21

Single claimants aged under 25 years ..... 2.30

Single claimants aged 25 years and over and  
couples with no dependent children ..... 2.40

Child reaching the age of 10 or 16 ..... 2.50

Care Leavers under 22 ..... 2.60

Broad Rental Market Areas ..... 2.80

What is a BRMA? ..... 2.80

Conditions for setting a BRMA ..... 2.90

Setting the LHA ..... 2.100

Example of rent officer's monthly update ..... 2.105

Reviewing the BRMAs and LHAs .....	2.120
<b>Length of LHA award</b>	
About this chapter .....	3.00
Length of LHA awards .....	3.10
Leap Years .....	3.20
Changes of circumstance .....	3.30
Date of claim .....	3.40
Claim backdated after LHA scheme starts .....	3.50
Mid year updates and changes of circumstance .....	3.60
Mid year updates .....	3.60
Changes of circumstance .....	3.70
Rapid Reclaims .....	3.100
<b>Paying Local Housing Allowance</b>	
About this chapter .....	4.00
Paying the LHA to landlords instead of tenants .....	4.10
Split overpayments .....	4.30
Recovery of overpayments .....	4.32
Payment on account .....	4.33
DWP deductions to cover rent arrears .....	4.40
<b>Identifying vulnerable tenants</b>	
About this chapter .....	5.00
Data Protection .....	5.01
What is vulnerability? .....	5.10
People who should not be considered as being vulnerable .....	5.20
Identifying potentially vulnerable claimants .....	5.21
Investigating potential vulnerability .....	5.30
Possible indicators of vulnerability .....	5.40
Causes .....	5.41
Effects .....	5.42
Making a decision .....	5.50
Reviewing a decision .....	5.60

**Identifying people who are unlikely to pay their rent**

- About this chapter ..... 6.00
  - Data Protection ..... 6.01
- Who is an ‘unlikely payer’? ..... 6.10
- People who should not be considered as falling within this category ..... 6.20
- Identifying potential unlikely payers ..... 6.30
- Investigating an unlikely payer ..... 6.40
- Making a decision ..... 6.50
- Reviewing a decision ..... 6.60

**Protection rules**

- About this chapter ..... 7.00
- 13-week protection ..... 7.10
- Protection on death ..... 7.20
- Transitional protection ..... 7.30
  - Transitional protection and discretionary housing payments ..... 7.50

**Appeals and redeterminations**

- About this chapter ..... 8.00
- When a redetermination decision can be requested ..... 8.10
- Accidental (slip of the pen) errors ..... 8.20
- Errors in professional judgement ..... 8.30
- Appeals rights of persons affected by a decision of LHA ..... 8.40
  - Payment to the landlord ..... 8.42
  - Vulnerable claimant or unlikely claimant will pay ..... 8.45
  - Payment to a third party where the third party is their landlord ..... 8.47
  - Direct payment where landlord is deemed to be not ‘fit and proper’ ..... 8.49
- Discretionary housing payments ..... 8.60

**Benefit subsidy and overpayments**

About this chapter ..... 9.00

Benefit subsidy ..... 9.10

    Background ..... 9.10

    Distributing additional subsidy to Pathfinder  
    authorities ..... 9.20

Overpayments ..... 9.30

    Background ..... 9.30

    DWP Debt Management ..... 9.35

**Appendices**

Pathfinder local authority areas ..... Appendix 1

Current Housing Benefit rules ..... Appendix 2

Commentary on the legislation ..... Appendix 3

Transitional protection ..... Appendix 4

Example of submission to the Appeals Service ..... Appendix 5

# *An overview of Local Housing Allowance*

## *About this chapter*

- 1.00 This chapter provides
- background information about Local Housing Allowance (LHA) scheme
  - information about the LHA scheme's
    - fundamental aims
    - scope
    - implementation, including expected start dates and method of introduction

## *Background to the LHA scheme*

- 1.01 On 17 October 2002, the Government announced a programme of reform to Housing Benefit (HB), which includes the trial of a standard LHA scheme in nine Pathfinder areas. The programme of reform is outlined in the prospectus *Building choice and responsibility: a radical agenda for Housing Benefit*. A copy of this report can be viewed on-line, see [www.dwp.gov.uk/housingbenefit](http://www.dwp.gov.uk/housingbenefit).
- 1.02 Claimants in the nine Pathfinder areas will receive an LHA based on the
- area in which they live, and
  - number of occupiers in their property
- See *Appendix 1* for details of the nine Pathfinder authorities.
- 1.03 Entitlement to the LHA will be subject to a means-test and proof of a valid tenancy. The payment will normally be to the tenant rather than to the landlord.

1.04-1.09

### *Aims of the LHA scheme*

1.10 The fundamental aims of the LHA scheme are to promote

- **Fairness:** The new scheme has been designed to pay the same amount to tenants with similar circumstances living in the same area. This differs from the existing scheme which ties the level of benefit to the rent actually paid, subject to a range of restrictions applied by a rent officer. Currently, tenants who live in smaller properties than they are entitled to, or in less attractive properties, generally receive less benefit than those with similar needs in the same area who live in larger or more attractive properties.

**Choice:** The intention is to allow tenants to trade between the quality and price of their accommodation. For example, tenants will be able to choose between paying more to stay in a property that is larger than they qualify for under the size criteria or increasing their after-housing-costs income by moving to a less attractive house.

- **Transparency:** The expectation is that the scheme will make it easier for tenants to find out in advance how much rent could be covered by Housing Benefit (HB). Although tenants can ask for “pre-tenancy determinations” under the current scheme, to see how much benefit they might receive for a particular property, this process is time-consuming and rarely used. As a result, private tenants often find the HB could not meet their rent only **after** they have signed a tenancy agreement. This should happen less frequently under the new scheme, as a major uncertainty will have been removed.
- **Personal responsibility:** It is hoped that by paying the allowance to the claimant it will encourage them to take responsibility for budgeting for and paying their rent themselves, rather than have it paid for them.
- **Increased work incentives:** Greater certainty about what in-work benefit they could receive is expected to help claimants bridge the gap between being unemployed and taking a job.
- **Simplicity:** There will no longer be a need for the complex rent restrictions and individual referral of rents to rent officers.

1.11-1.19

## *Scope of the LHA scheme*

### 1.20 The LHA scheme will

- only apply to HB claimants in the deregulated private sector, ie those who are subject to current rent restrictions *HB Reg 11A(2)*
  - be focused on mainstream private tenancies, and so a number of cases will be exempt. These exemptions are *HB Reg 11A(2)(a)*
    - Registered Social Landlord (RSL) tenancies - these currently only have to be referred to the rent officer in certain circumstances. See *HB/CTB Guidance Manual, Chapter A10 Rent Officer referrals and rent restrictions* for more information *HB Reg 11A(2)(b)*
    - protected cases (cases protected from the Local Reference Rent by The Housing Benefit (General) Amendment Regs 1995 Reg 10 Saving provision). Such as housing provided by certain charities and voluntary organisations where that body or a person acting on its behalf also provides the claimant with care, support and supervision (supported housing). In these cases it must be shown that the landlord has overall control of the provision. *HB (Gen) Amdt Regs 1995 10(1)(b) S.I. 1995 No. 1664*
- Supported accommodation that is not subject to LHA must be provided by a registered charity or voluntary body that also provide the support (or they have someone acting on their behalf to provide the support). Essentially this is the same as the exempt cases for the Local Reference Rent. Supported accommodation provided by a private landlord is subject to the LHA rules. *HB (Gen) Amdt) Act 1995/1644*
- Note:** Tenants would be entitled to LHA even if they are receiving floating support via Supporting People, providing they are in regular private sector tenancies. It is only supported accommodation that is exempt and that would be where the landlord (housing association; charity, etc) or someone acting for the landlord also provides them with care, support or supervision.
- If they are living in mainstream private accommodation they would continue to get LHA whether or not they were receiving support. It does not affect their eligibility, however, you may want to consider who you make payments to. *HB Reg 11A(2)(c)*
- tenancies that are excluded from current rent restrictions, such as pre-1989 tenancies, see *Appendix 2 - Current Housing Benefit rules* for more information *HB Reg 11A(2) (d)(i) & (2)(d)(ii)*
  - exceptional cases, ie caravans, houseboats (including mooring charges), mobile homes and hostels *HB Reg 11A (2)(e)(i)(ii)*

continued

## An overview of Local Housing Allowance

---

(1.20)-1.26

- (1.20) - cases where the rent officer judges that a substantial part of the rent is attributable to board and attendance, eg hotel accommodation *The HB (Gen) Regs 1987 Sch 1 & 1A*

**Note:** Exempt cases will have their HB calculated under the existing rules, see *HB/CTB Guidance Manual, Chapter A6 - Deciding and paying HB* for more information.

- 1.21 LHA can exceed the rental liability of the claimant. The LHA and the excess will not affect other benefits. LHA is a payment of HB and the receipt of HB does not normally affect the calculation of other benefits. LHA is disregarded as income in its entirety. The sole exception to this is in the case of discretionary housing payments which takes account of all income.

- 1.22 Claimants living in shared accommodation may be restricted to the shared rate. See *Joint tenants*. If information provided on the claim form raises doubts about the accommodation, contact the claimant for more information. You may also find it helpful to liaise with the Rent Service as they may hold information that would confirm whether the accommodation has shared facilities. *HB Reg 1(1)(c), 2, 10(2)(e), 12A(1)(a)*

### *Treatment of Crown tenants*

- 1.23 Crown tenants are excluded from entitlement to HB and instead receive help with their rent through IS, JSA or a rent rebate from their landlord. As these cases do not qualify for HB they are not referred to the rent officer. Their contractual rent is taken as the maximum rent minus ineligible charges. As they are excluded from current rent restrictions they are exempt from LHA.
- 1.24 Former Crown tenants (Irregular Occupiers) may continue to occupy their home after the tenancy has expired and against the wishes of the landlord. If mesne profits are awarded and collected from the claimant (as long as the landlord wants payments to be made and a new tenancy or licence has not been granted, even for a limited period) they are entitled to HB as they are no longer a crown tenant. These claims should be assessed and benefit should be awarded in the normal way, ie pay on LHA where appropriate.
- 1.25 Where the irregular occupier is waiting to be re-housed they will have an informal licence arrangement, an unwritten tenancy or a tenancy at sufferance which means that no rent will be payable as the tenant remains a crown tenant and is not entitled to HB.
- 1.26 Tenants or licensees of properties managed by the Crown Estate Commissioner, are not crown tenants. Claims for HB should be treated in the normal way, ie pay on LHA where appropriate.

- 1.27 Tenants or licensees of properties belonging to the Duchess of Lancaster or Cornwall do not come within the definition of Crown tenant. Claims for HB should be treated in the normal way, see *HBICTB Guidance Manual, Chapter A8*.

## *Definition of mobile home*

- 1.28 The legal definition of a mobile home is the same as that for a caravan. Broadly speaking, it covers any structure designed or adapted for people to live in which is capable of being moved from one place to another (whether by being towed or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. This does not include railway stock on a railway line which is in use, nor tents. It does include twin units separately constructed and designed for assembly on site, provided that the twin unit is physically capable of being moved when assembled (whether by being towed or by being transported on a motor vehicle or trailer). The twin unit must be no more than 60 feet (18.288 metres) long, 20 feet (6.096 metres) wide and the living accommodation no more than 10 feet (3.048 metres) high.

- 1.29 If the structure is a mobile home, even if supporting walls have been built (presumably with planning permission) and it has been connected to drains, utilities etc it is still exempt from LHA because it is essentially a mobile home. It is not the permanency of the structure that qualifies for LHA rather it is the type of dwelling.

*Caravan Sites & Control & Development Act 1960*

1.30-1.39

## *Implementation details*

- 1.40 The start dates and methods of introduction for the Pathfinder areas are

<b>Start date</b>	<b>Pathfinder authority</b>	<b>Method of introduction</b>
17 November 2003	Blackpool	Phased start
1 December 2003	Lewisham	Phased start
12 January 2004	Coventry	Phased start
12 January 2004	Teignbridge	Phased start
2 February 2004	Brighton & Hove	"Big bang"
9 February 2004	Edinburgh	"Big bang"
9 February 2004	NE Lincolnshire	"Big bang"
9 February 2004	Conwy	Phased start
9 February 2004	Leeds	Phased start

## An overview of Local Housing Allowance

---

1.41-1.54

1.41 From April 2005 nine new LAs, called second wave group (2WG) are implementing the LHA. The start dates for the 2WG are:

<b>Start date authority</b>	<b>Pathfinder</b>	<b>Method of introduction</b>
11 April 2005	Wandsworth	"Big bang"
18 April 2005	East Riding	"Big bang"
23 May 2006	St Helens	"Big bang"
30 May 2005	Argyle and Bute	"Big bang"
06 June 2005	South Norfolk	"Big bang"
13 June 2005	Norwich	"Big bang"
20 June 2005	Pembrokeshire	"Big bang"
04 July 2005	Guildford	"Big bang"
25 July 2005	Salford	"Big bang"

1.42-1.49

### *Phased start approach*

1.50 Under the "Phased start" approach

- tenants making **new** claims will be brought onto the LHA scheme from the go-live date for their Pathfinder authority
- tenants with **existing** awards will be converted to LHA at the earliest point that their claim would otherwise have been referred to the rent officer (excluding the routine referral after 52 weeks), for example due to a change of circumstances. Any new or renewal claim will bring the claimant into the scheme. Also, any change relating to a rent allowance, as defined in Reg 12A, will bring them into the scheme, for example a change in the number of occupiers that could currently trigger a re-referral to the rent officer

1.51 Existing claimants will also be brought into the new scheme if they move house. In this case, they would be effectively treated as a new claimant, and so would **not** be entitled to transitional protection when they move onto the scheme.

1.52-1.54

***Working Age claimants - go-live date to 4 April 2004***

- 1.55 Claimants in this category will go onto LHA on the earlier of the receipt of
- a new or renewal claim
  - relevant information regarding a claim, ie a Customer Management System (CMS) statement - only applicable in authorities where CMS has gone live
  - a notification of a change relating to a rent allowance that occurred on or after the go-live date, eg where the number of occupiers has changed, there has been a substantial change in the state of the property, there has been an increase in the rent under the terms of the tenancy, etc. This applies in relation to an award of HB where Maximum Rent was determined in accordance with regulation 11

1.56-1.59

***Working Age claimants - go-live date from 5 April 2004***

- 1.60 Claimants in this category will go onto LHA on the earlier of when you
- would have "routinely" referred to the rent officer, ie 52 weeks after your last referral under the existing rules
  - receive a notification of a change relating to a rent allowance that occurred on or after the go-live date, eg where the number of occupiers has changed, there has been a substantial change in the state of the property, there has been an increase in the rent under the terms of the tenancy, etc. This applies in relation to an award of HB where Maximum Rent was determined in accordance with regulation 11

1.61-1.64

***Pensioners - all cases from the relevant go-live date***

- 1.65 Claimants in this category will go onto LHA on the earlier of when you
- would have "routinely" referred to the rent officer, ie 52 weeks after your last referral under the existing rules
  - receive a notification of a change relating to a rent allowance that occurred on or after the go-live date, eg where the number of occupiers has changed, there has been a substantial change in the state of the property, there has been an increase in the rent under the terms of the tenancy, etc. This applies in relation to an award of HB where Maximum Rent was determined in accordance with regulation 11

1.66-1.79

1.80-1.99

## *Board and Attendance cases*

- 1.80 Cases must be referred at go live date for Big Bang authorities as any existing Rent Officer decision will be obsolete due to the fact that this decision is not based on whether a substantial part of the rent is attributable to board and attendance. All Board and Attendance cases must therefore be referred to the Rent Officer at go-live date in order for a decision to be made on substantiality.

*HB Reg  
11A(2)(e)(i) &  
(ii)  
HB Reg  
11A(6)(b)*

1.81-1.99

# *Establishing the maximum rent*

## *About this chapter*

- 2.00 This chapter explains
- the size criteria
  - Broad Rental Market Areas (BRMAs)
  - how LHAs will be set
- 2.01 Regulation 11A, a new regulation inserted into the Housing Benefit (General) Regulations, sets out when and how Pathfinder authorities must calculate a maximum rent (also known as standard local rate). This manual will use the term *maximum rent* for ease of reading.
- 2.02 A claimant's maximum rent will be the LHA that they are entitled to. This avoids the need for rent officers to examine every property and decide what level of rent is eligible for HB in each case.
- 2.03 The maximum rent will normally become the claimant's eligible rent, which is the figure used in calculating the claimant's HB entitlement.
- 2.04-2.09

## *The size criteria*

- 2.10 The LHA that a tenant will qualify for will depend on the number of occupiers and the area in which they live. The size criteria determine the appropriate number of rooms that the occupiers qualify for, see *Fig 1* below.

<p><b>One bedroom for</b></p> <ul style="list-style-type: none"><li><b>a</b> every adult couple</li><li><b>b</b> any other adult aged 16 or over</li><li><b>c</b> any two children of the same sex</li><li><b>d</b> any two children regardless of sex under age 10</li><li><b>e</b> any other child</li></ul> <p><b>Living rooms</b></p> <p>1-3 occupiers are entitled to one living room</p> <p>4-6 occupiers are entitled to two living rooms</p> <p>The number of kitchens and bathrooms is ignored for the purpose of this calculation, as it is assumed that all tenants are entitled to these.</p> <p><b>Note:</b> In cases when a child comes to stay with an absent parent, do not take the child into account when determining the number of rooms required by the claimant. Equally, if someone goes into hospital, do not consider reducing the number of rooms required.</p> <p><i>The Rent Officer (Housing Benefit Functions) Order 1997 Schedule 2 Size Criteria.</i></p>
---

**Fig 1:** Number of rooms occupiers qualify for

**Note:** See *Single claimants aged 25 years and over and couples with no dependent children.*

- 2.11 Using the categories shown at *Fig 1* above, the total number of rooms, ie bedrooms plus living rooms, will determine the rate of allowance that a claimant will qualify for. For example, a couple and their 14-year old child would be entitled to the rate for a three-roomed property, ie two bedrooms plus one living room.

- 2.12 Students, ie aged between 14-17 years of age, placed with host families should not be treated as a boarder or sub-tenant with a commercial let. Neither would they be treated as a non-dependant, in view of the short time that the students stay in the property. As the money received to host the students is more of an 'incentive payment' to cover extra living costs of the student, it would be viewed as income rather than a rental payment in respect of a third party and could be counted in full or disregarded, see *HB/CTB guidance Manual C3.665*. *HB Reg 3(1) & 3(2) 35(3)(b)*
- 2.13 When students stay for longer periods, a year or more, they could be treated as a boarder, sub-tenant or tenant and therefore included under the size criteria and the income received treated as rent, subject to consideration of commerciality.
- 2.14 Housing Benefit regulation 5(1) require the claimant and their family to occupy the dwelling as their home. Their family is defined in section 137 and includes those for whom the claimant is responsible. This term is defined in HB regulation 14, and HB regulation 15 determines those for whom the claimant cannot be held as being responsible. Foster children are included in HB regulation 15(3) as it is the local social services who are responsible for the child they have placed in the claimant's care. The foster child can not be a member of the claimant's family and so does not 'occupy' the dwelling for the purposes of HB regulation 5(1). Foster children should not be treated as being members of the claimants' household, therefore not treated as an occupier and consequently not included under the size criteria. *HB Reg 15(3)*

***Size criteria where tenants have a partner or household member who have no recourse to public funds, eg persons from abroad***

- 2.15 In the case of a couple where one party has no recourse to public funds and the other party does, the 'couple' rate is applied, provided that the person who has no recourse to public funds is **not** the claimant. *HB Reg 7A*
- 2.16 Similarly, where a person with no recourse to public funds is a member of the household of an LHA claimant they are included within the claimant's room entitlement under the size criteria.

2.17-2.19

2.20-2.21

### *Joint tenants*

2.20 Joint tenants will receive a rate of LHA based solely on the claimant's family, plus any non-dependants, sub-tenants or boarders of the claimant.

<p><b>Example</b></p> <p>Alice and Bob are joint tenants, living with Charlie, Bob's non-dependant.</p> <p><b>Pre LHA</b></p> <p>The rent officer referral would have shown three occupiers and the total rent payable.</p> <p>The rent for each joint tenant is the proportion each person is responsible for. As Bob has more of the property than Alice he may well be responsible for more of the rent. In this example the split is 30% for Alice and 70% for Bob.</p> <p>Bob's eligible rent would have been 70% of the relevant rent officer's decision less 100% of the non-dependant deduction.</p> <p>Alice's eligible rent would have been 30% of the relevant rent officer's decision.</p> <p><b>Post LHA</b></p> <p>Bob will be entitled to the three-room rate LHA that is then reduced by 100% of the non-dependant deduction.</p> <p>Alice (a single person living in shared accommodation) is entitled to the shared rate LHA.</p>	<p><i>HB Reg 10(5)</i> <i>HB Reg 63(1)</i></p> <p><i>HB Reg 10(5)</i></p> <p><i>HB Reg 11A(3)</i> <i>(b)(iii)</i> <i>HB Reg 63 (1)</i> <i>HB Reg 11A(3)</i> <i>(b)(i)(bb)</i></p>
---	---

### *Joint tenants with a shared non-dependent*

2.21 Joint tenants who have a **shared** non-dependent have the person counted for the size criteria but only have an apportioned non-dependent deduction, see *HBICTB Guidance Manual, Calculating the amount of HB*. *HB Reg 63(5)*

- 2.22 Although this may be fairly rare, it is worth having an example (in addition to the example that is already quoted of other types of joint tenants) because of the double counting of the non-dependent for the size criteria. *HB Reg 63(5)*

**Example**

John and Alex are joint tenant brothers whose father, Peter, also lives with them.

**Pre LHA**

The rent officer referral would have been made showing three occupiers and the total rent payable.

Each of the claimants, John and Alex would probably have had a maximum rent of 50% of the relevant rent officer decision. 50% of the appropriate non-dependant deduction would have been deducted to arrive at the eligible rent.

*HB Reg 10(5)*  
*HB Reg 63(5)*

**Post LHA**

John and Alex will each be entitled to a three-room rate LHA. This is because their father, Peter, is counted in each of the size criteria calculations. However the non-dependant deduction is still apportioned between them as the non-dependant is shared.

*HB Reg 11A(3)(b)(iii)*  
*HB Reg 63(5)*

- 2.23 A non-dependant is a person who
- resides with the claimant, and
  - is not a
    - Partner, or
    - dependant child of the claimant and/or their partner

See *HB/CTB Guidance Manual, Non-dependant deductions*.

2.24-2.29

2.30-2.40

### *Single claimants aged under 25 years*

2.30 Single claimants aged under 25 years, ie young individuals, who do not have a non-dependant living with them will be entitled to the standard rate for a room in shared accommodation. However, this will be based on a more generous definition than the existing Single Room Rent (SRR), which limits HB entitlement for this group of claimants to the rate for a room in shared accommodation. HB Reg 2  
HB Reg 11A(3)  
(b)(aa)

**Note:** This does not apply to under 25s who have the severe disability premium in their benefit assessment. Certain people under the age of 25 are not classed as a "young individual" therefore these would not be subject to the Shared rate LHA rules, see *HB/CTB Guidance Manual, Young people who are not young individuals*.

2.31 This new shared rate will be based on properties where, while the tenant has a room or bedsit of their own, all or some of the facilities are shared, eg kitchen/facilities for cooking, bathroom and toilet, and a room suitable for living in.

2.32 Single claimants aged under 25 years who have the Severe Disability Premium in their benefit assessment will not fall under the standard rate for a room in shared accommodation. They will be entitled to the same rate as a single claimant aged 25 years and over. This means that if they choose to rent a two-roomed property their LHA rate will be the two-roomed rate, see *Single claimant aged 25 years and over and couples with no dependent children*, however, should they choose to rent a room in shared accommodation they will receive the shared room rate LHA. HB Reg  
11A(3)(ii)(b)(aa)  
Sch 2 para 13

2.33-2.39

### *Single claimants aged 25 years and over and couples with no dependent children*

2.40 Single claimants aged 25 years and over, and couples with no dependent children, will be entitled to the rate for a two-roomed property, eg a one-bedroom flat or studio or other kind of self-contained accommodation, **provided they actually rent a property of at least this size**. This differs from the existing scheme, which fixes three separate Local Reference Rents (LRRs) for this group, ie a rate for a

- two-roomed property
- room in a shared house, ie SRR
- other one-bedroomed accommodation, eg studio flat, bedsit

- 2.41 However, if people in this category choose to live in a property where all or some of the facilities are shared, ie a property described in paragraph 2.31 above, they will be entitled to **only** the shared LHA rate.
- 2.42 The two room rate will apply to any single person aged over 25 living alone, a single person aged under 25 who is not a 'young individual, and couples without children or others living with them, so long as the claimant (and partner if they have one) has the exclusive use of
- two or more rooms. It will not matter if they share other facilities, or
  - one room, a kitchen or facilities for cooking, bathroom and toilet
- Note:** If they do not live in this category of accommodation then they are subject to the shared rate LHA, LAs may want to confirm the tenancy and living arrangements to ensure that the tenant has sole use of two rooms.
- 2.43 When a claimant reaches the age of 25 the LA should check to see if this affects the category of dwelling applicable to the claim.
- 2.44 Whether the claimant reaching the age of 25 affects the category of dwelling or not will depend on the type of accommodation they are in, if
- in shared accommodation then on turning 25 they may fall into the two-room category if they have two rooms for their sole use or have one room and exclusive use of kitchen, bathroom and toilet
  - they are still caught by the shared accommodation rate then notification of them turning 25 will not be a notification of a change which affects the category of dwelling applicable to the claim, and the LA does not have to determine a new LHA rate
- Note:** No notification of a change is needed where the change is a birthday. The claimant has a duty to report changes relating to their household under HB Reg 75(1), however 75(2) states that they are not required to report age changes, the LA should have procedures for identifying these.

2.45-2.49

### *Child reaching the age of 10 or 16*

- 2.50 When a child reaches the age of 10 or 16 the LA should check to see if this would affect the category of dwelling applicable to the award. Where the category of dwelling is affected the LA should apply the new LHA rate applicable on the child's birthday which will be effective from the following Monday.
- 2.51 If the change does not affect the category of dwelling applicable to the claim the LA does not have to take any action.

2.52-2.59

2.60-2.89

## *Care Leavers under 22*

2.60 A care leaver under 22 is not a “young individual”. Only a young individual is subject to the one room restriction. If the care leaver is in shared accommodation, pay one room rate, if they have sole use of two rooms or have one room with the exclusive use of kitchen, bathroom and toilet pay on two room rate. Once the care leaver reaches age 22 this is a change that affects the category of dwelling. If they have a partner, child or a non-dependant then they come under the normal size criteria.

*HB Reg (2)  
HB Reg 11A  
(3)(b)(i)(aa)*

2.61-2.79

## *Broad Rental Market Areas*

### *What is a BRMA?*

2.80 The BRMA is an area

- a** made up of two or more distinct areas of residential accommodation, each distinct area of residential accommodation adjoining at least one other in the area
- b** within which a person could reasonably be expected to live, having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping, taking account of the distance of travel (by public and private transport) to and from facilities and services of the same type and similar standard, and
- c** containing residential premises of a variety of types, and including such premises held on a variety of tenancies

2.81 Rent officers will be required to define the BRMA that an LHA will cover. The BRMA is based on the current concept of locality, which is used to determine LRRs and SRRs. BRMAs will be published by the LAs.

2.82 Both localities and BRMAs are areas containing a mixture of different types of residential accommodation within which someone could be expected to move and still have access to similar services of a similar standard.

2.83 The term “Broad Rental Market Area” will be used in place of locality, partly to avoid confusion between the two concepts, but also to give a more accurate impression of what “localities” actually are.

2.84-2.89

## *Conditions for setting a BRMA*

- 2.90 The conditions for setting a BRMA are
- there must be one or more BRMAs covering every part of the Pathfinder authority, but they must **not** overlap at all
  - the areas must be postcode-definable. This may go down to a detailed level, eg WC2N 6, if necessary but the first part of the postcode would normally be adequate, eg SW1
  - if a BRMA extends beyond the pathfinder authority's boundary, the rent officer must identify which parts are in each Pathfinder authority area
- 2.91 The rent officer can take account of rents in other similar areas where they believe a comparable market exists if
- there is an insufficient number of a particular category of properties in an area, or
  - the rent officer does not have enough information about the market to make an LHA determination
- 2.92 BRMAs are fixed independently of any individual property and so, once defined, will apply to all properties falling within that area.
- 2.93 As a result, it is possible that some claimants have their rent restricted by an LRR on the basis of a locality that differs from the BRMA across which the LHA is calculated. There will be a transitional protection scheme for any claimant who would otherwise lose out because of this. See *Appendix 4: Transitional protection* later in this manual for more information.

2.94-2.99

## *Setting the LHA*

- 2.100 When they have set the BRMAs, rent officers would then be responsible for setting the LHAs for different sizes of property in the area.
- 2.101 The rules are closely based on the current formulae for the SRR and LRR. The rates will be based on the mid-point between the highest and lowest value for properties of a given size in any area. **Note:** Exceptionally high and exceptionally low rents will be disregarded. The rates, whilst representing a broadly average rent for the area, do not represent a true mathematical mean or median.

## Establishing the maximum rent

---

2.102-2.119

2.102 Between 3-5 working days before the end of each month the rent officer will send each Pathfinder authority a list of LHAs for the following month for each BRMA falling totally, or partially, within the area of that Pathfinder. These figures must then be published, and all claims made within a month would be based on the same figures.

2.103-2.104

### *Example of rent officer's monthly update*

2.105 An example of the rent officer's monthly update report for a Pathfinder authority with three BRMAs (East, West and North) is shown below at *Fig 2*.

Category	Type	LHA for BRMA within Pathfinder authority (£per wk)		
		East	West	North
A	Shared accommodation	45.00	42.00	49.00
B	2-room property	65.00	62.00	69.00
C	3-room property	78.00	75.00	82.00
D	4-room property	88.00	85.00	92.00
E	5-room property	99.00	96.00	104.00
F	6-room property	111.00	108.00	115.00

*Fig 2: Example of rent officer update report*

2.106 Rent officers will routinely provide rates for all property sizes up to six rooms, but will be required to provide rates for larger properties if they

- are asked to do so by a Pathfinder authority because that authority has received a claim or an LHA pre-tenancy request for a larger property
- consider that larger house sizes are likely to be needed by benefit claimants in the area

2.107 These figures should be published in the normal way, and the rate would be valid for all claims relating to that size property in that month. The rates and BRMAs on which they are based should be made available to those members of the public who need to see them

2.108-2.119

## *Reviewing the BRMAs and LHAs*

- 2.120 Rent officers will be required to review the BRMA as often as it is thought appropriate, but will be required to review the LHAs each month. This follows the current practice of reviewing LRRs on a monthly basis. It will also give more certainty to claimants - the LHAs will remain valid until a known expiry date, rather than change at arbitrary times.
- 2.121 Providing a monthly review of LHAs is also expected to give a more accurate reflection of any market variation than if the rates were updated annually or six-monthly. Longer review periods might result in steeper changes to the LHAs, which could risk prompting unusual behaviour from tenants and landlords. For example, tenants may delay making a claim if they know that large increases to the LHAs would be likely at the end of the year.

2.122-2.199

## *Length of LHA award*

### *About this chapter*

#### 3.00 This chapter

- explains how long LHA awards normally last
- gives the three circumstances in which the eligible rent might be updated with a new LHA mid-year
- gives guidance on the date of claim

#### 3.01-3.09

### *Length of LHA awards*

- 3.10 Once an LHA has been used to establish a claimant's maximum rent, it will apply from the date of claim and continue to apply for a year unless an update is triggered by a change of circumstances, see *Change of circumstances* later in this section. Currently rent officer decisions are in use for at least 52 weeks.

#### **Example**

Claim made 7 October 2003.

Benefit paid on October LHA from 15 September 2003. (eg HB Reg 72(13) applied)

Anniversary falls 7 October 2004 and benefit is superseded from 11 October 2004 using the October 2004 LHA.

- 3.11 If an LHA has reached its anniversary date (one year hence) without change, the award will come to an end, except when the award is superseded in accordance with the new provision. This means that the anniversary date must be used to generate the new LHA. If the anniversary date falls on a Monday the effective date for the new rate will be the same day, if it falls on any other day of the week the effective date is the following Monday. If that benefit week falls in the following month, the LHA rate will still be that of the previous month, ie the month in which the anniversary fell. See *Appendix 3, Amendment Regulation 4: Maximum shelf-life for an LHA* for more information.

continued

## Length of LHA award

---

(3.11)-3.30

(3.11)

### **Example 1**

Claim received 28 October 2003. Benefit paid from 3 November 2003 using the October LHA. Anniversary falls on 28 October 2004. LHA reassessed using the October 2004 rate and paid from the week following the anniversary, 1 November 2004.

### **Example 2**

Claim received 6 September 2003. Benefit paid from 13 September 2003 using the September LHA. Anniversary falls on 6 September 2004. LHA reassessed using the September 2004 rate and paid from 6 September 2004, Monday on which the anniversary fell.

3.12-3.19

## *Leap Years*

3.20 Identifying the anniversary date is usually straightforward, the anniversary for 28th February 2004 is 28th February 2005. However, when we move to 29th February there is a problem as there is no 29th February in 2005. Applying the same number of days between the original date and its anniversary would produce an anniversary date of 1st March, which would defeat the purpose of the regulations which is to ensure that when the February 2004 rate was applied in a claimant's case, the February 2005 rate would be used for the purpose of uprating.

3.21 To make sure the February 2005 rate is used, the anniversary will have to be treated as falling on the last day of February which, in a non-leap year, is 28th February.

3.22-3.29

## *Changes of circumstance*

3.30 Under the new LHA scheme, there are four circumstances in which the eligible rent might be updated with a new LHA mid-year *HB Reg 11A(1)(b)(iv)(aa)*

**a** If a change occurs which might entitle the claimant to a different category of allowance, eg if there was a change in the number of occupiers. *HB Reg 11A(1)(iv)(cc)*

**b** If the claimant's rent rises and provision for this increase was included in the original tenancy agreement at the time the benefit claim was made. *HB Reg 11A(1)(b)(iii)(bb)*

In these cases, the new LHA for the month when the change happens (which may, or may not differ from the existing allowance) would be applied, subject to the transitional protection rules. *& (iv)(dd)*

continued

- (3.30) **c** Since the end of benefit periods a change of address might result in a new LHA mid-year.
- d** The LHA applied to a case might change if there is a death in the household which is not captured by **a** because it does not trigger a change in the number of rooms the claimant is entitled to, eg the claimant's spouse dies, see *Protection following death* later in this manual. *HB Reg 11A(1)(b)(iv)(bb)*

3.31-3.39

### *Date of claim*

- 3.40 Under the current rules, LRRs are based on the state of the local housing market on the date that the LA refers a case to the rent officer. Normally this date will be shortly after the claim.
- 3.41 However, if the LA delays processing the claim, the rent officer referral could be a few weeks or months after the initial claim. For example, if the date of claim is January but the application to the rent officer is made in April the LRR is based on April not January. As a result, the claimant's LRR might not actually reflect the housing market as it was at the time of the original claim.
- 3.42 Under the new scheme, claimants will get the LHA that was in force on their date of claim. Likewise, a claim may be made in January in advance of the period to which it relates (say March). In those cases, the January LHA would be used when payment is eventually made. So, even if the Pathfinder authority does not process the claim until April, the January LHA will be used. This should not cause administrative difficulties, since the Pathfinder authority will have a complete list of LHAs for past months back to the start of the new scheme for that Pathfinder authority. The new scheme will not apply where the date of claim or change pre-dates the beginning of the scheme for that Pathfinder authority.
- 3.43 The change should ensure that claimants have their benefit based on a figure that more accurately matches the state of the housing market at the date of their claim or change of circumstances.

**Note:** Regulation 69 continues to govern the calculation of weekly amounts and how to calculate the daily rate of LHA for mid-week commencement/cancellation on vacation cases. Given the Rent Service will only supply weekly amounts of LHA, you will need to multiply them up to achieve equivalent monthly figures.

3.44-3.49

3.50

***Claim backdated after LHA scheme starts***

3.50 If a claim is backdated to a point before the LHA go-live date the claim comes under the rules in force on that deemed date. For backdating to occur HB Reg 72(15) must be satisfied.

**Example**

**Big bang sites** - for this example assume LHA start date 1 March 2004.

Claim received 2 April 2004 with a backdate request. Backdate is successful and claim is backdated to 7 January 2004.

Process the claim using the rules in force on 7 January 2004. The Rent Service will accept a rent officer referral, because LA is past the LHA start date.

The claim will convert to LHA on 1 March 2004 and transitional protection should be considered. The March LHA figure will be used. The anniversary date will be 1 March 2005.

If the claim had been paid as LHA before the backdate decision is made replace the original decision using Housing Benefit and Council Tax Benefit (Decision and Appeals) Regulations 2001, Reg 4(a)(i) or Reg 7(2)(a).

If an overpayment occurs as the result of the revision or supersession consider whether it is the result of an official error and if so, is it recoverable.

See *Housing Benefit and Council Tax Benefit Overpayments Guide, Chapter 2*.

continued

(3.50)

**Phased sites** – for this example assume LHA start date is 1 March 2004.

Claim received 2 April 2004 with a backdate request. Backdate is successful and claim is backdated to 7 January 2004.

Process the claim using the rules in force on 7 January 2004. The Rent Service will accept a rent officer referral, once an LA is past the LHA start date. The claim dated 7 January 2004 is processed using the rent officer decision.

The claim converts to LHA when

- a new claim is received after the LHA start date, eg following an extended payment
- there is a change in circumstance that would normally have required a new rent officer decision, eg change of address or change to the number of occupiers
- the LA is required to apply for a new rent officer decision following the expiry of the 52 weeks period counting from the date the last referral was made

Transitional protection must be considered at the time of conversion. The anniversary date will be based on the date that triggers the conversion.

If the claim had been paid as LHA before the backdate decision is made replace the original decision using Housing Benefit and Council Tax Benefit (Decision and Appeals) Regulations 2001, Reg 4(a)(i) or Reg 7(2)(a).

If an overpayment occurs as the result of the revision or supersession consider whether it is the result of an official error and if so, is it recoverable.

See *Housing Benefit and Council Tax Benefit Overpayments Guide, Chapter 2*.

## Length of LHA award

---

3.51-3.60

- 3.51 If a claim is backdated to a date after LHA started in your LA, apply the LHA which was in force on the date of claim.

### **Example 1**

Claimant makes a claim in June, and successfully asks for it to be backdated to February. Go-live date for LA was January, so claim is assessed and LHA rate applicable in February awarded. The anniversary date is changed to February.

### **Example 2**

Claimant makes a claim in June, and in July successfully asks for it to be backdated to March. Go-live date for LA was March, so claim is assessed and LHA rate applicable in March awarded. Any over/underpayment resulting from initial payment at the June rate will need to be recovered/reimbursed. The anniversary date is changed to March.

- 3.52 The date of claim means the date the claim is made or treated as made under existing regulation 72. The term covers both the date when the claim is initially made and the date it is backdated to. You should use the earlier date when calculating the claimant's allowance.
- 3.53 The LHA rate is decided by the claim date. When a claim is backdated the claim date is changed. Use this changed date (deemed date) to decide which months LHA rate to use, eg claim made 2 August 2004 but successfully backdated to 30 June 2004. The June LHA would be used in the calculation of benefit but the commencement date may be 5 July 2004 when HB Reg 65(1) is applied.

3.54-3.59

## *Mid year updates and changes of circumstance*

### *Mid year updates*

- 3.60 A claimant's eligible rent can be updated mid year if their rent increases and provision for this increase was included in the original tenancy agreement at the time the claim was made.

- 3.61 However, this does not undermine the general principle that HB should be based on an allowance, rather than a tenant's actual rent. When the rent increase takes place, the tenant's actual rent will not be taken into account in the reassessment. Instead, simply give the LHA in force at that time, which may or may not differ from the rate the claimant received at the start of the tenancy.
- 3.62 If the rent increase is part of the original tenancy agreement (the one that was in force at the date of claim), this is a change of circumstance allowed in the *HB Reg 11A(1)(b)(iv)(cc)* regulations whereby LHA can be updated mid year. Allowing a new LHA to be triggered in this way will help ensure that the annual update of a claimant's LHA aligns with their landlord's review of their rent.

**Example:****Weekly - Ongoing liability**

Claim made on 7 March 2005 and liability ongoing, LHA paid from 14 March 2005. Anniversary date is 7 March 2006. However tenancy agreement states that rent will increase from 1 September 2005 (weekly liability).

*HB Reg 69(5)(b)*

Supersede the award with effect from 29 August 2005 using the September LHA rate and change the anniversary date to 1 September 2006

**Weekly - New liability**

Claim made on 9 March 2005 and is a new liability. LHA paid from 7 March 2005. Anniversary date is 9 March 2006. However tenancy agreement states that rent will increase from 1 September 2005.

Supersede the award with effect from 29 August 2005 using the September LHA rate and change the anniversary date to the 1 September 2006.

**Monthly - Ongoing liability**

Claim made on 7 March 2005 and liability ongoing, LHA paid from 14 March 2005. Anniversary date is 7 March 2006. However tenancy agreement states that rent will increase from 1 September 2005 (monthly liability).

continued

## Length of LHA award

---

(3.62)-3.72

(3.62)

Supersede the award with effect from 1 September 2005 using the September LHA rate and change the anniversary date to the 1 September 2006.

### **Monthly – New Liability**

Claim made on 9 March 2005 and is a new liability. LHA paid from 9 March 2005 (part week payment required). Anniversary date is 9 March 2006. However tenancy agreement states that rent will increase from 1 September 2006.

*HB Reg 69(2)(b)*

Supersede the award with effect from 1 September 2005 using the September LHA rate and change the anniversary date to the 1 September 2006.

**Note:** If there is no change to the monetary value of the LHA the decision maker should make a decision not to supersede (but the anniversary date should still be amended). This is an appealable decision.

3.63-3.69

### *Changes of circumstance*

3.70

Where the LA receives notification of a change of a kind which affects the category of dwelling applicable to the claim, it must determine a new LHA rate and the anniversary date should be amended to reflect this change.

*HB Reg*

*11A(1)(b)(iv)(aa)*

3.71

If there is a change of circumstances which results in the calculation of a new LHA, reassess the new LHA and change the anniversary date.

### **Example**

The date the claim was received was 6 October 2003. The next review is 6 October 2004.

However, the claimant notifies a change of circumstances that occurred on 8 December 2003, and a new LHA figure has to be determined. The next review is now 8 December 2004, **not** 6 October 2004.

3.72

If the change notified does not affect the category of dwelling applicable to the claim, the LA does not have to determine a new LHA and the review date should not be amended.

- 3.73 The death of an occupier listed in HB Reg 10 will require the LA to apply a new LHA rate, however, if this reduces the eligible rent then refer to protection 11A(1)(b)(iv)(bb) rules. *HB Reg*
- 3.74 A rent increase that is included in the terms of the original tenancy agreement (the one in force at the date of the claims) will require the LA to apply a new LHA rate and change the anniversary date. This will change the anniversary date even if the LHA rate remains unchanged or the category of dwelling is affected or not. This is not applicable to claims where a rent increase is not included in the terms of the original tenancy agreement. *HB Reg 11A(1)(b)(iv)(cc)*
- 3.75 A change of address, which is now a change of circumstance, will require the LA to apply a new LHA thus changing the anniversary date. *HB Reg 11A(1)(b)(iv)(dd)*
- 3.76 When the LHA has been recalculated, it takes effect from the benefit week that starts on or after the date the change of circumstances occurred. If that benefit week falls in the following month, the LHA rate used will still be that for the previous month, ie the month in which the change occurred.
- 3.77 The rules on applying the new rate when notification is late are unchanged. If the claimant has good reason for the late notification, the new eligible rent will apply from the date of change of circumstances. If there was no good reason and the change was
- favourable, it will apply from the date of notification
  - unfavourable, it will apply from the date of change of circumstances
- 3.78 However, if the claimant does not report a change of circumstances on time, the new maximum rent is based on the LHA applicable at the time of the change, **not** when the change was notified.

**Example**

Claimant circumstances change on 1 October, but the authority is not notified until 3 November. The claimant's new maximum rent is based on the October LHA, **not** the November LHA.

**Note:** The anniversary date will still be counted from the date the change occurred even if the notification was received late and benefit is superseded from a later date.

## **Length of LHA award**

---

3.79-3.99

3.79 A change of address will result in a new LHA mid-year. Where the claimant is single and aged 25 years and over or where they are couples with no dependant children their accommodation details are needed in order to establish if they are entitled to the shared accommodation or two room rate of LHA. The LA must therefore query this with the claimant, eg a statement advising that they live in self contained accommodation would suffice, alternatively a form requesting details of the accommodation being rented.

3.80-3.99

## *Rapid Reclaims*

- 3.100 Rapid reclaim is a means for quick entry back into HB/CTB when a claimant leaves Income Support (IS) or Jobseekers Allowance (Income based) (JSA(IB)) for work, but the employment does not last for a full 12 week period. The rapid reclaim form confirms that there has been no change in their circumstances since their last claim so that the HB/CTB can be reinstated with minimal delay (this must be within 12 weeks otherwise it is not valid).
- 3.101 The rapid reclaim is treated as a new claim if there is a break in entitlement and this will trigger conversion to LHA for a phased site or if already on LHA a new rate because it is a different claim.
- 3.102 If the claimant qualifies for HB/CTB for the in-work period then the in-work claim would be a change of circumstances and so conversion to LHA would not be necessary. If the claimant subsequently goes back onto IS or JSA within the 12 week period and completes a rapid reclaim form then this would be a change of circumstances (there would be no up-rating unless the household had changed). This would not trigger conversion to LHA for a phased site. See *HB/CTB Guidance Manual, Rapid Reclaim*.

### **Example 1**

Tenant A leaves IS on 9 June 2004 as they have gone into full time employment. Their claim is cancelled with effect from 14 June 2004. As their employment did not last they re-apply for benefit and a rapid reclaim form is received on 13 July 2004. Their claim is put back into payment with effect from 19 July 2004. As there is a break in their entitlement the rapid reclaim is treated as a new claim and such is converted to LHA for phased sites.

### **Example 2**

Tenant B leaves IS on 9 June 2004 as they have gone into full time employment. The claim is superseded for an in work period and qualify for HB/CTB with effect from 14 June 2004. As their employment did not last they reapply for benefit based on IS and a rapid reclaim form is received on 13 July 2004. Their claim is superseded with effect from 19 July 2004. As there is no break in their entitlement the rapid reclaim is treated as a change of circumstances and their claim would not be converted to LHA for phased sites.

3.103-3.199

# *Paying Local Housing Allowance*

## *About this chapter*

- 4.00 The Local Housing Allowance (LHA), in line with the aims of the scheme, will normally be paid to the claimant rather than to the landlord. The provision in existing Regulation 94 for claimants to choose to have their rent paid to the landlord will be removed.
- 4.01 This chapter explains the circumstances when it can be paid to landlords.
- 4.02-4.09

## *Paying the LHA to landlords instead of tenants*

- 4.10 In recognition of the risk that some tenants may struggle with the responsibility of budgeting for, and paying, their rent, safeguards will be put in place. Pathfinder authorities will have discretion to make payment to the landlord if they consider
- a** that the tenant is likely to have difficulty managing their own affairs. For example, if tenant is known to have a learning disorder or a drug/ alcohol problem that would mean they are likely to have difficulty handling a budget, payment could be made to the landlord
  - b** it is improbable that the claimant will pay their rent. For example, if the Pathfinder authority is aware that the tenant has consistently failed to pay the rent on past occasions without good reason, payment might be made to the landlord

See *Identifying vulnerable tenants* later in this manual.

- 4.11 Allowing the Pathfinder authority to use their discretion in identifying cases where payment should be made to the landlord was thought to be more effective than attempting to define a precise list of circumstances when direct payment would be necessary. Given the different circumstances of individual tenants, it would be extremely difficult to identify only and all those claimants who would have difficulty handling a budget or who would be unlikely to pay their rent.

## Paying Local Housing Allowance

---

4.12-4.18

- 4.12 An additional rule will apply in those Pathfinder authorities that transfer their existing caseload to the LHA scheme in a 'big bang'. (The 'big bang' approach would transfer the entire caseload on the start date whereas the 'phased' approach would transfer existing claimants on to the scheme when their rent would ordinarily be referred to the rent officer.)
- 4.13 If a claimant was having their benefit paid to the landlord before the transfer, the Pathfinder authority will be able to continue paying the landlord for up to six months (or until the claimant's LHA is next reviewed if that is sooner). This will allow time for the Pathfinder authority to make decisions about whether or not payment to the landlord would need to be continued in individual cases.
- 4.14 Following existing Regulation 94, Pathfinder authorities will also have discretion to make the first payment of LHA by cheque sent to the tenant but payable to the landlord. This may be necessary in cases where a large amount of benefit would be paid because the claim was backdated or because there has been a delay in processing the claim. Making the first payment direct to the landlord is also expected to provide a good indication that the tenancy has actually been established. *HB Reg 94(1A)*  
*(a)(b)*
- 4.15 As now, payment to the landlord will be required if a tenant
- has built up rent arrears of eight weeks or more, or
  - is having deductions from their Income Support (IS) or Jobseeker's Allowance (JSA) to pay off rent arrears
- 4.16 If this occurs, the Pathfinder authority will have discretion to continue paying direct to the landlord when the level of arrears drops to below eight weeks. The use of an eight-week period ties in with the period of eight weeks in which a tenant can fail to pay the rent without facing eviction action.
- 4.17 You should regularly review cases where direct payment has been made under paragraph 4.10 **a** or **b** above, or where arrears have been cleared. Rarely should direct payment be made in perpetuity. Vulnerable tenants, or those with rent arrears, should be encouraged to seek budgeting advice.
- 4.18 In cases when payment is made direct to the landlord and
- **there are no arrears**, the amount payable to the landlord will be limited to the amount due in rent and any excess will be paid to the tenant

continued

- (4.18) • **it has been established that the tenant is in arrears with the rent,** you may pay any excess LHA (over and above the weekly or monthly rent due) to the landlord, until such time as the arrears have been cleared

**Note:** You cannot use the excess to pay the landlord more than the tenant owes in rent and arrears of rent, eg it cannot be used to pay for repairs due to damage to the property caused by the tenant.

- 4.19 Excess benefit is benefit which the tenant may use as they see fit. Where they have moved to a new address leaving rent arrears, their benefit at their new address may be made direct to their landlord, as it will be seen that it is improbable that they will pay their rent. Their previous landlord cannot be paid the excess to reduce the rent arrears.

4.20-4.29

### *Split overpayments*

- 4.30 Where an overpayment has been calculated and is deemed recoverable it is recoverable from the claimant or the person to whom the benefit was paid, eg the claimant's appointee, agent or landlord. If it has been paid to the landlord, it can either be recovered from the landlord or the claimant as the authority chooses. Where the overpayment is to the claimant it can only be recovered from the claimant. *HB Reg 101(1) (a)(b) and 101 (2) HB Reg 75(3)(b)*
- 4.31 Where there is split liability for an overpayment the authority can recover from either or both the landlord and tenant. See *Social Security Administration Act 1992 75(3)(b), HB/CTB Overpayments Guide, Who are you going to recover from?*

### *Recovery of overpayments*

- 4.32 Anyone paid under regulations 92, 93 and 94 are an affected person and as such recovery can be made from them. They would be receiving the payments of HB and so would be a person affected. *HB Reg 101(2)(a)*

### *Payment on account*

- 4.33 The same rules apply to LHA claimants as to non-LHA claimants, ie the Pathfinder Authorities duty to make payment on account arises at the latest on the 14th day after the claim is made. If no request for further information, etc has been made by that date or a request has been made, but the claimant has good cause for failing to supply the material requested, the authority must make a payment on account. *HB/CTB Guidance Manual A6, Payment on account.* *HB Reg 91*

4.34-4.39

## ***DWP deductions to cover rent arrears***

4.40 Any landlord can ask the DWP for deductions from IS, JSA or Pension Credit guarantee credit to cover rent arrears. However, deductions can only be made for existing tenants, therefore no assistance can be rendered to previous landlords of a tenant where the tenant has vacated leaving rent arrears and has moved to another privately rented accommodation. This provision is for their current landlord only. Third party deductions from benefits are there to help vulnerable individuals deal with debt - deductions are only made where a failure to do so would place an individual at risk. They are only made to prevent evictions, imprisonment or to maintain essential supplies, eg heating and water.

4.41-4.99

---

# *Identifying vulnerable tenants*

## *About this chapter*

- 5.00 This chapter deals with
- vulnerability and what it is
  - people who should not be considered as vulnerable
  - identifying potentially vulnerable tenants
  - investigating potential vulnerability
  - possible indicators of vulnerability
  - making a decision
  - reviewing decisions

## *Data Protection*

- 5.01 As always, you must ensure you have the claimant's consent to approach individuals or organisations for evidence, unless there is a legislative "gateway", eg between LAs and DWP.

5.02-5.09

## *What is vulnerability?*

- 5.10 Vulnerability is not actually used as a word in the regulations, but for the purposes of LHA, it means a description of an LHA claimant who, in the wording of the regulations:

*"the pathfinder authority considers...is likely to have difficulty in managing his affairs"* (Reg 94 of the HB (General)(Local Housing Allowance) Regulations 2003, inserting sub paragraph (1C)(b)(ii))

- 5.11 We will consider the indicators of vulnerability later in this chapter.

5.12-5.19

5.20-5.29

## *People who should not be considered as being vulnerable*

5.20 Do **not** consider as being vulnerable

- people who have been appointed to act on behalf of a claimant who is “unable for the time being to act” **and**
- the claimants they act for, until such time as they cease to have an appointee acting for them

## *Identifying potentially vulnerable claimants*

5.21 Before deciding whether a claimant meets the criteria of vulnerability, you will first need to identify potential cases.

5.22 You will not be expected to be pro-active in identifying someone as potentially vulnerable, although there may be occasions when HB staff will be aware of a claimant’s history through previous dealings or hold records, and may choose to act on that knowledge.

5.23 In most cases, you will identify potential cases through representation, either in person, on the phone or in writing, by one or several of the following sources:

- the claimant
- the claimant’s
  - family and/or friends
  - landlord
  - General Practitioner (GP)
  - Probation Officer
- administrators of Deposit Bond Guarantee Schemes
- welfare groups, including money advisors
- Social Services
- Department for Work and Pensions, ie Jobcentre Plus, The Pension Service

**Note:** This list is not exhaustive

5.24 Always seek written (signed) representation from these sources. You must investigate potential vulnerability when you receive a written representation. This is particularly important since the claimant may, by definition, be the least likely of the above sources to actually come forward first.

5.25-5.29

## *Investigating potential vulnerability*

- 5.30 This section covers the procedures you should follow after you have received a representation.
- 5.31 You should always seek to interview the claimant, unless you already have satisfactory written evidence from them. Occasionally the claimant will not be capable of providing answers to your questions although in most of these cases an appointee should already be acting on their behalf, see *People who should not be considered as being vulnerable* earlier in this chapter.
- 5.32 You should also obtain, where practicable, written evidence from any other party identified as relevant. This does not have to be one of the above sources. The written evidence does not have to be addressed to the council - it could be something that pre-dates your investigation, but see *Data Protection* earlier in this chapter. The older the evidence however, the less relevant or reliable it is likely to be.
- 5.33 You should attach degrees of weight to each source of information.
- 5.34 Accept without question evidence from
- Social Services
  - GP
  - DWP
  - reputable financial institutions and courts
- 5.35 You should normally accept evidence from welfare groups, such as Citizens Advice Bureaux. If the person is in receipt of a rent deposit guarantee, consider evidence from the rent deposit scheme.
- 5.36 Evidence from the claimant, their friends and family is important, but it should be borne in mind that some claimants will want to do everything possible to secure direct payment to their landlord.
- 5.37 You should be cautious when considering evidence from a landlord, given their direct interest in the outcome. Landlords do however have a valid role to play, but their evidence alone (or together with the claimant's) should not be regarded as sufficient for a decision that vulnerability has been satisfied.
- 5.38 Where evidence of vulnerability has been requested, it is reasonable to expect a response. Where no response is received, this should not necessarily be regarded as sufficient for a decision that vulnerability has been satisfied.

5.39-5.41

5.39 Where there are age/disability implications evidence should still be pursued. The decision is about financial management not solely on whether the tenant cannot look after their affairs. Disability can be taken into consideration but evidence should be requested in the usual manner.

### *Possible indicators of vulnerability*

5.40 By indicators we mean both the causes and the effects of vulnerability. You will need to consider either, or sometimes both, in any given case. You must never decide a claimant is vulnerable simply because they match one of the indicators below. They are indicators rather than criteria, and you must consider each case on its merits.

#### *Causes*

5.41 You may have received a representation but no actual evidence of an outcome of vulnerability, see *Effects* later in this chapter, due perhaps to the fact that until now the claimant's landlord has been in receipt of direct payments. In these cases you will need to consider an individual's current circumstances in order to decide whether they satisfy the vulnerability test.

- **People with learning disabilities** - ranging from the mild to the severe. At the severe end, appointee action should normally have been taken, so you will usually only need to consider people with slight learning disabilities. Consider evidence from
  - care workers
  - GP
  - Social Services
  - DWP, etc
- **Medical conditions** - those that seriously impair a person's ability to manage on a day to day basis, eg mental illness (schizophrenia, depression, age-related mental deterioration such as early stages of Alzheimer's disease or senile dementia). Also those suffering from terminal illness. Consider evidence from
  - care workers
  - GP (letters of referral to hospitals, etc)
  - hospital
  - Social Services, etc

continued

- (5.41)
- **Illiteracy, or an inability to speak English** - consider evidence from welfare groups etc
  - **Addiction to drugs, alcohol or gambling** - consider evidence from
    - GP
    - hospital
    - care workers
    - Social Services
    - support organisations for people with these addictions
  - **People fleeing domestic violence/single homeless (care leavers)/ people leaving prison** - consider evidence from
    - Social Services
    - probation officers
  - **Living alone** - there is no doubt that the chances of a person meeting the vulnerability criteria increases when they live alone and have no support. However, this is likely to be a contributory factor in your assessment rather than a “clincher”

## *Effects*

- 5.42
- Sometimes you will also be able to consider effects that demonstrate vulnerability. Among the main ones are
- **severe debt problems/ recent County Court Judgements** - look for evidence from help groups, creditors, courts, solicitors, etc
  - **undischarged bankruptcy** - the court order should be sufficient evidence
  - **an inability to obtain a bank account** - ask for letters from banks and evidence from money advisers
  - **DWP is making payment of Income Support (IS) or income-based Jobseeker’s Allowance (JSA(IB)) in respect of housing costs** - housing costs include service charge, utility bills *which are part of the rent*. You should only consider this a vulnerable case if part of the debt is still outstanding
  - **the person is in receipt of Supporting People (SP) help (some of these will have already been covered by the above categories)** - consider evidence from social services and support providers. Authorities may consider a Transitional HB/ SP flag as sufficient evidence of vulnerability alone

continued

(5.42)-5.54

- (5.42)
- **the person is in receipt of help from a homeless charity** - consider evidence from the charity
  - **an inability on the part of the tenant to provide you with evidence of their vulnerability** - you may decide as a last resort that this fact alone is sufficient to establish vulnerability. However, this option should not become a convenient “fall-back”. LAs can only make a decision on available information and evidence of vulnerability should be made available. In exceptional cases a favourable decision can be made if the pathfinder can be satisfied that the information is correct, even if not backed up by evidence. If evidence is not available the pathfinder may be able to use information from personal interviews and local knowledge, however, we want to avoid rewarding laziness or apathy.

5.43-5.49

### *Making a decision*

- 5.50 You must decide when you have gathered sufficient information and evidence to make a decision on vulnerability.
- 5.51 Do not delay payment of HB in order to await the outcome of your decision. Consider making payment to the claimant pending the outcome. Where you decide to make payment to the landlord, you should set a firm deadline for concluding your enquiries and making a decision having regard to all the available evidence. Where the landlord is currently being paid, this would continue pending a decision on vulnerability. How the claimant handles these initial payments may, in fact, help you to reach a decision on vulnerability.
- Note:** A first payment can be given to the claimant, but made payable to the landlord.
- 5.52 If you have been unable to establish the facts to your satisfaction because the claimant has failed to co-operate in your investigation, you must decide whether or not that failure to co-operate does in itself demonstrate vulnerability. Where evidence of vulnerability has been requested, it is reasonable to expect a response. Where no response is received, this should not necessarily be regarded as sufficient for a decision that vulnerability has been satisfied.
- 5.53 In some cases it will be obvious whether the person is vulnerable, in others you will need to reach a decision by carefully balancing the facts.
- 5.54 Make a record of your decision and issue a letter to the claimant explaining it.

- 5.55 If the decision is to pay the landlord because the tenant is deemed vulnerable, *HB Reg 10 (1)* and there is excess entitlement due to the LHA award, pay the landlord the full *HB Reg 93 (2A)* contractual rent (ineligible charges such as fuel and water would not be deducted as they are a condition of the tenancy agreement and have to be paid as a condition of occupation of the dwelling). If, however, the service charges are “not a condition of occupation of the dwelling”, eg optional laundry charge
- deduct these from the LHA amount, and
  - pay the difference to the landlord
  - any excess to the customer

5.56-5.59

## *Reviewing a decision*

- 5.60 There are two types of review that you will undertake
- a on appeal from a relevant person, ie the normal DMA process
  - b a review of circumstances some time after your decision, to establish whether it is still appropriate
- 5.61 You will already be familiar with procedures relating to **a**, see *Appeals and redeterminations* earlier in this manual. The “person affected” rules will not change as a result of the LHA. A landlord may appeal against a decision made under Regulation 93 or 94, as amended by the LHA Regulations.
- 5.62 On **b**, you should only set a review date when you have decided vulnerability is satisfied (the DMA process will cover cases where the claimant wants to appeal against a decision that vulnerability is not satisfied). Set the review for a date appropriate in that particular case. Occasionally you may consider that a review is not appropriate - if it is long term disability such as senility it would not be fitting to set a review date. However, for conditions where change is possible a review date should be set.
- 5.63 Claimants deemed vulnerable (and indeed those not, but who did not miss by much) should be encouraged to seek support and advice, either elsewhere in the council or from voluntary groups, to enable them to be in a better position to manage their affairs. This could be anything from money advice to tackling more fundamental underlying issues like health, for example.
- 5.64 You may decide a claimant is not vulnerable but nevertheless there may be a likelihood that they will not pay their rent. You should then consider the case under the rules on ‘unlikely payers’, see *Identifying people who are unlikely to pay their rent*.

## Identifying vulnerable tenants

---

5.65-5.99

- 5.65 When setting a review period consider each case individually and set the review period for an appropriate amount of time, eg when the customer has a
- condition that will not improve, a review period is not necessary
  - previous history of rent arrears, the review period should be set for approximately three months

5.66-5.99

## *Identifying people who are unlikely to pay their rent*

### *About this chapter*

- 6.00 This chapter deals with
- people who are unlikely to pay their rent
  - people who should not be considered as falling within this category
  - identifying 'unlikely payers'
  - investigating potential 'non-payers'
  - indicators of probable non-payment
  - making a decision
  - reviewing decisions

### *Data Protection*

- 6.01 As always, you must ensure you have the claimant's consent to approach individuals or organisations for evidence, unless there is a legislative 'gateway', eg between LAs and DWP.

6.02-6.09

### *Who is an 'unlikely payer'?*

- 6.10 The regulations indicate that direct payments can be made where
- "the pathfinder authority considers that it is improbable that the claimant will pay his rent".

6.11-6.19

6.20-6.39

## *People who should not be considered as falling within this category*

6.20 Do **not** consider as being unlikely payers

- people who have been appointed to act on behalf of a claimant who is 'unable for the time being to act' **and**
- the claimants they act for, until such time as they cease to have an appointee acting for them

6.21-6.29

## *Identifying potential unlikely payers*

6.30 Before deciding whether a claimant meets the criteria of being an unlikely payer, you will first need to identify potential cases.

6.31 You will not be expected to be pro-active in identifying someone as potentially an unlikely payer, although there may be occasions when HB staff will be aware of a claimant's history through previous dealings or records held, and may choose to act on that knowledge.

6.32 In most cases, you will identify potential cases through representation, either in person, on the phone or in writing, by one or several of the following sources:

- the claimant
- the claimant's
  - family and/or friends
  - landlord
  - Probation Officer
- administrators of Deposit Bond Guarantee Schemes
- welfare groups, including money advisors
- Social Services
- Department for Work and Pensions, ie Jobcentre Plus, The Pension Service

**Note:** This list is not exhaustive. Always seek written representation from these sources.

6.33-6.39

## *Investigating an unlikely payer*

- 6.40 This section covers the procedures you should follow after you become aware of a possible case.
- 6.41 When you receive verbal or written notification indicating the claimant will not pay their rent, you must try to substantiate this. You may choose to interview the person and obtain past evidence of 'bad debts', which may or may not include rent arrears, for details of deductions from benefit in respect of none payment of rent see *Paying Local Housing Allowance*. To this extent, this test is likely to be based on past behaviour to a greater degree than the vulnerability test.
- 6.42 It will not be sufficient to make direct payments simply because, eg the claimant has said they are not going to pay their rent. You will need to find out why they made this statement.
- 6.43 If you believe the statement has been made *simply* to trigger direct payments, do not make such payments.
- 6.44 When considering past behaviour evidence must be compelling, the odd missed payment here and there should not be enough. Evidence must show a sustained period of non-payment. Consider the following
- look for early evidence where it appears that the tenant is unlikely to pay their rent (you should already be encouraging landlords to report any missing rent payments at the earliest opportunity). The eight week rule is intended to be used as a last resort only
  - how far back are the missed payments (you should consider more recent history of arrears, eg proof of one payment missed 18 months ago is not sufficient as evidence that the claimant will not pay their rent
  - has the landlord shown that they have tried to obtain the missing payments, eg have they taken out a possession order or court order
  - is the tenant suffering from money issues rather than won't pay - if so budgeting advice may be more appropriate
- 6.45 You should recognise that a person can legitimately withhold their rent, eg in a dispute with the landlord over repairs or maintenance.

6.46-6.49

6.50-6.59

### *Making a decision*

- 6.50 You must decide when you have gathered sufficient information and evidence to make a decision on whether the claimant is an unlikely payer.
- 6.51 Do not delay payment of HB in order to await the outcome of your decision. Consider making payment to the claimant pending the outcome. How they use such a payment should contribute to your ultimate decision. If you decide to make payment to the landlord, you should set a firm deadline for concluding your enquiries and making a decision having regard to all the available evidence. When the landlord is currently being paid, this would continue pending a decision about the claimant making their payments.
- Note:** A first payment can be given to the claimant, but made payable to the landlord.
- 6.52 If you have been unable to establish the facts to your satisfaction because the claimant has failed to co-operate in your investigation, you must decide whether or not that failure to co-operate does in itself demonstrate that they may be unlikely payers.
- 6.53 Make a record of your decision and issue a letter to the claimant explaining it.
- 6.54 Rent arrears are considered when making a decision on 'identifying people who are unlikely to pay their rent'. Rent arrears are defined as a sum that has become due and has not been paid.
- 6.55 The mandatory eight week rule is intended to be used as a last resort. The underlying policy intention of this rule is to prevent cases arising where a tenant is clearly not using their benefit money to cover their housing costs and is designed to avoid a situation arising where a tenant is evicted. In most cases you would expect to be looking at earlier evidence where it appears that the tenant is unlikely to pay their rent. You should encourage landlords to report any missing payments at the earliest possible opportunity rather than resorting to the eight weeks provisions.

6.56-6.59

## *Reviewing a decision*

- 6.60 There are two types of review that you will undertake
- a** on appeal from a relevant person, ie the normal DMA process
  - b** a review of circumstances some time after your decision, to establish whether it is still appropriate
- 6.61 You will already be familiar with procedures relating to **a**, see *Appeals and redeterminations* earlier in this manual. The 'person affected' rules will not change as a result of the LHA. A landlord may appeal against a decision made under Regulation 93 or 94, as amended by the LHA Regulations. They cannot appeal against your initial decision to pay benefit to the claimant if that decision was made by you at a time when you had no reason to believe it was improbable the claimant will pay their rent.
- 6.62 On **b**, you should only set a review date when you have decided the claimant is an unlikely payer, the DMA process will cover cases where the claimant wants to appeal against a decision that they are not an unlikely payer. Set the review for a date appropriate in that particular case. Occasionally you may consider that a review is not appropriate.
- 6.63 Claimants considered unlikely payers should be encouraged to seek money advice.

6.64-6.99

---

# *Protection rules*

## *About this chapter*

- 7.00 This chapter explains the rules on protection covering the circumstances when a claimant can have their eligible rent protected at a higher rate. These circumstances are
- a** for the first 13 weeks of their claim if they were previously able to pay the rent without the help of Housing Benefit (HB). **Note:** This is the same as the current rules
  - b** for a year following the death of a relevant person. **Note:** This is the same as the current rules
  - c** at the point of transfer onto the Pathfinder scheme if, immediately before that point, they had a higher eligible rent than they would get from the LHA
- 7.01 The legislation for this is quite complicated, as it has to allow for various ways in which the different protection rules can interact. But we are proposing that all three types of protection should be based on a common approach
- a** Claimants only have their eligible rent protected in the first place if it is higher than they would get from the eligible rent based on the LHA. Those who would be better off getting the normal LHA-based eligible rent do not qualify for protection.
  - b** Claimants lose their protection as soon as a review (as a result of a reported change of circumstances or an annual comparison) shows they would get a better eligible rent without it, even if that is sooner than the end of their time-limited protection period. For example, if someone new moves into the claimant's household and they become entitled to a higher LHA based eligible rent as a result, they lose their existing protection immediately – even if this is only one week into a 12-month protection period. From that point onwards, they are treated in the same way as other claimants. **Note:** Protection is also lost if you treat a move to a new address within your authority as a change of circumstances.
  - c** Every time the Pathfinder authority could apply a fresh eligible rent (for example, at the end of the year), another comparison will be made to see whether an LHA-based eligible rent would be higher.
- Note:** Tenants in receipt of protection are **not** protected from the new rules on direct payments.

7.02-7.09

7.10-7.22

## *13-week protection*

7.10 The claimant can have their eligible rent based on their *actual* rent (without rent officer restrictions) for 13 weeks, if this is higher than the LHA that they would qualify for, if a Pathfinder authority is satisfied that the claimant

- was able to pay the rent on their accommodation when their tenancy began, and
- had not previously been entitled to HB in the 52 week period before their claim

7.11 This protection is based on the existing 13-week protection scheme in Regulation 11(9), and aims to help those who are ordinarily able to pay their rent but have fallen into difficulties, for example from losing a job. This provides time to either find another job or to find cheaper accommodation.

7.12 At the end of the 13 week period the claim is paid at the LHA rate for the month when the claim would have transferred had there been no protection. You will also need to take account of any other changes that would have affected the LHA rate during the time of protection, eg the birth of a child that would change the size criteria but the protection remained, this would mean that at the end of the protection period the LHA applicable on the date of the child's birth would be used.

*HB Reg  
10(3C)(C),  
10(3G),  
10(3I)(e), 10(3J),  
11(9)*

7.13-7.19

## *Protection on death*

7.20 Where there is a death of a relevant person the claimant can be protected for a year from any decrease in their eligible rent. This protection is based on the existing rules for protection on death in Regulation 11(7).

7.21 As now, people can benefit from this protection even if they only claim Housing Benefit after the death. In this case, their eligible rent will be based on the actual rent they pay unless the LHA-based eligible rent is higher.

7.22 A claimant may already have a protected eligible rent that was not subject to a rent officer decision at the time of conversion.

### **Big bang sites**

Customer's eligible rent has not been subject to a rent officer decision so eligible rent is the contractual rent less ineligible services.

*HB Reg 11(7)(b)*

continued

(7.22)

Claim is transferred to LHA on the LHA commencement date. If the LHA is lower than the amount used as the eligible rent, continue to pay the existing eligible rent figure until the original 12-month period of protection has elapsed or there has been some other change that requires an LHA at a higher rate than the existing eligible rent.

*HB Reg 10(3C)  
(b)(ii) & HB Reg  
10(3I)(b)(i)(aa)*

In cases where there has been a further bereavement before the end of the original protection period, the 12-month period starts again. If on commencement date the eligible rent is less than the LHA do not continue the bereavement protection.

#### **Example**

Bereavement May 2003, eligible rent based on full contractual rent of £100. LHA start date is February 2004. February LHA figure £90.00.

May 2003 LHA figure £91.00. February 2004 claim converts to LHA on the bereavement-protected rate of £100. May 2004 is the end of the 12-month bereavement protection. At this time a supersession of the claim changes the February 2004 LHA figure, ie £90. Do not consider any other protection. Anniversary date changed to February 2005.

*HB Reg 10(3J)  
HB Reg 8A*

#### **Phased sites**

Customer's eligible rent has not been subject to a rent officer decision so eligible rent is the contractual rent less ineligible services.

*HB Reg 11(7)(b)*

Claim is transferred to LHA at the end of the 12-month bereavement protection. (It may convert earlier if there is some change that would entitle them to an LHA higher than the bereavement protected rate.) The LHA rate is the one applicable on the month of the transfer.

*HB Reg  
11A(1)(b)(iii)  
HB Reg 10 (3J)*

In cases where there has been a further bereavement before the end of the original protection period, the 12-month period starts again.

continued

(7.22)-7.23

(7.22)

**Example**

Bereavement May 2003, eligible rent based on full contractual rent of £100. LHA start date is February 2004. February LHA figure £90.00. May 2003 LHA figure £91.00.

May 2003 claim processed on the bereavement protected rate of £100. May 2004 is the end of the 12-month bereavement protection. At this time the claim converts to the LHA figure applicable to that month, £91.00. Do not consider any other protection. Anniversary date May 2005. If the claim should have converted before the 12 months and the LHA is lower, the conversion takes place at the end of the 12 months but the LHA used is the one of the earlier possible conversion date, eg additional occupiers in February 2004 after the LHA start date, the February LHA is lower than the current eligible rent so continue with the bereavement protection but in May 2004 transfer to LHA on the February LHA. Anniversary date February 2005.

*HB Reg 10(3J)  
HB Reg 8A*

7.23

A claimant may already have a protected eligible rent that was subject to a rent officer decision at the time of conversion.

**Big bang sites**

Claim is transferred to LHA on the LHA start date. The protection will continue if the figure is higher than the LHA rate. The rate continues until

- there is a relevant change of circumstance that allows a new LHA that equals or exceeds the existing eligible rent, or
- on the anniversary date the LHA equals or exceeds the existing eligible rent

*HB Reg  
10(3C)(a)(ii)*

*HB Reg 10 (3I)*

**Example**

Bereavement May 2003, eligible rent based rent officer decision of £90. LHA start date is February 2004. February LHA figure £85.00.

February 2004 claim converts to LHA on a protected rate of £90. Anniversary date February 2005.

continued

(7.23)

**Phases sites**

Claim is transferred to LHA on

- receipt of new claim
- rent officer expiry date
- relevant change of circumstances

The protection will continue if the LHA is less than the existing eligible rent. This continues until

- there is a relevant change of circumstance that allows a new LHA that equals or exceeds the existing eligible rent
- at the end of the 52 week protection period the LHA equals or exceeds the existing eligible rent

**Example**

Bereavement May 2003, eligible rent based rent officer decision £90. LHA start date is February 2004. June 2004 LHA figure £85.00.

May 2003 claim processed on protected rate of £90. June 2004 is the end of the 52 weeks rent officer referral period. At this time the claim converts to LHA, as this is still lower than the existing eligible rent the protection continues. Anniversary date June 2005. The rate continues until

- there is a relevant change of circumstance that allows a new LHA that equals or exceeds the existing eligible rent, or
- on the anniversary date the LHA equals or exceeds the existing eligible rent

*HB Reg  
10(3C)(a)(ii)  
HB Reg 10(3I)*

*HB Reg 10(3I)*

7.24-7.29

## *Transitional protection*

- 7.30 Existing claimants will be protected at the point of transfer if they would lose out under the LHA scheme. If the claimant's eligible rent at the point of change is higher, it will be frozen at that level until the LHA-based eligible rent 'catches up'. At this point, the claimant will receive the LHA-based eligible rent and will lose their protected status.

7.31-7.33

7.31 The primary reason for adopting this form of transitional protection is to ensure that no claimant will lose out at the point of change. A more detailed explanation of our reasoning for taking this approach can be found at *Appendix 4: Transitional protection*.

7.32 It should be noted that the claimant's actual eligible rent (ie the rent used in the benefit calculation), at the time of transition, will be frozen. We do not propose to reassess the claimant's eligible rent at the point of change under the current scheme and then freeze this updated amount. The latter scheme would require reassessment of all existing claimants' eligible rents, which would be a considerable administrative burden, and would not be practicable at all for those Pathfinder LAs introducing the scheme with a "Big Bang".

*HB Reg 10(3A),  
(3C)(a)(ii),  
(3C)(b)(ii),  
(3D)(a), (3F)(a)*

When applying transitional protection the LA compares the eligible rent in use the day immediately prior to the relevant date (date transfer is effective from)

**Example 1**

Mr Green is single and pays rent of £130 per week and his benefit is based on the Rent Officer claim related rent of £105. He is due to be transferred to LHA on 04/07/05 and would be entitled to the two room rate. The two room LHA for July 05 is £100, as his eligible rent is already £105 he will receive transitional protection of £105 per week.

**Example 2**

Mr Black is single and has a non-dependant living with him. He pays rent of £130 per week and his benefit is based on the rent officer's claim related rent of £130. The non-dependant moves out of the property in the week before he is due to transfer to LHA. The two room rate LHA for July 2005 is £100. The LA will compare the LHA to the eligible rent used in the benefit assessment on the day before the transfer takes place, therefore Mr Black will receive transitional protection of £130.00. The LA does not need to ask for new rent officer decision as any decision would only be effective from the same day as the LHA transfer and therefore could not be used in the benefit assessment.

7.33 For example, under the proposed protection scheme if a claimant's eligible rent is £80 a week at the point of change and the LHA which would apply to their claim is only £72 a week, the claimant's eligible rent will be frozen at £80.

- 7.34 In most cases, claimants whose eligible rent is protected at the point of transfer will be protected indefinitely, until the LHA-based eligible rent catches up. However, there is one exception. It is possible that, at the point of transfer, some claimants will already be entitled to a 13-week or 12-month protection period (because they were previously paying their own rent, or because there was a death of a relevant person).
- 7.35 If they are, and their eligible rent was based on their *actual* rent, rather than a rent officer's decision, they will only continue to be protected for the remainder of the 13 weeks or 12 months. The reason for this is to avoid giving indefinite protection to people whose rents can have never been subject to any form of rent officer rent restriction at all. **Note:** In the event of a further death, the claimant's rent will be protected for 12 months from the date of the later death.
- 7.36 Any break in an award would result in a claimant losing their transitional protection. **Note: A fresh claim that is backdated to the date the previous award ended would not be classed as a break in the award.** This will have the following effects in the two cases below
- a** Under the current scheme, linking rules allow some pre-1997 claimants to have a short break in entitlement (or a break for up to 52 weeks if the claimant or their partner are welfare-to-work beneficiaries), and still retain their protection under the old rules. This will not be permitted under the LHA scheme. Similarly, if a claimant is protected under the old scheme but happens to be enjoying a break in their entitlement when the LHA system is introduced, they will lose that protection since their new claim under the new scheme will not be linked to their previous claim.
  - b** It should also be noted that although the existing rules allow certain other occupiers to 'inherit' a claimant's protection under the old rules, for example if the protected claimant dies, or is imprisoned or leaves the property, this will not be permitted under the LHA scheme. The general principle is that as soon as a new claim is made under the LHA scheme any transitional protection will be lost. The new claim cannot 'inherit' protection from a previous occupier or be linked to any previous claim.
- Note:** The rules on inherited protection appear in reg 10 of the Housing Benefit (General) Amendment Regulations 1995 (SI 1995/1644).
- 7.37 For Big Bang sites when a customer is in receipt of an extended payment of HB and they transfer onto LHA do not do a better buy comparison. This is because the customer is in receipt of benefit they were entitled to under previous circumstances. As this is not their current entitlement they will not convert to LHA within the extended payment period. If after the extended payment period a new claim for benefit is made calculate it under LHA in the normal way. Housing Benefit General Regulation 1996 Schedule 5A. *HB Reg 62A (7)*

7.38-7.40

7.38 Unlimited transitional protection applies when you are comparing an eligible rent set by the Rent Officer to the eligible rent set by the LHA on point of transfer. Once a person is on LHA then if their circumstances change the new LHA will apply, even if this is less than the one currently in payment.

**Example 1**

If a care leaver reaches the age of 22 and has already been transferred to LHA on a protected rate then a change in their circumstances which produces a lower LHA will not be applied.

If a care leaver is transferred to LHA using the LHA rate then a change in their circumstances which produces a lower LHA will be applied.

For phased sites if the change in circumstance triggers the transfer, the existing eligible rent is used to compare with the LHA for the under 25 rules (if they live alone and are not disabled) and transitional protection is applied if appropriate.

**Example 2**

Once a person has a transitional protection this is only lost if there is a break in entitlement, they move house or the appropriate LHA matches or exceeds the protected amount.

If a claimant has a transitional protection and a non-dependant leaves, this will trigger a new comparison because a change in the occupiers will affect the size criteria. If the new LHA is lower than the protected amount then the protection continues.

7.39 Where a change of dwelling is reported, a claimant's transitional protection ceases to apply. Change of dwelling means a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance, ie a change of one dwelling to another. *HB Reg 12A(8)*

7.40 Where transitional protection has been awarded this will last until a new eligible rent is determined in accordance with *Regulation 10(3A)* which equals or exceeds it ('catching up') or a new eligible rent is based on a maximum rent *11A(1)(b)(iv)(dd)* (SLR) (a maximum rent (SLR) is determined because of notification of a change of dwelling and it is used for a new eligible rent). *HB Reg 10(3)(a),*

continued

(7.40)

**Example 1**

Tenant A rents a two bedroom property having sole use of all the rooms in the property. When they transferred onto LHA they were protected at £100.00 per week (Their LHA would be £80.00 per week). Their landlord moves into the property with them and they now have sole use of one bedroom and share the rest of the property. Their rent has reduced to £75.00 per week.

They have not changed dwelling, although the number of rooms which they have exclusive use has reduced.

A new eligible rent will be calculated because the landlord has moved in reducing the number of rooms that the tenant has sole use of. The category of dwelling applicable to the claim is therefore affected but this does not equal or exceed the transitional protection. There has been no change of dwelling and there is no new eligible rent based on a maximum rent (SLR) determined because of a notification of a change of dwelling.

There transitional protection will continue.

**Example 2**

Mr Smith is 30 years old and lives alone. He receives Income Support and is charged £90 per week rent for his two bedroom house. His claim is currently worked out using a rent officer decision of £85 per week. He therefore receives £85 per week Housing Benefit.

On 9 February 2004 he moves onto the LHA and receives transitional protection at £85 per week, because this LHA is less than £85.00.

On Friday 20 February 2004 his friend moves in with him which means he now shares bathroom/toilet and living room and the landlord reduces Mr Smith's rent to £50 per week.

In this case the new eligible rent, which has been calculated because of the notification of a kind that affects the category of dwelling applicable to the claim, does not equal or exceed the transitional protection. There appears to have been no change of dwelling and there is no new eligible rent based on a maximum rent determined because of a notification of change of dwelling.

Based on this information, transitional protection should continue.

*HB Reg  
11A(1)(b)(iv)*

## Protection rules

---

7.41-7.99

- 7.41 Transitional protection will not be given to a partner remaining in the household. The partner would have to make a claim in their own right after the claimant moves out. There is no 'joint claim' in HB. *HB Reg 10 (3B)*
- 7.42 Transitional protection is only applicable when the LHA is less than that person's eligible rent in use on the day before the LHA applies.
- 7.43 The claimant will not continue to receive transitional protection at their new address. When the claimant vacates the property the transitional protection will end even if they 'claim' at the new address. This is due to the fact that although their claim continues through the change of circumstances process they are no longer at the same property.

7.44-7.49

### *Transitional protection and discretionary housing payments*

- 7.50 A discretionary housing payment is not a payment of HB. There is no statutory entitlement as they are discretionary payments. Transitional protection refers to the maximum rent figure applied to the HB assessment. *CSP&SSA 2000*

7.51-7.99

## *Appeals and redeterminations*

### *About this chapter*

- 8.00 This chapter covers the matter of appeals and redeterminations. There is no right of appeal or redetermination about the levels of LHA, or the Broad Rental Market Areas (BRMA) on which they are based. Appeals cannot be made to the appeal tribunal in relation to any part of a decision that adopts the decision of the rent officer.
- 8.01 This is because, unlike now where all claims are assessed individually and an appeal would affect only one claim, an appeal would call into question the level set for the whole area, so any changes to the published maximum rents would require Pathfinder authorities to identify and adjust all claims that had been made using that rate. This would undermine the transparency and certainty of the scheme for other claimants.

8.02-8.09

### *When a redetermination decision can be requested*

- 8.10 Pathfinder authorities can ask for a redetermination of a rent officer's decision on a board and attendance case. The normal rules about asking for a redetermination or substitute determination apply, including those in relation to written representations by a person affected. *Sched 7 CSP&SSA 2000, para 6(2)(c)*

8.11-8.19

### *Accidental (slip of the pen) errors*

- 8.20 If the rent officer makes an error, other than an error of professional judgement in relation to the LHA or BRMA, they will make a substitute determination and notify the Pathfinder authority affected. This will trigger an adjustment of the LHA that applies to affected claimants.

## **Appeals and redeterminations**

---

8.21-8.39

8.21 As with rent officer redeterminations, substitute determinations and substitute redeterminations about existing case specific determinations, the rules are designed to be favourable to the claimant. If the claimant's benefit would

- increase as the result of a change, the change is backdated to the time in relation to which the claimant's LHA was calculated
- reduce, the cut only takes effect from the point that the rent officer makes the amended determination

8.22 However, if a rent officer makes a redetermination following the identification of a "slip of the pen" error, and you have not yet made a payment, apply the re-determined rate from the first payment made.

8.23-8.29

### ***Errors in professional judgement***

8.30 Errors in professional judgement cannot be rectified, eg the rent officer cannot have second thoughts about whether the boundaries were right, or whether the LHAs accurately reflect market rates.

8.31-8.39

## *Appeal rights of persons affected by a decision of LHA*

- |      |  |   |
|------|--|---|
| 8.40 | As currently happens, any decision made relating to direct payment of HB will be appealable by any person affected, ie the claimant or the landlord.   | <i>HB Reg 94(1C)(a) &amp; 94(1C)(b)(ii) to (iv)</i> |
| 8.41 | There is a standard format for written submissions to the Appeals Service. Appendix 5 shows a specimen LHA appeal. The Decision Maker may use the following explanation of the policy intention concerning the direct payment rule in their submission |   |

Tenants in the Private Rented Sector who claim Housing Benefit in a Local Authority operating the Local Housing Allowance (LHA), will normally have their LHA paid to them rather than their landlord. This is because the aims of the LHA are to extend choice and encourage responsibility among tenants, enabling them to trade between the quality and price of property by deciding what percentage of their LHA to spend on the rent. This in turn will equip tenants of working age with the skills for the transition from benefit to work, a key Housing Benefit Reform objective. To do this effectively, tenants need to take ownership of their LHA payments and ensure an appropriate amount is paid over to their landlord as rent. Tenants in non-LHA areas are not affected by this change.

It is recognised that a few tenants will not be capable of managing their affairs because they are “vulnerable”. There will also be a small percentage who will refuse to meet their rent payments or who will have already accumulated at least 8 weeks’ of rent arrears. In these cases, Local Authorities will still be able to make payments direct to the landlord.

### ***Regulations***

The Housing Benefit (General) (Local Housing Allowance) Amendment Regulations 2003 amend The Housing Benefit (General) Regulations 1987 (The “principal Regulations”) to enable the changes on payment to be implemented in LHA authorities.

continued

## Appeals and redeterminations

---

(8.41)-8.42

- (8.41) Specifically, Regulation 12 of the Amendment Regulations amends Regulations 93 and 94 of the principal Regulations. The amendments
- remove a tenant's ability to ask for their Housing Benefit to be paid to their landlord (though they may still ask for it to be paid to a third party under Regulation 92). This applies to all claims to Housing Benefit received on or after each Authority's "go-live" date and to existing claims at the point they come up for review (but see next bullet)
  - allow authorities adopting a "big bang" approach to converting their existing caseload (Brighton and Hove, Edinburgh and North East Lincolnshire) to delay implementing the above requirement for up to six months
  - allow an authority to pay a person's LHA to their landlord if they are thought to have difficulty in managing their affairs (what is sometimes referred to as "vulnerability")
  - allow an authority to pay a person's LHA to their landlord if they are thought unlikely to pay their rent
  - allow an authority to pay a landlord the whole amount of a person's LHA where it exceeds the rent but only where the excess is needed to cover rent arrears

### *Payment to the landlord*

8.42 Both pathfinder and non-pathfinder authorities must make direct payments to the landlord where the claimant in arrears of eight weeks or more (subject to the conditions and exceptions in Regulation 93). Both pathfinder and non-pathfinder authorities may make the first payment of a rent allowance by way of a cheque made payable to the landlord where the circumstances in Regulation 94(1A) apply.

*HB Reg  
94(1C)(b)(ii) to  
(iv)*

Non-pathfinder authorities may make direct payments to the landlord where the circumstances in regulation 94(1) apply, for example where the claimant has requested this.

For pathfinder authorities, power to make direct payments to the landlord in the circumstances set out in Regulation 94(1)(a) and (b) has been removed by HBR 94(1C)(a). However, they can still make direct payments where

- the circumstance in Regulation 94(1)(c) applies (the claimant has moved leaving arrears of rent)
- any of the more limited circumstances set out in regulation 94(1C)(b)(i) to (iv) applies, for example where the pathfinder authority considers the claimant is unlikely to be able to manage their affairs.

This decision can be appealed to the appeal tribunal.

- 8.43 Where the Pathfinder Authority makes payment to the tenant this is because
- a) there is nothing to put them on notice that one of the circumstances in which they must or may make direct payments applies so they have not considered direct payment, or
  - b) they have considered direct payment and have decided that none of the circumstances in which they must or may make direct payments exist, or
  - c) they may make a direct payment but they have decided not to do so
- 8.44 This decision can be appealed to the appeal tribunal. Where the appeal is made using the Human Rights Act Article 8 the appeal may be heard by the appeal tribunal.

***Vulnerable claimant or unlikely claimant will pay***

- 8.45 Pathfinder authorities can make the decision to pay the landlord where
- they deem the claimant vulnerable
  - it is unlikely that they will pay their rent or
  - a direct payment has previously been made to the landlord in accordance with Regulation 93 in respect of the current award of housing benefit.
- 8.46 As this decision has been made under Regulation 94(1C)(b)(ii) to (iv) it can be appealed to the appeal tribunal (as can any decision made under 93 or 94). If however, the decision had been made under Regulation 92(3), it could only be challenged by way of Judicial Review.

**Note:** If the appeal tribunal considered that a pathfinder authority had arrived at its decision unreasonably, then it might be within its jurisdiction to hold that the decision on vulnerability was invalid, and then decide the appeal on that basis. The appeal tribunal could not form its own subjective view on vulnerability and substitute it for the considered decision of the LA, but would have to leave it for the LA to reconsider.

**Example**

Tenant A makes representation on 15 April 2004, providing details that he is vulnerable and requests payment to his landlord B. HB has previously been paid to A but on conversion to LHA on 15 March 2004 there was no evidence to suggest that A was vulnerable and so payments were changed to him. The Pathfinder Authority considered the representation on the 16 April 2004 and did not find evidence of vulnerability. Payments continued to A and both tenant and landlord advised.

continued

(8.46)-8.48

(8.46)

Appeal received on 21 April 2004 and passed to the appeal tribunal on 23 April 2004. Case heard on 10 May 2004 and the appeal tribunal decision is that the Pathfinder Authority arrived at its decision unreasonably as the authority did not set out the criteria of the decision. The tribunal refer the case back to the authority for them to reconsider their decision.

The Pathfinder Authority reconsidered their decision on 13 May 2004 and continued with their original decision that there is no evidence of vulnerability. They advised the landlord and tenant of this.

**Note:** If the Pathfinder Authority had reconsidered their decision and accepted vulnerability they would amend the claim to pay the landlord from an acceptable date, which in this instance would be the following Monday, 17 May 2004 (this would avoid duplication of payment and any subsequent overpayment issued).

*HB Reg 92(3)*  
*HB Reg 93 &*  
*94*

### ***Payment to a third party where the third party is their landlord***

8.47 LAs have the discretion to pay someone other than the claimant where the competent claimant requests them to do so. This is subject to *Regulations 93-96*.

8.48 *Regulation 93* and *94* set down the circumstances in which payment must or may be made to a landlord. This means that the Pathfinder Authority must decline to use its discretion under *Regulation 92* to pay the landlord where the claimant has appointed their landlord as their agent, on the basis that this regulation is subject to *Regulation 93* and *94*. Any decision whether or not to make direct payments to landlords must therefore be under the provisions in *Regulations 93* and *94*. This decision can be appealed to the appeal tribunal.

*HB Reg 93(3)*  
*HB Reg 94(1B)*

### ***Direct payment where landlord is deemed to be not 'fit and proper'***

- 8.49 The duty to make direct payments under Regulation 93 where the claimant is in arrears of eight weeks or more does not apply where it is in the overriding interests of the claimant not to make direct payments to the landlord. In addition, no authority can make a direct payment under regulation 93 where it is not satisfied that the landlord is a fit and proper person to receive such a payment.
- 8.50 Where an authority may make a direct payment under Regulation 94, as one of the relevant circumstances applies, and it is not satisfied that the landlord is a fit and proper person, it can decide whether or not to make the direct payment. In this situation the Pathfinder Authority would need to balance the risk to the claimant and their family against the risk presented by the landlord. If the risk to the claimant was the greater problem the Pathfinder Authority could decide to make direct payments. This decision can be appealed to the appeal tribunal, however the LAs application of the fit and proper rule may only be challenged at Judicial Review. See *Schedule 7 Child Support Pensions and Social Security Act 2000, Housing Benefit and Council Tax Benefit (Decision and Appeals) Regulations 2001*

#### **Example**

Tenant A makes representation on 15 April 2004, providing details that he is vulnerable and requests payment to his landlord B. Housing Benefit has previously been paid to B but on conversion to LHA there was no evidence to suggest that A was vulnerable and so payments were changed to him.

The Pathfinder Authority considered the representation on 16 April and found evidence of vulnerability. The authority is not satisfied that the B is a fit and proper person to be the recipient of payment of rent, and when looking at the balance of probabilities they establish that the risk to A does not outweigh the risk presented by B. The decision is made on the 15 April 2004 to pay A with a review date of 3 months. Both landlord and tenant are advised of this.

B appeals on 21 April 2004 against the decision to pay the tenant and states that the decision was made by taking into account the fact that he had been made not 'fit and proper'.

Appeal passed to the appeal tribunal on 23 April 2004. Case heard on 10 May 2004 and the Appeals Tribunal decision is that Pathfinder Authority arrived at its decision to pay A unreasonably. As B is deemed to be 'not fit and proper' they cannot overturn the decision to pay A and so refer the case back to the authority for them to reconsider their decision.

continued

## Appeals and redeterminations

---

(8.50)-8.99

(8.50)

The Pathfinder Authority reconsidered their decision on 13 May 2004 and continues to pay the tenant. They advise the landlord and tenant of this.

The decision that the landlord is not 'fit and proper' can only be challenged at Judicial Review.

**Note:** The Pathfinder Authority may make a decision to pay a 'not fit and proper' landlord once that they have established that the risk to the tenant outweighs that of payment to the landlord (the landlord being 'not fit and proper' does not take away the discretion of the Pathfinder Authority).

8.51-8.59

### *Discretionary housing payments*

8.60

When a claim is received for a discretionary housing payment, the award cannot exceed those elements in the contractual rental figure that would form part of the eligible rent for HB purposes, even when the LHA is higher than this amount. The normal rules for discretionary housing payments apply. The discretionary award is to provide financial assistance to those who, in the LA's opinion, require further financial assistance with their housing costs arising from their liability to make payments in respect of the dwelling, which they occupy as their home. Child Support, Pensions & Social Security Act 2000 69 (1) Discretionary Financial Assistance Regulations 2001 2 and 6.

8.61

Discretionary housing payments are not subject to transitional protection, see *Transitional protection*.

8.62-8.99

# *Benefit subsidy and overpayments*

## *About this chapter*

- 9.00 This chapter gives explains
- how benefit subsidy arrangements will vary from those in operation in non-Pathfinder authorities
  - the role of DWP Debt Management Group in helping Pathfinder authorities recovery overpayments

9.01-9.09

## *Benefit subsidy*

### *Background*

- 9.10 From November 2003, nine Pathfinder authorities will join the LHA scheme. These authorities will no longer be required to refer claims to the Rent Officer, instead paying a standard amount of Housing Benefit (HB).
- 9.11 This means they will pay more in Rent Allowance, for which they are currently reimbursed by Department for Work and Pensions (DWP) at a direct subsidy rate of 95%. As a result, these authorities may lose out financially.
- 9.12 Timelags in subsidy reimbursement through current mechanisms, particularly the 5.5% of indirect Rent Allowance may exacerbate this, leading to adverse effects on cash flow. Furthermore, the 5.5% indirect subsidy currently paid to authorities is based on forecasts.

9.13-9.19

### *Distributing additional subsidy to Pathfinder authorities*

- 9.20 The simplest and most straightforward way of distributing additional subsidy to Pathfinder authorities would be to pay the additional 5.5% subsidy, based on DWP statisticians' estimates of expenditure, direct as a lump sum from day one of assuming LHA status. This will both meet the authority's additional expenditure from the outset and safeguard the authority's cash flow.

## **Benefit subsidy and overpayments**

---

9.21-9.99

9.21 Pathfinder authorities will have the scope and flexibility to update their in-year estimates sent to DWP during 2003/2004 in the light of their experience of the financial implications of LHA status.

9.22 There will also be effects on the 2003/2004 subsidy claim form for Pathfinder authorities. Information will need to be collected on LHA expenditure, backdating and overpayments.

9.23 The above benefit subsidy arrangements will apply for 2003/2004 only. From 2004/2005, DWP will assume responsibility for all benefit subsidy, and subsidy rates for 2004/2005 are under review.

9.24-9.29

## *Overpayments*

### *Background*

9.30 We recognise that LHA status could lead to the potential for reduced overpayment recovery. For example, if a the claimant absconds and benefit under the LHA was payable to the claimant rather than the landlord, recovery would be more problematic. Pathfinder authorities will need to maximise available overpayment recovery mechanisms, and this aspect of the LHA pilot will be evaluated in the light of experience. **Note:** Overpayments resulting from a Rent Officer's "slip of the pen" should be classed as official error, not recoverable.

9.31-9.34

### *DWP Debt Management*

9.35 Specialist staff in DWP Debt Management are keen to work with LHA Pathfinders, as they

- can offer LHA Pathfinders options in terms of recovery from other DWP benefits
- can explain the other services available from Debt Management

They will publish an overpayments guide in late 2003, setting out the full range of mechanisms available to local authorities to maximise overpayment recovery.

9.36 Debt Management are happy to be contacted by LHA authorities. For more information contact Jane Autherson by phone on 0113 232775 or e-mail [Jane.Autherson@dwp.gsi.gov.uk](mailto:Jane.Autherson@dwp.gsi.gov.uk)

9.37-9.99

## *Pathfinder local authority areas*

The nine Pathfinder local authority areas are

- Blackpool
- Brighton & Hove
- Conwy
- Coventry
- Edinburgh
- Leeds
- Lewisham
- North East Lincolnshire
- Teignbridge

## *Current Housing Benefit rules*

- 1 The basic principle of Housing Benefit (HB) is that people with incomes low enough to need Income Support (IS) can get their eligible rent paid in full. There are two main parts to the assessment
  - a calculating the **eligible rent**: ie the amount of rent that HB will pay for. In general, tenants living in social housing, where the rent levels are themselves regulated, normally get their rents paid in full (with the exception of certain “ineligible” service charges). Private tenants can have their eligible rent limited to less than their actual rent (see below), and
  - b the means-test. With some minor exceptions, claimants’ resources are assessed on the same basis as for IS. People with incomes below the “applicable amount” for their household get their eligible rent paid in full. Those with incomes above the applicable amount, eg people in low paid work, can still receive HB. But their benefit is reduced by 65p for every £1 of income above the threshold.
- 2 Another feature of the scheme is that, if claimants have a “non-dependant” adult living with them, eg a grown-up child, a deduction is made from their HB. The deduction, which varies according to the non-dependant’s income, is intended to recognise the contribution that the non-dependant should be expected to make towards the rent.

## *Rent restrictions for private tenants*

- 3 Since 1989, when the private rented sector was deregulated, new tenancies have not been subject to any form of rent control. Unlike social housing, rent levels are set on the open market, and there is no control over the way that properties are allocated. This brings the need for expenditure limits in HB, to prevent the state paying for rents that are unnecessarily high.
- 4 There are now two types of rent restrictions: a claim-related rent for the specific property and the Local Reference Rent. Both are carried out by the rent officer, under the Rent Officers (Housing Benefit Functions) Order 1997 and its Scottish equivalent, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

## *Claim-related rent*

- 5 Every HB claim by a private deregulated tenant is referred to the rent officer, who carries out three property-specific tests on the rent. These reflect the three ways in which a rent may be unreasonably high for HB to pay for
- a The rent may be higher than the property is worth (e.g. because the landlord is over-charging to take advantage of the benefit system). To prevent this, the rent officer applies the **“significantly high” test**: if the rent officer judges that rent is significantly higher than the landlord could expect to get on the open market, he or she decides what a reasonable figure would be.
  - b The rent may be too high because the property is larger than the claimant reasonably needs. The **“over-large” test** prevents this: if the property is larger than the claimant needs (under the “size criteria”), the rent officer determines what the reasonable rent would be if the property were of the size needed.
  - c The **“exceptionally high” test** deals with rents that are realistic by market standards but are higher than it would be reasonable to expect the taxpayer to fund (e.g. luxury accommodation). If the rent is exceptionally high, the rent officer sets a figure that is not exceptionally high by the standards of the neighbourhood.

The claim-related rent is the lowest figure produced by these three tests.

## *Local Reference Rent*

- 6 The Local Reference Rent (LRR) was introduced in two stages in 1996 and 1997, as an additional way of capping the HB paid to private tenants, over and above the property-specific checks. The reference rent represents a broadly “average” rent in the locality where a claimant lives, for a property with the number of rooms needed by the claimant and aspects of their tenancy. It is defined as the midpoint between the highest and lowest market rents after stripping out exceptionally high and low rents. **Note:** The LRR is not a mathematical average such as the mean or median.
- 7 The equivalent for single under-25 claimants is the **Single Room Rent (SRR)**, which is based on rents for shared accommodation rather than self-contained properties.
- 8 LRRs are calculated by the rent officer. The result depends heavily on the size and boundaries of the “locality” that the rent officer decides to use.

- 9 It is up to the rent officer to decide what area to set, based on their judgement about the housing market rather than on any administrative boundaries. However, the intention is that a locality should be a broad area, made up of two or more different neighbourhoods, and containing a variety of different types of accommodation and tenancies. Following a judicial review case in October 2001, the Rent Officer's (Housing Benefit functions) Order was amended to clarify the definitions of locality and neighbourhood. The LHA Pathfinder regulations largely mirror these new definitions. *Rent Officers Order, Sched 1, para 3(5) and 4(6)*.

## *The parallel rent schemes*

- 10 When the LRR was introduced, existing claimants continued to be treated under the original rules. As a result, there are now four parallel sets of rules in place for private tenants

- **Pre-1996 claimants**

- People who have received HB continuously since 1 January 1996 have their benefit assessed under "Old" Regulation 11. *HB (Gen) Amdt Regs 1995, reg 10* Their rents are subject to the three property-specific checks by the rent officer, but not to the Local Reference Rent. If a claimant is elderly, disabled or has children, local authorities may only restrict his/her benefit if they decide that there is suitable alternative accommodation available more cheaply.
- The claim-related rent is only a guideline; the LA has discretion in deciding by how much to reduce the claimant's eligible rent. However, as an incentive to restrain expenditure, the authority is only reimbursed by DWP for 60% of any benefit paid on rents above the rent officer's claim-related rent.
- (The pre-1996 rules also continue to be used for *new* claims from people living in supported accommodation provided by charities or voluntary organisations. These claimants will continue to be treated under the old rules, and will not be affected by the LHA Pathfinder.)

- **1996 to 1997 claimants**

- Those who first claimed between January 1996 and October 1997 are subject to the property-specific tests and to the LRR. But, if the LRR is lower than the claim-related rent, the claimant's eligible rent is based on the claim-related rent plus 50% of the difference. The rent officer's figures have to be used, there is no discretion for local authorities to pay more.

continued

- (10)
- **Current claimants**
    - Since October 1997, all claimants have had their eligible rent restricted by both the claim-related rent and the Local Reference Rent. The rent officer's figures have to be used: there is no discretion for local authorities to pay more.
  - **The Single Room Rent**
    - Most single under-25 claimants have their benefit restricted by the claim-related rent and the Single Room Rent. The Single Room Rent was introduced in October 1996. The formula for calculating it was modified in July 2001. Previously, the definition had been based on the use of a bedroom with shared use of a kitchen and toilet. The new definition also allows shared use of a living room and a bathroom (which reflects the reality of most available shared accommodation).

### *Discretionary housing payments*

- 11 When the LRR was introduced, LAs lost their old regulation 11 discretionary power over how much to restrict claimants' rent. Instead, they were given a power to top up claimants' benefit to avoid "exceptional hardship".
- 12 In July 2001, the "exceptional hardship" top up was replaced by a new system of "discretionary housing payments". Local authorities are given a cash-limited grant which they can use to top up anyone who is entitled to HB (or Council Tax Benefit), subject to certain exceptions.
- 13 LAs will still be able to use discretionary housing payments during the LHA Pathfinder phase.

## *Localities*

- 14 LRRs are calculated by reference to a locality. The definition of a locality appears in article 4(6) of Schedule 1 (Part I) of the 1997 Rent Officers (Housing Benefit Functions) Order. The locality is defined as follows:

“‘locality’ means an area –

- a** comprising two or more neighbourhoods, including the neighbourhood where the dwelling is situated, each neighbourhood adjoining at least one other in the area;
- b** within which a tenant of the dwelling could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping which are in or accessible from the neighbourhood of the dwelling, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
- c** containing residential premises of a variety of types, and including such premises held on a variety of tenancies.”

- 15 The concept of a neighbourhood is defined in article 3(5) of Schedule 1 (Part I) of the 1997 Rent Officers (Housing Benefit Functions) Order, as follows

“‘neighbourhood’ means –

- a** where the dwelling is in a town or city, the part of that town or city where the dwelling is located which is a distinct area of residential accommodation; or
- b** where the dwelling is not in a town or city, the area surrounding the dwelling which is a distinct area of residential accommodation and where there are dwellings [...which have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria)]. **Note:** The text inside the square brackets [ ] is added from the cross reference to article 3(4)(b) of Schedule 1 (Part 1)

- 16 The above definitions enable rent officers to mark out an area, built up of at least two neighbourhoods, in which a claimant could reasonably be expected to live while having access to amenities of a similar standard.

- 17 Before the insertion of these definitions into the Order in November 2001, the term ‘locality’ had not been defined in legislation. Instead, marking this area was purely a matter for the rent officers’ professional judgement.

## Appendix 2

---

18-99

- 18 However, the judicial review case *R (Dinsdale) v Rent Service* (February 2001) argued that in treating the entire local authority area as the locality, rent officers in Stockport MBC had taken too wide a concept of locality which had resulted in lower Local Reference Rents than the claimants had expected.
- 19 The argument was rejected, but the case was taken to the Court of Appeal in October 2001. The Court concluded that treating the whole of Stockport as a single locality was against the meaning and purpose of the Order. Instead, it was argued that the concept of a locality signifies an area no larger than would allow the rent officer to reliably calculate the LRR.
- 20 Leaving the law where it stood as a result of this judgement would have resulted in an increase in the number of localities from around 400 to an estimated 4,000 in England. This would have taken longer for rent officers to process cases, involving delays for claimants, and put additional administrative burdens on local authorities. It would have also gone against the policy that LRRs should reflect the generality of the market and be based on an area large enough to take account of the bigger picture.
- 21 DWP therefore considered it necessary to legislate quickly and introduced the definitions of 'locality' and 'neighbourhood' above.

22-99

---

# *Commentary on the legislation*

## *The Regulations*

### *Background: Structure of the regulations*

- 1 The main changes made by the Pathfinder regulations are to the rules on how much rent Housing Benefit (HB) should pay for. These fall in three stages:
- 1 Wherever LAs are required to refer a claim to the rent officer, they must set a **maximum rent** for the claim under Regulation 11. This is normally the lowest of the actual rent, the claim-related rent for the property set by the rent officer and the Local Reference Rent.
    - Under the Pathfinder, claimants will instead get a **maximum rent (standard local rate)** under a new Regulation 11A. This will be the relevant Local Housing Allowance for the claim.
  - 2 LAs then set the **eligible rent** under Regulation 10. For most private tenants this is simply the maximum rent.
    - Under the Pathfinder regulations, there are additional rules in Regulation 10 for calculating the eligible rent: in particular, to protect claimants from losing out at the point of transfer to the LHA scheme.
  - 3 LAs work out the **maximum housing benefit** under Regulations 8 and 61. This is the eligible rent less any non-dependant deductions that the claimant is liable for. Finally, the means-test is applied. The claimant's actual HB award is the maximum housing benefit if they have an income at or below Income Support (IS) levels; the award is reduced by 65p in every £1 of additional income.
    - In the Pathfinder regulations, there is a new Regulation 8A which states that the **maximum housing benefit** for LHA claimants can only last a year without being updated. This is supported by a new ground for supersession (see Amendment Regulation 16, page 41), which allows Pathfinder authorities to supersede a claimant's award after a year, to prevent it coming to an end. Together, these provisions help ensure that Pathfinder authorities update every claimant's LHA each year.

### ***Amendment Regulation 1: Pathfinder start dates***

- 2 The LHA scheme will be starting on different dates in different Pathfinder authorities. The dates will be listed in a Schedule to the LHA regulations.
- 3 The first Pathfinder authority will be starting on 17 November 2003

### ***Amendment Regulation 3: Amendments of Regulation 8***

- 4 This is simply consequential, ensuring that a *maximum housing benefit* can be calculated for Pathfinder cases as well as current claimants.

### ***Amendment Regulation 4: Maximum shelf-life for an LHA***

#### **New Regulation 8A**

- 5 This new regulation makes clear that a claimant's maximum housing benefit *can last no longer than a year* without being updated.
- 6 It acts together with two other parts of the Pathfinder regulations to require Pathfinders to carry out annual reviews of the LHA
- The changes to Regulation 10 (see below, Amendment Regulation 5) say that an eligible rent based on an LHA *can only be updated at the anniversary of the date the original LHA was based on*, unless an update is triggered by a relevant change in the claimant's circumstances. For example, this ensures that if a claimant's eligible rent was based on the January LHA, the Pathfinder authority cannot update their benefit merely because the LHA set for March claimants is higher; and
  - Amendment Regulation 16 allows Pathfinder authorities to supersede a claimant's eligible rent after a year, in order to prevent the maximum housing benefit expiring as a result of Regulation 8A. If no supersession was carried out, the claimant's HB award would effectively end. However, in practice, this should be a straightforward process which could be automated. For example, if the claimant's eligible rent was based on an LHA for January 2004, the Pathfinder authority would apply the corresponding LHA for January 2005. So, in practice, there should be no need for any claimant's award to end as a result of Regulation 8A.

- 7 Regulation 8A applies to all Pathfinder claimants, including those whose eligible rent is protected at a higher level than if it was based on the LHA. In these cases, the anniversary is based on the LHA date that was last used for a “better off” comparison, to check whether or not the claimant needed to be protected.
- 8 The reason the legislation for the review mechanism is so complicated is that we have no straightforward primary power to require LAs to carry out reviews of HB awards at set points. This contrasts with the power under section 122 of the Housing Act 1996 to require LAs to make referrals to the rent officer at specific times.

### *Amendment Regulation 5: Amendments of Regulation 10 - Eligible rent*

- 9 This is the most complicated part of the Pathfinder regulations. It inserts eleven new paragraphs, (3A) to (3K), into Regulation 10, which says how LAs must calculate a claimant’s eligible rent. The new paragraphs describe how to set the eligible rent for LHA claimants, and deal with the various cases where claimants can have their eligible rent protected at a higher level than the LHA.

#### **Paragraph (3A): “Normal” LHA claimants**

- 10 Paragraph (3A) deals with “normal” LHA cases, where no protection rules need to be applied. It says that the eligible rent is the maximum rent (standard local rate), which is calculated under New Regulation 11A (see below) and which is based on the relevant LHA for the claimant’s area and household size.
- 11 However, unlike current claimants, the eligible rent for LHA cases is **not** subject to paragraphs (4) or (6B):
- Paragraph (4) deals with cases where part of the claimant’s rent is for non-residential premises, eg a flat as part of a shop. In these cases, the eligible rent will only pay for the residential part of the rent. There is no need to apply this power for LHA cases, since there is no link to the claimant’s actual rent.
  - Paragraph (6B) gives Pathfinder authorities a general power to reduce claimants’ eligible rent if they think it is unreasonably high. However, allowing this to apply to LHA cases would undermine the certainty for claimants about how much benefit they could expect to get.
- 12 The eligible rent applies until
- the claimant has a change of circumstances that triggers an update (listed in new Regulation 11A(1)(b)(iv)); or
  - a year after it was set, at which point the Pathfinder authority must review and update it (see new Regulation 8A)

### **Paragraphs (3B) to (3J): Protected cases**

- 13 New paragraphs (3B) to (3J) deal with the three categories of claimants who can have their eligible rent protected at a higher level than the maximum rent (standard local rate)
- a** Existing claimants at the introduction of the LHA scheme will continue to receive the same eligible rent if that is higher than the eligible rent they would get based on an LHA. This will ensure that no one loses out at the point of change. Claimants will be protected at this rate until an LHA-based eligible rent would be the same or higher. There is no time limit on the protection (with two minor exceptions – see paragraph (3C)). You are not expected to do a comparison of rates unless a change of circumstances has been reported, or a year has elapsed since the LHA Scheme was introduced or the last comparison was undertaken.
  - b** Claimants who have a death in their household can be protected for 12 months from any fall in their eligible rent. If they only claimed HB after the death, their eligible rent will be based on their actual rent, without rent officer restrictions.
  - c** Tenants who were previously paying their own rent and had not claimed HB in the past year can have their eligible rent based on their actual rent, without rent officer restrictions, for the first 13 weeks of their claim.
- 14 **In all cases**, the protection rules will stop as soon as a claimant would be better off with an LHA-based eligible rent.

### **Paragraph (3B): Who qualifies for protection at point of transfer**

- 15 Paragraph (3B) says that existing claimants can potentially have their eligible rent protected at the point of transfer onto the LHA scheme. As soon as someone moves house or leaves HB, they lose their protection. There are no linking rules, for example for people who have a short break in entitlement or who take part in a welfare to work scheme.

### **Paragraph (3C): How much eligible rent they get**

- 16 Paragraph (3C) says that claimants keep their existing eligible rent if it is **higher** than an eligible rent based on the LHA. If it is not, they get the “normal” eligible rent, calculated under paragraph (3A) - they have no need to be protected.

17 Paragraph (3I) – below – says that claimants protected at the point of transfer are protected **indefinitely**, until the LHA-based eligible rent catches up with their eligible rent. But there are two exceptions to this, listed in paragraphs (3B)(b) and (3B)(c). These are people whose eligible rent was never subject to any form of rent officer restriction at all

- **paragraph (3B)(b)**: existing claimants who first claimed Housing Benefit after a death in their household, and whose eligible rent is based on their actual rent for a year as a result, under Regulation 11(7)(b)
- **paragraph (3B)(c)**: existing claimants whose eligible rent is based on their actual rent during the first 13 weeks of their claim, under Regulation 11(9)

18 These two groups of claimants stay protected only for the *remainder* of their original protection period except where the claimant was receiving protection on death at the point of transfer and the trigger for transfer was another death. In that case, protection would run for 12 months from the date of the later death. This is set out in paragraph (3I).

#### **Paragraph (3D): Protection after a death**

19 Where there has been a death in the household, paragraphs (3D), (3E) and (3H) protect the claimant's eligible rent. They largely mirror the current rules in Regulation 11(7), (8) and (11).

#### **Paragraph (3F): Protection for the first 13 weeks of a claim**

20 Paragraphs (3F) and (3G) allow people who previously paid their rent without help from HB to get their full rent paid for the first 13 weeks of the claim. They largely mirror the current rules in Regulation 11(9) and (10).

#### **Paragraph (3I): Time-limits for protection**

21 This sets out how long a protected eligible rent stays protected, ie

- 13 weeks for a new claimant
- 12 months if there has been a death
- indefinitely for someone protected at the point of transfer onto the Pathfinder scheme (**except** for the two categories of claimant listed under paragraph (3C))

22 In all cases, the protection can end sooner if the Pathfinder authority calculates a new LHA-based eligible rent which is the same or higher than the protected eligible rent. This eligible rent would be calculated if the claimant had a relevant change of circumstances. For those claimants who are protected under (3C)(a)(ii), protection can also end if the Pathfinder authority calculates a new LHA-based eligible rent which is the same or higher than the protected eligible rent at an annual review.

### **Paragraph (3J): End of time-limited protection**

- 23 At the end of a 12-month or 13-week period of protection, the claimant's eligible rent reverts to the eligible rent that would have applied without the protection (this eligible rent may have been updated).

#### **Example**

A claimant is protected for 13 weeks at an eligible rent of £80 when the LHA at the time would have been £70. After eight weeks, she has a contractual rent increase, which triggers the calculation of a new eligible rent (based on the current LHA – by then £74).

She continues to receive £80 until the 13 weeks is up, at which point her eligible rent becomes £74.

### ***Amendment Regulation 6: Applying and publicising LHAs***

#### **New Regulation 11A: Applying the LHA**

- 24 This new regulation sets out when and how a Pathfinder authority should calculate a *maximum rent (standard local rate)* for the claimant. (As shorthand, the commentary on this regulation refers to "LHA" rather than "maximum rent (standard local rate)").

#### **Paragraph (1): Triggers for applying an LHA**

- 25 This lists the various points at which the Pathfinder authority must set the claimant's LHA. It covers
- claimants who need to be transferred to the Pathfinder rules
  - updates for claimants who are already on the new scheme

#### *Applying an LHA for the first time*

- 26 Sub-paragraph (a) only applies to those Pathfinder authorities who have chosen to introduce the scheme with a "big bang". They will have to calculate LHAs for their entire existing caseload on the start date.
- 27 In the other Pathfinder authorities, people will be transferred to the LHA at the earliest point that their claim would otherwise have been re-referred to the rent officer.

28 So, sub-paragraph (b)(i) and (ii) says that any claim, or information regarding a claim, will count as a trigger to calculate an LHA. Sub-paragraph (b)(iii) says that any “change relating to a rent allowance” (as defined in Regulation 12A) will trigger a transfer to the Pathfinder. These are changes, eg a change in the number of occupiers of a house, that could currently trigger a re-referral to the rent officer.

29 Also, for pensioners, Amendment Regulation 14, covered later in this Appendix, adds another trigger: sub-paragraph (c). This is the point at which their claims would next be referred to the rent officer – 52 weeks after the previous referral.

#### *Updating the LHA mid-year*

30 Sub-paragraph (b)(iv) lists the changes of circumstances that can trigger a mid-year update of the LHA. It is based on the list of changes that can currently trigger a new referral to the rent officer (set out in Schedule 1A paragraph 2(3) to the Housing Benefit Regulations). See *Length of award, Changes of circumstance* earlier in this manual.

#### **Paragraph (2): Exemptions from the LHA**

31 This lists the types of claim that will be assessed under the current rules, rather than the LHA. See *Scope of the LHA scheme* earlier in this manual.

#### **Paragraph (3): Which LHA to apply**

32 This says that the Pathfinder authority should use the LHA for the Broad Rental Market Area where the claimant lives, and for the size of house they are entitled to.

#### **Paragraph (4): Large households**

33 This deals with claimants with large families needing more than 6 rooms, where the rent officer may not already have set an LHA. If no valid LHA is in place for the size of house the person needs, the Pathfinder authority must apply to the rent officer for one.

#### **Example**

A person needing an eight-room house claimed HB, the Pathfinder authority applies to the rent officer. The rent officer calculates eight-room LHAs for **all** the BRMA within the Pathfinder authority. These would remain valid for any subsequent claims that month.

### **Paragraph (5): Pre-tenancy requests for large households**

- 34 This gives a way for claimants to find out the LHAs for large houses before they actually claim. It is based on the existing *pre-tenancy determination* procedure in Regulation 12A.

### **Paragraphs (6) and (7): Board and attendance**

- 35 This requires the Pathfinder authority to refer any claim that includes board or attendance to the rent officer. It is for the rent officer, see *New Article 4C: Board and attendance determinations and notifications* later in this Appendix to decide whether board and attendance forms a "substantial" part of the rent. If it does, the claim is exempted from the LHA, and treated under the current Housing Benefit rules.

### **Paragraph (8): LHAs that are higher than the claimant's rent**

- 36 Sometimes the amount of HB that the claimant can receive will be greater than their actual rent, which might seem odd in the context of setting a "maximum rent". So, this paragraph makes it clear that the claimant shall be "treated as liable" to pay any excess above their rent. Regulations 6 and 7 contain similar provisions for treating claimants as liable or not liable to pay rent.
- 37 This notional rent liability does not apply if the Pathfinder authority is considering whether to make payments direct to the claimant's landlord under Regulation 93, see *Amendment Regulation 12: Payments to the landlord* later in this Appendix. In that context, the Pathfinder authority cannot pay the landlord any more than the claimant actually owes.

### **New Regulation 11B: Publicising the LHA areas and rates**

- 38 This requires Pathfinder authorities to publicise the LHAs and details of the areas they cover. It is not technically necessary, but it emphasises the importance of effective communication and publicity. The LHA scheme will only work if claimants understand and are able to respond to the rates.

### ***Amendment Regulation 7: Referring individual claims to the rent officer***

- 39 This inserts a new paragraph (2B) into Regulation 12A (which sets out when local authorities have to refer claims to be checked by the rent officer). The new paragraph makes it clear that LHA claims do not need to be referred. Claims that are excluded from the standard allowance under Regulation 11A(2) will continue to be treated under current referral rules.

### *Amendment Regulations 8 to 10: Redetermination of rent officer decisions*

- 40 The general principle in the Pathfinder regulations is that there should be a right for claimants to ask for redeterminations of decisions about **individual** cases, but **not** of decisions which may affect many other people (such as the level of an LHA). Amendment regulations 8 to 10
- allow Pathfinder authorities to ask for redeterminations of a rent officer's decision about whether a claim includes substantial board and attendance, see note on Regulation 11A(6). The same rules about asking for a redetermination or substitute determination of a rent officer's decision apply
  - make it clear that there is no right to ask for a redetermination of a rent officer's decision about a BRMA or an LHA

### *Amendment Regulation 11: Amended determinations*

#### **New Regulation 12E**

- 41 A Pathfinder authority will not be able to ask for an LHA or a BRMA to be reviewed. But the amendments to the Rent Officers Order do require rent officers to correct any mistakes they make, eg a mistyped LHA value, that were not errors of professional judgement. This new regulation allows claims to be revised if the LHA or BRMA they are based on is changed.
- 42 Of course, any retrospective alteration of an LHA would be administratively difficult for Pathfinder authorities (having to revisit all the claims that had been based on that figure), and potentially disruptive for claimants (who may have made choices about their accommodation based on that amount). However, as with revised rent officer decisions about an individual's claim (in current Regulation 12CA(5)), the rules are designed to be favourable towards the claimant
- if the claimant's benefit would increase as the result of the change, the change is backdated to the original date that the claimant's maximum rent (standard local rate) was based on
  - but if the claimant's benefit would reduce, the cut only takes effect from the point that the rent officer makes the amended determination

### ***Amendment Regulation 12: Payments to the landlord***

- 43 Amends Regulation 93 (which sets out when a local authority *must* make HB payments to the landlord) and Regulation 94 (which says when a local authority *may* pay Housing Benefit to the landlord). See *Paying claimants not landlords* earlier in this manual.
- 44 Paragraph (1) inserts a new paragraph (2A) in Regulation 93 (it also applies to Regulation 94). This says that, when payment is made direct to the landlord and there are no arrears, the amount payable to the landlord will be limited to the amount due in rent and any excess will be paid to the tenant. If the tenant is in arrears, the Pathfinder authority can decide whether to pay any excess to the landlord towards the arrears. However, the Pathfinder cannot use the excess to pay the landlord more than the tenant owes in rent and arrears of rent.
- 45 Paragraph (2) amends Regulation 94 to make it clear that Pathfinder claimants will not be able to ask for their benefit to be paid to their landlord. It also lists the extra circumstances where Pathfinder authorities will have discretion to make payments to the landlord, see *Paying claimants not landlords* earlier in this manual.

### ***Amendment Regulation 13: List of Pathfinder authorities and start dates***

- 46 Inserts a new Schedule 8, which will list all the Pathfinder authorities where the new scheme will apply. Part I of the Schedule will list the Pathfinder authorities that will transfer their existing caseload to the LHA scheme with a "big bang"; Part II will list those planning to phase in the scheme gradually for existing claimants, see *Implementation details* earlier in this manual.

### ***Amendment Regulation 14: Rent officer referral arrangements for pensioners***

- 47 From October 2003, it is proposed that "benefit periods" in HB, ie the need to reclaim benefit every year, for pensioners will be abolished. The proposals for this are in the draft Housing Benefit and Council Tax Benefit (State Pension Credit) (Abolition of Benefit Periods) Amendment Regulations 2003.

- 48 One of the consequential amendments made by these regulations is to change the rules for referring claims to the rent officer. The policy intention has always broadly been that claims should be referred to the rent officer every year. But the current rules are linked to the cycle of benefit periods for an individual claimant. Under the new proposals (inserted as paragraphs (1)(d) and (e) in Regulation 12A), Pathfinder authorities would simply have to make a fresh referral to the rent officer 52 weeks after the last referral.
- 49 Amendment regulation 14 simply makes some minor consequential amendments to refer to these changes.

### ***Amendment Regulation 15: Pre-1996 claimants***

- 50 This applies to people who are still treated under the "Old Regulation 11" rules for pre-1996 claims, see *Appendix 2 - The parallel rent schemes* earlier in this manual. It says that, as soon as they have to be dealt with under the LHA scheme, they should stop being dealt with under the old rules.

### ***Amendment Regulation 16: Annual reviews of the LHA***

- 51 These amendments combine with new Regulation 8A to require Pathfinder authorities to update a claimant's LHA if it has applied for a year without change, in order to prevent the award coming to an end. See *Maximum shelf-life for an LHA* earlier in this section.
- 52 Under Regulation 8A, a claimant's "maximum housing benefit" (and therefore their award) will expire after a year. This regulation inserts a new paragraph (2A) in Regulation 7 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, which provides a ground for Pathfinder authorities to supersede the award on their own initiative, in order to prevent it expiring under Regulation 8A. The supersession will change the date and amount of the LHA adopted in the decision, or just the date to which the LHA applies if there is no change in the amount.
- 53 The new Regulation 8(14) says that the new decision will come into effect from the moment that the claimant's award would otherwise have ended under Regulation 8A, to ensure that the benefit award runs on seamlessly.
- 54 The provision is not technically mandatory, since there is no primary power to compel a local authority to make a superseding decision on the award. However, if there are grounds for superseding a claimant's award, and the award would otherwise end, it would be unreasonable for the Pathfinder authority not to carry out a supersession.

55-61

- 55 In practice, carrying out an annual supersession is unlikely to cause problems. There would be no need for the claimant to make a new application for HB (as happens now when a benefit period ends), the Pathfinder authority would simply update their eligible rent with the latest LHA and amend the date to which that LHA applies.

### *Schedule 1*

- 56 This will contain the commencement date for the Regulations for each Pathfinder authority.

### *Schedule 2*

- 57 This inserts a new Schedule 8, which will list all the Pathfinder authorities where the new scheme will apply. Part I of the Schedule will list the Pathfinder authorities that will transfer their existing caseload to the LHA scheme with a "big bang"; Part II will list those planning to phase in the scheme gradually for existing claimants. It will contain the commencement date for the Regulations for each Pathfinder authority.
- 58 The commencement details are not included in the draft regulations as the start dates are still subject to final agreement with the Pathfinder authorities. A provisional timetable can be found in *An overview of Local Housing Allowance*, earlier in this guidance manual.

## *The Rent Officers Amendment Order*

### *Amendment Order Article 2: England and Wales*

- 59 Article 2 inserts new changes for England and Wales; Article 3 makes the same amendments to the corresponding Rent Officers Order for Scotland.

#### **Paragraph (2): Definitions**

- 60 Introduces various new terms, including a new concept of "board and attendance determination". Claimants who receive board and attendance as a "substantial part" of their rent (the rent officer will decide this) will be excluded from the Local Housing Allowance.

#### **Paragraph (4): Indicative rent levels**

- 61 This makes it clear that rent officers do not need to provide "indicative rent levels" for Pathfinder authorities, see *Indicative rents* earlier in this manual.

**Paragraph (5): Inserts new Rent Officers Order Articles 4B, 4C, 4D and 4E***New Article 4B: LHA determinations*

## Paragraph (1): "Broad Rental Market Areas"

- 62 Requires the rent officer to define the "Broad Rental Market Areas" that the standard local housing allowances will cover, see *Broad rental Market Areas* earlier in this manual. The definition of Broad Rental Market Area is in paragraph 4 of New Schedule 3A.

**Paragraph (2): LHA rates to be set every month**

- 63 Every month, the rent officer must calculate LHAs for every size of house up to six rooms (plus for any other sizes of house that the rent officer thinks would be needed). See *Setting the Local Housing Allowance* earlier in this manual.

**Paragraph (3): Shelf-life for LHAs**

- 64 Paragraph (3) states that LHAs are valid from the beginning of the month after the rent officer sets them. Taken together with paragraph (2) it means that each LHA has a shelf-life of one month.

**Paragraphs 4 and 5: LHAs for large houses**

- 65 Requires rent officers to provide standard allowances for large households if asked to by a local authority, either because of a claim or a pre-tenancy request, see *New Regulation 11A: Applying and publicising the LHAs* earlier in this appendix.
- 66 Any large-house LHA that is needed in order to assess an actual claim is valid for the month in which the claim has to be assessed. Any LHA that is provided after a pre-tenancy request is valid for the month in which the rent officer notifies it to the Pathfinder authority.

*New Article 4C: Board and attendance determinations and notifications*

- 67 This links to new Regulation 11A(6). It will be for the rent officer to decide whether a "substantial part of the rent is fairly attributable to board and attendance", eg if a claimant is living in a hotel. Rent officers already have to make decisions about board and attendance, this wording is based on paragraph 7(1)(a)(ii) of Schedule 1 to the Rent Officers Order.
- 68 If the rent officer decides that there *is* substantial board and attendance – paragraph (1)(b), the claim is treated under the existing, mainstream Housing Benefit rules.

- 69 If the rent officer decides that it does **not** (paragraph (1)(c)) the rent officer must notify the Pathfinder authority, who would then treat it as an LHA case.

*New Articles 4D and 4E: Board and attendance redeterminations*

- 70 Just as LAs can currently ask for redeterminations of a rent officer's decision on a specific claim (under existing articles 4 and 4A of the Rent Officers Order), this allows Pathfinder authorities to challenge a decision under new article 4C about whether a claim involves substantial board and attendance. The text is based on the wording of current Articles 4 and 4A.

***Amendment Order, Article 2 paragraph (8):  
Errors by the rent officer***

- 71 This requires rent officers to notify the Pathfinder authority and provide an update if they have made an error in deciding an LHA or in defining a Broad Rental Market Area. It mirrors the existing rent officer rules, in that it only applies to factual errors, not to errors of professional judgement. For example, a rent officer could correct a typing mistake in the LHA figures sent to the council, but would not be allowed have second thoughts about whether the area boundaries were right.
- 72 Of course, it will be important to avoid mistakes and corrections as much as possible. Unlike now, where only a single claim is affected by a mistake, Pathfinder authorities would have to identify and alter **all** the claims that had been made using the same LHA. This is why we propose not to allow any right of appeal or redetermination on the level of the LHAs and the Broad Rental Market Areas they are based on.

***Amendment Order, Article 2 paragraph (10)***

***New Rent Officers Order Schedule 3A***

**Paragraph (1): Size categories of LHA**

- 73 Defines the categories of standard allowance that the rent officer would have to provide routinely. The definition of "room" in sub-paragraph (2) is based on the existing definition at paragraph 4(4) of Schedule 1 to the Rent Officers Order.

**Paragraphs (2): Formula for calculating LHAs**

- 74 This sets the rules for calculating the standard allowance, and covers all categories of the LHA.

75 The rules closely follow the current formula for the Single Room Rent and Local Reference Rent, in paragraphs 4 and 5 of Schedule 1 to the Rent Officers Order.

**Paragraph (4): Definition of “Broad Rental Market Area”**

76 Defines “Broad Rental Market Area”. Again, it closely follows the current definition of “locality” in paragraph 4(6) of Schedule 1 to the Rent Officers Order. See *Localities* earlier in this manual.

77 The Broad Rental Market Area is made up of two or more “distinct areas of residential accommodation”. This concept is based on the definition of “neighbourhood” in paragraph 3(5) of Schedule 1.

**Paragraph (5): List of Pathfinder authorities**

78 This will contain a table listing the Pathfinder authorities in column (1) and the date that they each become a Pathfinder authority in accordance with the Regulations in column (2).

79 The commencement details are not included in the draft Order as the start dates are still subject to final agreement with the Pathfinder authorities. For provisional details, see *Appendix 4 - Implementation details* later in the section.

### ***Schedule 1***

80 This will contain the commencement date for the Order for each authority that will become a Pathfinder authority. (The Order will need to commence during the month before the authority becomes a pathfinder authority, so the rent officers have determined Broad Rental Market Areas and standard local allowances for the authority to use immediately the authority becomes a Pathfinder authority.)

### ***Schedule 2***

81 This inserts the new Schedule 3A in the Rent Officers (Housing Benefit Functions) Order.

### ***Schedule 3***

82 This inserts the new Schedule 3A in the Rent Officers (Housing Benefit Functions) (Scotland) Order.

83-99

## *Transitional protection*

- 1 The Social Security Advisory Committee's twelfth report outlines the principles of transitional protection and provides guidelines for deciding whether transitional protection is necessary and, if so, what form it should take. The three forms of transitional protection outlined in the report are:
  - a continuation of the old rules for those in receipt of benefit at the time of change (indefinite transitional protection). This form of protection is currently in place for pre-1996 and January 1996 Housing Benefit claimants.
  - b the same as a but without subsequent uprating of the benefit (frozen transitional protection)
  - c the same as a but with entitlement ending on a specific date (determinate transitional protection)
- 2 The option we have proposed for the LHA Pathfinders is option ii – frozen transitional protection. This will guarantee that there are no losers at the point of change.
- 3 If an existing claimant would lose out under the LHA scheme, their current eligible rent would be frozen until it is equalled or exceeded by the LHA-based eligible rent that they would be entitled to. When this occurs, the claimant will move onto the new scheme and get the appropriate LHA. See *Protection rules* earlier in this guidance manual for more information.
- 4 As soon a case has to be dealt with under the LHA scheme, any existing transitional protection would be lost from this point, and the claimant would no longer be assessed under the old rules. Given the small and dwindling numbers of claimants who benefit from existing protection schemes and the administrative costs of the transitional rent rules, it would make no sense to continue them further at the point when we introduce a brand new – and more generous – scheme.
- 5 One of the main reasons for considering transitional protection necessary in introducing the LHA is that claimants may have made long-term financial commitments on the basis of their current entitlement. We therefore considered it preferable to avoid allowing claimants to see a drop in their benefit as a consequence of changes to the scheme.
- 6 It should be noted that the proposal to adopt a 'frozen' transitional protection scheme was not simply based on administrative convenience. From the administrative perspective, it would have been simpler just to exclude those existing claimants from the scheme who might lose out. Instead, we recognise that many existing claimants will benefit from the LHA scheme, and considered it unfair to prevent this group from benefiting by continuing to treat them under the old rules.

7-99

7 While administrative ease was not the primary factor in developing the proposed transitional protection scheme, it is still a significant issue. The transitional rent restriction rules and the need to refer claims to the rent officer are often singled out as a major administrative difficulty for local authorities.

8 In the 2000 Housing Green Paper, the Government consulted on possibilities for simplifying Housing Benefit. A key proposal was to simplify the transitional rent rules for private tenants. The follow-up White Paper said

*“We now want to focus our efforts on some key areas, including... possible simplification of transitional [rent] schemes.”*

9 In view of this, administrative convenience must be an important consideration, alongside equity to claimants. The approach we have adopted is expected to be simpler to administer and fair to claimants and is therefore thought to be consistent with the Government’s aims to simplify transitional protection schemes for Housing Benefit.

10-99

# *Example of submission to the Appeals Service*

## *Specimen Submission*

### **Section 1. Personal Details**

Appellant: Miss Sarah BUTLER

Address: 7A Road  
Teignbridge

NINO: AB 12 34 56 C

DoB: 08/06/72

Appealing against: Housing Benefit

Date of decision: 20/08/04

Date of appeal: 27/08/04

### **Section 2. Schedule of Evidence**

Document	Date	Description

### Section 3. Decision

20/01/04

"I am writing with reference to your Housing Benefit claim made on 13/08/04. You have asked for the payment of your rent to be made direct to your landlord.

Under the new Local Housing Allowance payments will be made to you as claimant. It is your responsibility to pay your landlord and meet your rental liability."

---

### Section 4. Appeal

27/01/04

"I wish to make an appeal. I disagree with your decision that you will pay my rent to me. I want payments made to the landlord as they were last year. I am not good with money and my bank account is usually overdrawn. My ex-partner used to sort out all the money for the household, as I am not good with numbers. I have to buy school uniform for my son as he is growing fast and this will be another large amount of money I have to find soon. I do not see my landlord very often, as he does not live near here. It will be much easier if rent is just paid to him then I won't get behind. If I get behind I will be evicted and I don't want to have to move from here.

Please send my rent to my landlord direct."

---

### Section 5. Summary of Facts

1. Miss Butler claim for Housing Benefit transferred to Local Housing Allowance (LHA) on 13/08/04.
2. She is in receipt of Income Support so receives the maximum LHA of £101.00 per week. The contractual rent is £106.00 per week so there is shortfall of £5.00 per week for Miss Butler to meet from her own finances.
3. Miss Butler's previous Housing Benefit award was paid at her request direct to the landlord. There was a shortfall of £15 per week.
4. The rent book shows that Miss Butler did not always pay the shortfall.
5. Housing Benefit was calculated on 20/08/04 and Miss Butler notified of the result. She was advised that with the new Local Housing Allowance benefit payments would be made direct to her as claimant.
6. 26/08/04 a letter received from the landlord advising that his tenant has some mental health problems and he would like payments made direct to him as landlord.
7. A letter of appeal from Miss Butler was received by hand on 27/08/04.

8. Miss Butler attended the office on 27/08/04 and was offered money management advice. Direct payments of LHA were discussed.
9. The decision was looked at again, but there was no reason found to revise the decision of 20/08/04.
10. Miss Butler was notified on 31/08/04 that the matter would now proceed to the Appeals Service.

---

## Section 6. Relevant Legislation

### Housing Benefit (General) Regulation 94(1C)

In the case where a pathfinder authority has determined a maximum rent (standard local rate) in accordance with regulation 11A

- (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply, and
- (b) payment of a rent allowance to a person's landlord may be made where the pathfinder LA
  - (ii) considered that the claimant is likely to have difficulty in managing his affairs
  - (iii) considers that it is improbable that the claimant will pay his rent

Decision of the Tribunal of Social Security Commissioners CH 5216/01, CH 841/02 & CH 3880/02

Paragraph 69 ".....We hold that the scope of any challenge on appeal to an authority's choice to use the statutory recovery powers against a particular appellant is limited to the propriety and lawfulness of any such choice that necessarily precedes or is incidental to the making of the determination against which he has the right of appeal under paragraph 6(6) of schedule 7; such an appeal cannot extend to reopening the merits of any such choice or exercise of discretion by the authority."

---

## Section 7. The decision-maker's submission

- 1) The tribunal is asked to decide if the council acted lawfully and with propriety in its consideration of Housing Benefit regulation 94(1C)(b)(ii) or (iii)
- 2) Tenants in the Private Rented Sector who claim Housing Benefit in a Local Authority operating the Local Housing Allowance (LHA), will normally have their LHA paid to them rather than their landlord. This is because the aims of the Local Housing Allowance are to extend choice and encourage responsibility among tenants, enabling them to trade between the quality and price of property by deciding what percentage of their LHA to spend on the rent. This in turn will equip tenants of working age with the skills for the transition from benefit to work, a key Housing Benefit Reform objective. To do this effectively, tenants need to take ownership of their LHA payments and ensure an appropriate amount is paid over to their landlord as rent. Tenants in non-LHA areas are not affected by this change.

It is recognised that a few tenants will not be capable of managing their affairs because they are “vulnerable”. There will also be a small percentage who will refuse to meet their rent payments or who will have already accumulated at least 8 weeks’ of rent arrears. In these cases, Local Authorities will still be able to make payments direct to the landlord.

### **Regulations**

The Housing Benefit (General) (Local Housing Allowance) Amendment Regulations 2003 amend The Housing Benefit (General) Regulations 1987 (The “principal Regulations”) to enable the changes on payment to be implemented in LHA authorities.

Specifically, Regulation 12 of the Amendment Regulations amends Regulations 93 and 94 of the principal Regulations. The amendments

- remove a tenant’s ability to ask for their HB to be paid to their landlord (though they may still ask for it to be paid to a third party under Regulation 92). This applies to all claims to HB received on or after each LA’s “go-live” date and to existing claims at the point they come up for review, but see next bullet
- allow LAs adopting a “big bang” approach to converting their existing caseload (Brighton and Hove, Edinburgh and North East Lincolnshire) to delay implementing the above requirement for up to six months
- allow an LA to pay a person’s LHA to their landlord if they are thought to have difficulty in managing their affairs (what is sometimes referred to as “vulnerability”)
- allow an LA to pay a person’s LHA to their landlord if they are thought unlikely to pay their rent
- allow an LA to pay a landlord the whole amount of a person’s LHA where it exceeds the rent but only where the excess is needed to cover rent arrears

- 3) The Local Housing Allowance began in Teignbridge on 12/01/04
- 4) Miss Butler was notified that her LHA would be paid to her direct for her award of benefit from 16/08/04.
- 5) The landlord sent a letter advising that he thought she had some mental health problems and he wanted direct payments. No evidence of mental health problems was supplied.
- 6) Miss Butler attended the council offices on 27/08/04. She brought a letter of appeal, which stated she wanted the LHA to be paid to her landlord. Her letter explains that she is not good with money and she is worried about getting behind with her rent.
- 7) Miss Butler was asked about mental health problems. She advises that she used to take medication for depression following the breakdown of her relationship with her partner, but that she has not taken anything in recent months.
- 8) Teignbridge council offers money management advice to claimants. An officer spoke with Miss Butler about priority debts and organising personal finances. Miss Butler states that she would rather prioritise her son’s clothing and school outings over her other expenses such as utilities or rent. She confirmed that the shortfall of £15 a week under the previous Housing Benefit award was usually met, but if family expenses were necessary she would not make the shortfall.

- 9) Miss Butler was advised about setting up a bank account, which would take the LHA payments, which she could then directly pay her landlord from. Miss Butler was reluctant to get another bank account and stated that she currently has two already both of which are regularly overdrawn. She again stated that she is not good with numbers and made a request for payments to be made to her landlord.
- 10) A decision was made that although Miss Butler preferred the previous system where benefit was paid direct to the landlord she was not regarded as a vulnerable tenant. The legislation advises that payments may be made to the landlord where "the pathfinder authority considered that the claimant is likely to have difficulty in managing his affairs; or the pathfinder authority considers that it is improbable that the claimant will pay his rent".
- 11) Miss Butler has not shown that she has difficulty in managing her affairs. She is an adult with no long-term disabilities and is responsible for her son. She has two bank accounts, which are managed by her. She is able to budget and is clear about priority expenses. She has previously made a successful application for a Social Fund loan. It has not been shown that Miss Butler would have difficulty with the LHA being paid direct.
- 12) It is probable that Miss Butler will pay the rent if she has direct payments of Housing Benefit LHA. Miss Butler previously met the shortfall with only the occasional week being missed.
- 13) It is understood that the landlord does not live in the area of Miss Butler's property. At present he does not visit regularly. It is unclear what arrangements he is making to collect rent from his properties.
- 14) The council respectfully submits that the application of Housing Benefit regulation 94 is a discretionary power and therefore would apply the same principal for the scope of the appeal as that found in the Decision of the Tribunal of Social Security Commissioners, CH 5216/01, CH 841/02 & CH 388/02.
- 15) The council submits that full consideration was given to the representation made by Miss Butler and based on the information provided the decision was reasonable. The council further submits that it acted lawfully in using its discretion when deciding if direct payment should be made to the landlord.