

Local Housing Allowance Guidance Manual

April 2014

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Abbreviations

AFIP	Armed Forces Independence Payment
BRMA	Broad Rental Market Area
CTR	Council Tax Reduction
CTS	Council Tax Support
DWP	Department for Work and Pensions
ESA(IR)	Income-related Employment and Support Allowance
HCA	Homes and Communities Agency
HB	Housing Benefit
IS	Income Support
JSA(IB)	Income-based Jobseeker's Allowance
LA	Local authority
LHA	Local Housing Allowance
SSAA	Social Security Administration Act
SSCBA	Social Security Contributions and Benefits Act
TPD	Third Party Deductions
TSA	Tenant Services Authority

Glossary

The following terms used in this manual have 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.

Authorised authority	A housing authority, local authority (LA), charging or Levying authority, as appropriate. S.134 and 139 SSAA
Benefit week	A period of seven consecutive days starting on a Monday and ending on a Sunday.
Broad Rental Market Area	An area within which a customer 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, taking account of the distance of travel, by public and private transport, to and from those facilities and services.
Cap rent	The aggregate of payments that the tenant is required to make as a condition of occupying the property. This includes payments such as rent or licence payments but does not include payments for non-residential portions of the property. Where rent payments are made by joint tenants, the rent will be apportioned between them. Where the LA has reason to believe that the contractual rent is above a level that it considers reasonable it may reduce it to an appropriate amount. <i>HB and HB (SPC)Reg 12(1), 13D(12), 12B(3), (4) and (6)</i>

Care leaver	A child who leaves LA care, fully supported by the authority until they reach age 18. Known as a compulsorily supported person in Scotland.
Child	A person under the age of 16. S.137(1)SSCBA
Customer	A person claiming benefit.
Contractual rent	The rent which the tenant is contractually liable to pay to the landlord.
Couple	A man and a woman who are married to each other or living together as a married couple or a same sex couple who have formed a civil partnership or are living together as civil partners. <i>HB and HB (SPC) Reg 2(1)</i>
Crown tenant	A person who lives in a property belonging to <ul style="list-style-type: none">• the Crown, that is the head of state• a Government Department <p><i>Arrangements for dealing with Crown tenants' claims remain unchanged from previously under LHA.</i></p>
Date of claim	The date the claim is made or treated as made. <i>HB Reg 2(1), HB (SPC) Reg 2(1), HB Reg 83, HB (SPC) Reg 64</i>
Decision	An LA's ruling on any matter under the Regulations connected with a Housing Benefit (HB) claim. However, rent officers still make determinations regarding the amount of rent payable.

Dependant	A child or young person who is financially dependent on the customer, and who is in non-advanced education. Other adult members of a claimant`s household, e.g. an elderly parent with no recourse to public funds, may depend on them financially but are still treated as non-dependants for HB purposes.
Dwelling	Residential accommodation. <i>S.137(1) SSCBA</i>
Eligible rent	The amount of rent which may be used to determine the appropriate maximum housing benefit for any rent allowance or rent rebate.
Family	A couple with or without children, or a lone parent with a child or children.
Housing Benefit	Covers both a rent rebate and a rent allowance.
Income-related benefits	Describes Income Support (IS), income-based Jobseeker`s Allowance (JSA(IB)), income-related Employment and Support Allowance (ESA(IR)) and Pension Credit.
Landlord	The person a customer is liable to pay rent to.
Linked person	This is any member of the customer`s family <ul style="list-style-type: none">• if the customer is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household, or

- any relative of the customer or his partner who occupies the same dwelling as the customer, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the customer ceased his occupation of it.

HB and HB (SPC) Reg 2(1).

Maximum rent (LHA)

The amount determined in accordance with regulation HB and HB (SPC) Reg 13D.

Mobile home

A dwelling which 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.

Non-dependant

Anyone who lives with the customer, except

- members of the customer's 'family', but including any of the customer's (or their partner's) grown-up children who live with them
- a joint occupier of the accommodation
- a tenant or a sub-tenant of the customer
- someone who is paid by a voluntary or charitable organisation to care for the customer or the customer's partner and the customer or the customer's partner pay for the services provided

Occupier(s)

The person(s) whom the LA is satisfied occupy the 'dwelling' to which the claim or award relates, except for any joint tenant who is not also a member of the customer's household.

HB and HB (SPC) Reg 13D(12)

Partner

Where a customer is a member of a couple, the other member of that couple or where a customer is polygamously married to two or more members of his household, any such member.

HB and HB (SPC) Reg 2(1)

Person affected

A person who is

- a a customer
- b a customer's deputy, or someone with Power of Attorney
- c the LA
- d the landlord (in the case of a decision on direct payments of HB)
- e a person from whom the LA decides that an overpayment of HB is recoverable

Room

A bedroom or room suitable for living in except for a room which the customer shares with any person who is not a member of his household, a non-dependant of his, or a person who pays rent to him or his partner.

HB and HB (SPC) Reg 13D(2)(b)(ii)

Introduction

About this manual

0.001 This introduction contains overview information about this manual, including:

- what information is contained in this manual and where to find information that it does not contain
- language and layout of the manual
- specific technical terms used in the manual and the meaning of them.

0.002-0.009

What this guidance manual contains

0.010 This manual offers guidance on the administration of the Local Housing Allowance (LHA) arrangements in Housing Benefit. It provides information and guidance about:

- all aspects of the LHA arrangements, and
- the legal requirements that local authorities (LAs) must adhere to.

0.011 Remember, however, that this manual provides guidance only, and must not be taken as a complete and authoritative statement of the law. If in doubt LAs should seek their own legal advice.

0.012-0.019

What is not contained in this guidance manual

0.020 This manual does not include guidance about:

- the administration procedures for dealing with claims such as gathering information, and verifying evidence, liability to make payments, and occupying the home, assessment of capital, income and needs; or reconsidering, revising and superseding decisions.

For more information, [see the Housing Benefit Guidance Manual](#) and the [Adjudication and Operations Circulars](#)

- subsidy arrangements for LAs such as when subsidy is payable and how it is calculated. For subsidy information, see the [Subsidy Guidance Manual](#) -which is updated yearly
- the calculation and recovery of overpayments. For more information see the [HB/CTB Overpayments Guide](#)
- making Discretionary Housing Payments. For more information see the [Discretionary Housing Payments Good Practice Guide](#)

0.021-0.029

Glossary

0.030 This manual contains a glossary which lists specific terms used in the administration of benefit claims and gives an explanation of their meaning within the context of this guidance.

0.031-0.039

Language and layout of the guidance

0.040 Some ordinary words and phrases have been used in this guidance with a specific meaning to aid ease of reading and understanding, for example:

- 'you', is used to mean the person within the local authority making the decision or gathering information and evidence
- 'LA's' or 'authority's' is used to denote LAs' responsibilities
- 'we', is used to refer to the Department for Work and Pensions.

0.041 In this guidance DWP should be taken to include:

- Jobcentre Plus
- The Pension, Disability and Carers Service.

0.042 -0.049

References to the Housing Benefit Regulations

0.050 We have included references to the Housing Benefit regulations and other legislation throughout this guidance. Because provisions in the Housing Benefit (HB) Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) (HB (SPC)) Regulations 2006 often have the same regulation numbers we have only quoted both sets of regulations in full where the regulation numbers differ.

0.051 We have updated this guidance with updates in legislation and the DWP circulars as follows:

- The Rent Officer(Housing Benefit Functions) Amendment order 2013(SI No 666)
- The Rent Officers(Housing Benefit Functions) Amendment(No.2) Order 2013(SI 2827)
- The Housing Benefit and Universal Credit(size Criteria)(Miscellaneous Amendments) Regulations 2013(SI 2828)
- The following DWP circulars:A6/2012, A8/2012, A5/2013, A10/2013, A21/2013.

0.052-0.999

Chapter 1

An overview of the Local Housing Allowance

About this chapter

- 1.001 This chapter provides background information about the Local Housing Allowance (LHA) including:
- changes which have been made to the LHA arrangements from April 2013
 - how the maximum rent is calculated under the LHA
 - how LHA rates are set
 - its scope
 - movement onto the LHA arrangements.

1.002-1.009

Background to the LHA

- 1.010 The LHA arrangements were rolled out nationally from 7 April 2008 and apply to people who are claiming Housing Benefit (HB) for a property which is rented from a private landlord with an assured or an assured shorthold tenancy agreement.
- 1.011 Local authorities (LAs) use published LHA rates to calculate the maximum HB entitlement for the tenant.
- 1.012 Until 1 April 2011 customers who chose to rent below their LHA rate could keep the excess up to a weekly limit of £15 per week.

1.013-1.019

Changes to the LHA arrangements from 1 April 2013

- 1.020 From April 2013 the LHA arrangements have changed so that:
- LHA rates will be set annually, each April at the lower of:
- The previous LHA rate updated by the previous September's Consumer Price Index (CPI) or
 - The 30th percentile of local market rents in the previous September
 - For the following 2 years (April 2014 and April 2015) increases will generally be capped at 1 per cent. The Government has set aside funding of £140 million over two years to help people most affected by these new limits. In April 2014, some LHA rates will be increased by up to 4%.

- Abolition of anniversary dates.
- Rent increases and decreases become a relevant change of circumstances
- Provisions to allow an additional bedroom for a foster child or children of an approved foster carer to be included in the size criteria. This will apply both to LHA scheme cases (subject to the maximum of 4 bedrooms in total) and cases which are referred for rent officer determination.
- An additional bedroom will be added for adult children of the claimant or their partner who are in the armed forces but who continue to live with parents. These adult children will be treated as continuing to live at home (for the purposes of applying the size criteria), when deployed on operations. In addition, the non-dependant deduction should be removed and only reinstated when they return home.
- From 08/04/2013 When determining the number of bedrooms a person requires for the purposes of housing benefit, an additional room is allowed for a non-resident over-night carer where the claimant or partner is receiving AFIP(Armed Forces Independent Payment)
- They allow an additional bedroom within the size criteria for a disabled child who would normally be expected to share but is unable to do so due to their disability. This provision was applied retrospectively from 15/05/2012, following the *Court of Appeal* judgement in the cases related to Burnip, Trengove and Gorry.
- From 4 December 2013 the Government has amended legislation to allow an extra bedroom for a severely disabled child eligible for the middle or highest rates of Disability Living Allowance(DLA) care who would normally be expected to share a room under the size criteria rules but who is not reasonably able to do so due to severe disability.[\(See paragraphs 2.001, 2.012 & 2.092\)](#)

How the maximum rent is calculated under the LHA

- 1.021 Under the LHA arrangements rent officers provide LAs with LHA rates for properties ranging from a room in a shared household up to properties with a maximum of four bedrooms.
- 1.022 The LA uses the appropriate rate, based on the area where the person lives and the size of their household, to work out the maximum rent to be included in the HB calculation. [Chapter 2](#) contains detailed guidance

on the size criteria which are used to determine the LHA rate which applies to the household.

HB and HB (SPC) Reg 13D

1.023 To establish the maximum rent the LA compares the customer's cap rent (contractual rent charge) with the appropriate LHA rate.

1.024 The customer's maximum rent will be the lower of:

- the appropriate LHA rate
- the customer's cap rent (contractual rent charge).

HB and HB (SPC) Reg 13D(6) and (12)

1.025 If the cap rent (contractual rent charge) is higher than the appropriate LHA rate the customer must make up the difference from other sources of income.

Example

An LHA rate of £150 a week applies to Mr and Mrs Smith.

Their contractual rent (the cap rent) is £140.

As the cap rent is lower than the LHA rate, the maximum rent to be used in the benefit calculation is the cap rent of £140.

1.026 The maximum rent will be the eligible rent for the HB claim unless the customer is protected following the death of a linked person or because they were able to afford their rent prior to making a claim. See [Chapter 8 – Protection rules.](#)

HB and HB(SPC) Reg 12D (3)(a)and (5)(a)

1.027 Eligibility to HB under the LHA rules will be subject to a means-test and proof of a valid tenancy and occupation. Payment of benefit will normally be made to the tenant rather than to the landlord but see Chapters 4-7 which set out the circumstances in which rent can be paid direct to the landlord.

1.028-1.049

How LHA rates are set

- 1.050 LHA rates are set within BRMAs which are determined by rent officers, subject to the agreement of the Secretary of State.
- 1.051 The BRMA is an area within which a person could reasonably be expected to live and have access to services such as health and education and facilities for recreation, personal banking and shopping. Rent officers take account of the distance of travel, by public and private transport, to and from those services and facilities.
- 1.052 The rent officer must be satisfied that the area contains residential premises of a variety of types and tenures and sufficient privately rented residential premises, to ensure that, in the rent officer's opinion, the LHA rates for the categories of dwelling in the area for which the rent officer is required to determine a rate is representative of the rents that a landlord might reasonably be expected to obtain in that area.
- 1.053 When they have set the BRMAs, rent officers are then responsible for setting the LHA rates for a range of properties from a shared room up to a maximum of four bedrooms in the area.
- 1.054 The LHA rate is a standard rate calculated by reference to the 30th percentile value from a range of rents for properties of a given size in the BRMA. For example, if a list contains 70 rents the rent at position 21 would be the rent at the 30th percentile. This means that around one in three properties in the BRMA will be affordable for rent to Housing Benefit claimants.
- 1.055 From April 2013, LHA rates will be up rated annually. In April 2013 they were set at the lower of either: the previous LHA rate up rated by the September 2012 CPI inflation, or the 30th percentile of local rents.
- 1.056 For two years from April 2014, LHA rates will be set at the lower of the current 30th percentile or the previous LHA rate up-rated by 1%. The LHA rates that have diverged the most from market levels will be increased by up to 4% using the Targeted Affordability Fund. This will not apply to the national LHA cap amounts, which will be up-rated by 1% only. Local Authorities should continue to refer to LHA rates provided by the rent officer.

- 1.057 Rent officers are required to review the BRMA as often as it is thought appropriate, but all suggested changes to BRMA boundaries are subject to the agreement of the Secretary of State.

Rent Officers (Housing Benefit Functions) Order 1997 and Rent Officers (Housing Benefit Functions)(Scotland)1997 Article 4B and Schedule 3B

1.058-1.069

Scope of the LHA arrangements

- 1.070 The LHA arrangements apply to HB customers in the deregulated private sector only.

HB and HB (SPC) Reg 13C

- 1.071 The LHA arrangements do not apply to the following types of tenancy which are specified at HB and HB (SPC) Reg 13C(5). Some tenancies may initially appear to fall within the following definitions but before making a decision you should establish the status of the landlord, for example a number of housing operators are charging sub market/social sector rents and appear to be registered providers but are not social landlords and will therefore fall within the scope of the LHA arrangements.

- Tenancies of social housing of registered providers or registered housing associations

Most of these registered providers will include their registration number on their correspondence or tenancy agreements. If not, you can verify their registration as follows:

- In England, check that the landlord is a registered provider and that the property is social housing. You can check that the landlord is a registered provider of social housing by going to the Homes and Communities Agency website (HCA). This body has replaced the Tenant Services Authority (TSA).
- In Scotland, check that the landlord is a Registered Housing Association statutorily registered with Communities Scotland under the Housing (Scotland) Act 2001. You can verify their registration by going to the [The Scottish Housing Regulator RSL Register](#)
- In Wales, check that the landlord is a Registered Housing Association, registered with the National Assembly for Wales under section 36 of the Housing Act 1996. You can verify their registration by going to the Social Housing Regulation and

Investment Unit of the Welsh Assembly Government Housing Directorate.

Schedule 2, para 11(1) HB Regs 2006

Note: Some landlords who may operate in a similar way to a registered provider of social housing or registered housing association may have deregistered. These landlords cannot be classed as a registered provider, although the tenancy may fall within one of the other exemptions. If in doubt you should check the landlord's registration.

- If the properties are not registered on the HCA register, they will be either deregulated (DRT) or LHA cases.
- Registration provides them with Registered Social landlord status (RSL's)
- Protected cases.

These are cases protected from the Local Reference Rent by paragraph 4 of schedule 3 (Transitional and Savings Provisions) of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. To satisfy that definition:

 - the accommodation must be provided by a county council, housing association, registered charity or voluntary organisation, and
 - the tenant must be provided with care support or supervision by either the landlord or someone acting directly on their behalf. It should be the landlord that has ultimate responsibility for providing care, support or supervision. It is not sufficient for the landlord to simply facilitate, co-ordinate or just be involved in the provision of care, support or supervision either on behalf of others, ie social services, the NHS or within a joint responsibility. If the care, support or supervision is not directly provided by the landlord or by someone acting on their behalf, eg if all the care, support and supervision are independently commissioned by Social Services, the tenants are not exempt from the LHA arrangements.
- Regulated tenancies – pre 1989 (pre 15 January 1989 England and Wales, pre 2 January 1989 in Scotland). In these cases either the landlord or the tenant has applied to the rent officer or rent assessment committee for a fair rent to be registered which will be recorded in the local rent register. The eligible rent in these cases is the registered rent minus amounts for service charges which are ineligible for Housing Benefit as stated on the register.
- Certain accommodation types, such as caravans, houseboats (including mooring charges), mobile homes and hostels.

- Board and attendance cases where the rent officer judges that a substantial part of the rent is attributable to board and attendance, eg boarders, hotel and guest houses.

Note: Claims where the rent includes an element of board and attendance will still need to be referred to the rent officer. The rent officer will make a decision on whether a substantial part of the rent is attributable to board and attendance and inform the LA that the claim is either:

- outside of the LHA arrangements, in which case he will provide a decision on the rent referred, or
- that the tenancy falls within the LHA arrangements.

HB and HB (SPC) Reg 13D(10)

1.072 The following types of dwellings would normally fall within the LHA arrangements unless the dwelling also falls into one of the categories at paragraph 1.071.

- Abbeyfield Society tenancies should be assessed under normal LHA rules except where they are a registered provider of social housing with the TSA or they fall within the definition of a protected case (see paragraph 1.081) because the dwelling is 'exempt accommodation'.
- Almshouses should be assessed under normal LHA rules except where they are a registered provider of social housing with the TSA. Note: The registration of almshouses is relatively uncommon.
- Co-operatives – Only those co-operatives where the owner of the property is a registered provider of social housing or a LA will not fall to be assessed under the LHA rules. Your own Housing Department (or similar part of your organisation) should be able to assist with queries regarding Housing Co-operatives as they have records of the development of new properties in your areas, details of housing needs, developing agents etc. If in doubt, contact these departments for further advice.
- Private sector supported housing tenancies (supported accommodation) provided by a private landlord (i.e. not a county council, housing association, registered charity or voluntary organisation) are assessed under the LHA rules. Tenants receiving floating support from their LA, or an appropriate source, and who are renting from private landlords are also calculated using LHA rules.

1.073-1.079

Movement on to the LHA arrangements

1.080 The LHA arrangements apply to customers in the deregulated private rented sector who have

- made a new claim to Housing Benefit on or after 7 April 2008
- have changed address.

Note: There are no linking rules for claims made under the pre April 2008 rent restriction schemes. Any break in entitlement or change in customer will transfer the claim onto the LHA arrangements.

HB and HB (SPC) Reg 13C(2)(a)(b)and (c)

1.081 Where a tenancy is exempt from the LHA because it falls within one of the exemption categories and that tenancy changes, for example a registered provider de-registers with the HCA, the award should continue to be treated under normal HB regulations and will not transfer onto the LHA arrangements until one of the trigger events, outlined at paragraph 1.080, occurs.

1.082 If a claimant has transferred onto the LHA arrangements and that tenancy subsequently changes, for example if the landlord sells their social housing to a registered provider or the landlord registers with the HCA and their liability becomes an exempt tenancy, LHA arrangements will no longer apply as the accommodation would be said to be “Exempt”. This is accommodation provided by a:

- Housing Association, whether registered or unregistered
- A non-profit making organisation,
- A registered charity,
- A County Council or
- Any other registered Social Landlord

Where that body or person acting on its behalf provides the claimant with care, support or supervision.

(They will now fall within HB Regulation 14.)

HB and HB(SPC) Reg 14(1)(h); HB & CTB (Consequential Provisions) Regs 2006, Schedule 3, Paragraph 4

1.083-1.999

Chapter 2

Local Housing Allowance – establishing the maximum rent

About this chapter

2.001 This chapter explains how to determine the maximum rent by setting out:

- how to establish the applicable Local Housing Allowance (LHA) rate by reference to the size criteria
- who to include as occupying the dwelling
- when to allow an additional bedroom for a non-resident carer
- when to allow an additional bedroom for a person in receipt of AFIP(Armed Forces Independent Payment) who is in need of overnight care
- when to allow an additional bedroom for a disabled child who is unable to share a bedroom with a sibling because of their disability
[\(See paragraphs 2.012 & 2.092\)](#)
- when to allow an additional bedroom for a foster child or children of an approved foster carer to be included in the size criteria by rent officers when making determinations within the private rented sector.
- When an additional bedroom will be added for adult children who are in the armed forces but who continue to live with parents.
- special rules which apply to under 35 year olds, single customers aged 35 years and over, couples with no dependent children, people with a severe disability and care leavers under 22
- rules relating to former residents of specialist hostels for homeless people
- rules for Ex-offenders
- rules which apply to joint tenants
- examples of how to calculate the maximum rent.

2.002-2.009

The size criteria and how to establish the LHA rate

2.010 Local authorities (LAs) should undertake to make available to their customers information about the Broad Rental Market Areas (BRMAs) which fall wholly or in part in the LA area, and the LHA rates for the different categories of dwelling which apply within them (shared room rate and properties with one to four bedrooms)

HB and HB (SPC) Reg 13E

2.011 The LHA rate that will apply to the customer will depend on the area in which they live and the number of people who occupy the dwelling as their home. ([See paragraphs 2.030 and 2.031 Who to include as occupying the dwelling.](#)) The size criteria determine the appropriate number of bedrooms that those living in the dwelling are allowed. From 1 April 2011, the maximum allowance is four bedrooms.

HB and HB (SPC) Reg 13D

2.012 The number of bedrooms allowed is calculated as follows:

- one bedroom for
 - every adult couple
 - any other adult aged 16 or over
 - any two children of the same sex
 - any two children regardless of sex under age 10
 - any other child
 - one additional bedroom where the customer or partner require overnight care see [paragraphs 2.040-2.046](#) below
 - one additional bedroom for a severely disabled child who would normally be expected to share a bedroom under size criteria rules but is unable to do so due to their disability ([See paragraphs 2.092](#))
 - one additional bedroom for a claimant or partner in receipt of AFIP(Armed Forces Independent Payment) where overnight care is required.
 - One additional bedroom for a foster child or children of an approved foster carer
- subject to a maximum allowance of four bedrooms.

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

Example 1

John and Sally have three boys aged 11, 8 and 6. John's mother also lives with them.

They are allowed a bedroom for themselves, one for their 11 year old, one for the 8 and 6 year olds to share and one for John's mother.

The four bedroom LHA rate would apply to them.

- 2.014 There are separate rules for some groups such as single customers aged 35 years and over, couples with no dependent children, under 35 year olds and care leavers under 22 – see paragraphs [2.050-2.080](#) [below](#).

2.015-2.029

Who to include as occupying the dwelling

2.030 An occupier is anyone who you are satisfied occupies the dwelling as their home. This will normally include:

- the customer and members of their household
HB and HB (SPC) regs 19,20 and 21
- joint-tenants who are a member of the customer's household, for example their partner or children who are now adults
- non-dependants
- boarders
- sub-tenants
- people who are temporarily absent, for example in hospital (up to a maximum of 52 weeks)
- people with no recourse to public funds, providing they are not the customer.

This list is not exhaustive.

HB and HB (SPC) Reg 7

2.031 Do not treat as occupying the dwelling the following:

- joint-tenants who are not a member of the customer's household (household is not defined but should be given its everyday meaning)
- a child who comes to stay with a non-resident parent, do not take the child into account when determining the number of rooms required by the customer
- However,

2.032 Carers who normally reside elsewhere are not normally treated as occupying the dwelling but see [Additional bedroom for non-resident carers](#) at paragraphs 2040-2046.

2.033 Foster children cannot be a member of the customer's family and therefore do not occupy the dwelling for the purposes per HB and HB (SPC) Reg 21(3). However, see Additional Room for Foster Carers at paragraph 2.090.

2.034 LAs should ensure that any referrals to the Rent Officer include details of when a foster child moves in or out of the property, as this will be needed to make determinations under the LRR rules.

2.035-2.039

Additional bedroom for non-resident carers

- 2.040 From 1 April 2011 an additional bedroom can be allowed for a non-resident carer in the following circumstances:
- a carer who does not live in the tenant's property stays overnight to provide care
 - the overnight care is provided for the customer, their partner and, from 4 December 2013, a joint tenant (the provision does not extend to other members of the household – principally children and non-dependants – and only one extra room is allowed)
 - there is a spare bedroom that is used by a carer or team of carers for overnight stays.
- 2.041 In order to establish whether an extra bedroom can be included in the assessment LAs will need to be satisfied that:
- overnight care is required
 - the care is in fact provided
 - there is a bedroom available for the carer's use
 - that the care is provided by someone outside of the claimant/partner's/joint tenant's household.
- 2.042 A person who requires overnight care is likely to be a person who
- receives Attendance Allowance (AA), or
 - receives the middle or highest rate care component of Disability Living Allowance (DLA) or the daily living component of PIP, or
 - if they do not receive either of the above, has provided the LA with sufficient evidence to show that this type of care is required.
- HB Reg 2(1)*
- 2.043 You have discretion to decide what alternative evidence, if any, is needed to demonstrate that overnight care is required, given the circumstances of the case - for example a letter provided by the customer from a GP or other medical professional.
- 2.044 You also have to be satisfied that the customer, partner or joint tenant actually receives care that requires a carer, or team of carers, to stay overnight. You have discretion to decide what evidence, if any, is needed in each case, and from whom it should be obtained, such as from adult social services or the care agency providing the care. In the case of a joint tenant receiving care the customer may not be able to provide as much evidence as if it were them or their partner.

2.045 Help with the extra room will also be available to those who live in a property that is shared with other tenants who also receive care and there is a bedroom that is used by a non-resident carer. This is most likely to apply when a number of residents share the same property and overnight care is provided to all of them by the same carer or team of carers using just the one bedroom.

Please note that the qualifying conditions are only a guide and do not cover all circumstances. LAs will have to make their own decisions based on individual cases.

2.046 Detailed guidance on this provision and how to apply it to customers who claimed HB before 1 April 2011 is contained in [HB/CTB Circular A3/2011](#).

2.047 Armed Forces Independence Payment(AFIP): From 8 April 2013 an additional bedroom can be awarded for a claimant/partner needing overnight care and in receipt of AFIP as an income.

2.048-49

Single customers aged under 35 years

2.050 Single customers aged under 35 years, ie young individuals, who do not have a non-dependant living or treated as living with them (see paragraphs 2.110 Joint tenants with a shared non-dependant) will be entitled to the shared room rate only.

2.051 When the young individual has a non-dependant living with them, or treated as living with them, they would be entitled to the two bedroom LHA rate. Where they have any other person living with them, for example a boarder, then the shared room rate will still apply.

HB Reg 13D(2)(a)(i) and HB(SPC) Reg 13(D)(2)(a)(ii)

The definition of “young individual” has been amended so that a person who is a qualifying parent or carer (person who is an approved foster parent or in Scotland an approved Foster carer or kinship carer) will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by HB in the private sector.

2.052 When a customer reaches the age of 35 you should check to see if this affects the category of dwelling applicable to the claim. (See [paragraphs 2.060 and 2.061](#).)

2.053 Separate rules apply to:

- care leavers under 22 years old – [see paragraph 2.070](#)
- people under the age of 35 who have the Severe Disability Premium included in their benefit – [see paragraph 2.080](#)
- Former residents of specialist hostels for homeless people – [see paragraphs 2.081-2.085](#)
- Ex-offenders – [see paragraphs 2.086-2.089](#)

2.054 The four situations listed above apply only to single under-35s to entitle them to the 1-bedroom LHA rate when they would otherwise be restricted to the SAR. The other special circumstances which entitle a claimant to an additional bedroom, such as being a foster parent or a person who is disabled and requires an overnight carer, apply to “young individuals” on the same basis as they would to a person who was 35 years of age or over.

2.055-2.059

Single customers aged 35 years and over, and couples with no dependent children

2.060 Single customers aged 35 years and over and couples with no dependent children will be entitled to the rate for a one-bedroom property, for example a one-bedroom flat or studio or other kind of self-contained accommodation, provided they actually rent a property of at least this size.

2.061 If people in this category choose to live in a property where they do not have either:

- exclusive use of two or more rooms, or
- exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking

they will be entitled to only the shared room LHA rate.

However, if the Severe Disability Premium is included in the assessment, [see paragraph 2.080](#).

HB and HB(SPC) Reg 13(D)(2)(b)

Note:

- Whether the tenant has exclusive use of rooms should normally be clear from the tenancy agreement.

- Facilities for cooking should normally include facilities for the storing of food, facilities for food preparation such as washing and chopping, a means of heating and facilities for washing up dishes etc.

2.062-2.069

Care leavers under 22 years old

2.070 Care leavers under 22, or a customer who lives with a care leaver under 22 who is their partner, who have no dependent children will have their benefit entitlement based on the one bedroom LHA rate whether or not they share accommodation and regardless of its size.

2.071 When care leavers reach the age of 22 they will fall within the definition of single customers aged under 35 years and will be subject to the shared room rate. But if the Severe Disability Premium is included in the assessment, [see paragraph 2.080](#).

HB and HB(SPC) Reg 13(D)(2)(b)

2.072-2.079

Severe Disability Premium included in benefit assessment

2.080 Under 35 year olds, single customers over 35 or couples who have no dependent children and who have the Severe Disability Premium included in their benefit assessment, will have their benefit allowance based on the one bedroom LHA rate whether or not they share accommodation and regardless of its size.

Former residents of specialist hostels for homeless people

2.081 This exemption applies to those who have reached 25 years of age and have spent at least three months in a specialist hostel (or hostels) for homeless people, where the main purpose of that hostel is to provide accommodation, care, supervision or support with a view to assisting homeless people to be rehabilitated or resettled in the community. To be eligible for this exemption they would need to have been offered and accepted support services to enable them to be rehabilitated or resettled in the community during their time in the hostel.

2.082 The hostel's main purpose must be to provide accommodation together with care, support or supervision with the aim of resettling or rehabilitating in the community people who are homeless. Note that it is not necessary to make your own assessment of whether each individual applicant is homeless and in need of resettling or rehabilitating in the community but to be satisfied that this is the main

purpose of the specialist hostel. It is not material to determining the hostel's main purpose whether or not the residents are owed a statutory duty of homelessness.

- 2.083 It will not matter how long before the benefit claim is made that the person moved out of the hostel into settled accommodation, or at what age they were living in the hostel, although they will need to be aged 25 or over to qualify for the exemption. It would not be necessary for the three months stay to be continuous or to be spent in the same hostel, although we would anticipate it would be in the majority of cases.
- 2.084 The claimant would need to provide evidence of their period of stay in an appropriate specialist hostel (or hostels) as well as confirmation that they had been offered and accepted support to help them be rehabilitated or resettled in the community. The onus is on the claimant to provide supporting evidence and details. This will normally be achieved through written confirmation from the relevant hostel (or hostels), with the claimant's consent.
- 2.085 Detailed guidance on this provision is contained in HB/CTB Circulars A12/2011 and A14/2011.

Ex-offenders

- 2.086 This exemption, which only extends to claimants aged 25 and over, applies to a small group of ex-offenders who pose a risk of serious harm to the public and who are managed by multi-agency agreements under statutory arrangements to manage the risks posed by certain offenders (MAPPAs). This covers management levels 2 and 3.
- 2.087 Scottish MAPPA legislation for violent offenders and certain others who pose a risk of harm to the public is not fully in force, so in Scotland an assessment is required in order to establish those individuals who are considered to be equivalent to level 2 and 3 cases. That assessment will be made by a social worker, supported by their team leader and signed off by the Service Manager.
- 2.088 You will be notified that an individual meets the exemption by the lead agency (normally the police or probation service) or from the Service Manager in Scotland.

The form will only contain sufficient details to be able to identify the claimant, a statement that the claimant is managed at an appropriate level in order to meet the criteria for an exemption to the shared accommodation rate and an end date when they will no longer be managed under MAPPA (or its equivalent in Scotland) and therefore no longer meet the exemption. This date is likely to cover a number of years and the claimant may well reach their 35th birthday before MAPPA management ends. If you are informed that a claimant subject

to the exemption is now being managed under MAPPA at level 1, the exemption should remain in place until such time as the claimant moves home. The MAPPA form is very sensitive information and should be treated as such.

The claimant is unlikely to know which MAPPA management level they come under and the information contained in the form should only be used for the purposes of deciding whether the exemption from using the shared accommodation rate applies when deciding the eligible rent.

- 2.089 Detailed guidance on this provision is contained in [HB/CTB Circulars A12/2011](#) and [A14/2011](#).

Foster Parents

- 2.090 An additional bedroom is awarded to the claimant/partner where either party is classified as “a qualifying parent or carer”. The conditions are that
- They have a spare bedroom; and either
 - They have a child placed with them; or
 - They are approved foster carers but do not currently have a child placed with them, and have had no child placed with them for a maximum of 52 weeks

Armed Forces Personnel

- 2.091 Adult children deployed in active service can still be included as part of the household where the following criteria *are* met. The person on active duty must be :
- The claimant/partner`s son, daughter, step son or step daughter and
 - The claimant/partner`s non-dependant before they went on active duty with the armed forces and
 - The person serving on active duty intends to return home after active service.

Disabled Children

- 2.092 The Court of Appeal ruling in the case relating to *Burnip, Trengove and Gorry* has allowed for an additional bedroom to be awarded for a disabled child who would normally be expected to share but is unable

to do so due to their disability. This ruling meant that an extra bedroom was awarded retrospectively from 15/05/2012.

LAs would have made certain that they were satisfied with the evidence provided before a decision was made to allow an additional bedroom. Each individual case would have been looked at in its own merit.

From 4 December 2013 the Government has amended legislation through the Housing Benefit and Universal Credit (Size Criteria)(Miscellaneous Amendments) Regulations 2013 to allow an extra bedroom for a severely disabled child eligible for the Middle or Higher rates of Disability Living Allowance(DLA) Care who would normally be expected to share a room under the size criteria rules but who is not reasonably able to do so due to severe disability.

This means that the claimant must have a bedroom in their home which is in addition to those occupied by their household for the additional room to be allowed in the size criteria(subject to the maximum four bedroom LHA rate).

One additional bedroom will be allowed for each disabled child to whom this applies.

If there ceases to be a qualifying disabled child resident in the household, the entitlement to an additional bedroom will cease.

Any HB paid from the date of the Gorry ruling to cover the cost of an additional bedroom for a disabled child based on previous guidance will be treated as correctly paid for subsidy purposes.

Joint tenants

- 2.093 The LHA rate applicable to a joint tenant will be based on the number of people in their household subject to the maximum allowance of four bedrooms.

Example 1

Ali and Mustafa are joint tenants of a two bedroom property. They share a kitchen and bathroom.

Under the size criteria they are each allowed the shared room rate.

Example 2

Sarah and Rachel are joint tenants of a three bedroom property. They share facilities. Susan, who is Sarah's sister, lives with them but is not a joint tenant.

Susan is treated as Sarah's non-dependant so Sarah is allowed the

two bedroom LHA rate. Rachel is allowed the shared room rate.

2.094-2.099

Joint tenants within the same household

2.100 In some cases joint tenants may be part of the same household but are not treated as members of the same family. For example, the customer may have a non-dependent son or daughter who is a joint tenant but they maintain a common household.

Example

Lee has a partner and two children aged under 10. He is a joint tenant with his mother but they form a single household. They pay £150 a week to rent a three bedroom house and they both claim Housing Benefit (HB).

Under the size criteria the three bedroom LHA rate applies to both Lee and his mother because they form a single household.

2.101 – 2.109

Joint tenants with a shared non-dependant

2.110 Joint tenants who have a shared non-dependant have the person counted for the size criteria, but only have an apportioned non-dependant deduction.

HB and HB(SPC) 13D(3,) HB Reg 74(5), HB (SPC) Reg 55(5)

Example

John and Alex are joint tenants. Their friend Peter also lives with them.

John and Alex will each be allowed the two bedroom rate LHA. This is because Peter is counted in each of the size criteria calculations.

The non-dependant deduction is still apportioned between them as the non-dependant is shared.

2.111 See the glossary for a definition of non-dependant.

2.112-2.119

Calculating the maximum rent

2.120 The maximum rent to be included in the calculation of the customer's HB entitlement will be the lower of:

- the appropriate LHA rate
- the customer's cap rent(contractual rent).

2.121 In certain circumstances, for example when a customer has to flee their home because of domestic violence and intends to return to the original property, it is possible for HB to be paid on two homes.

HB and HB (SPC) Reg 7(16)

2.122 In the majority of cases the cap rent will be equivalent to the contractual rent paid by the customer but could differ where the LA makes an adjustment under HB and HB (SPC) Reg 12B (3), (4) or (6) because the:

- contractual rent includes non-residential accommodation
- contractual rent is apportioned between joint tenants
- LA considers the contractual rent to be greater than it is reasonable to meet by way of HB.

2.123 Below are a number of examples illustrating how to calculate the maximum rent to be included in the calculation of HB.

Example 1 – cap rent lower than the LHA rate

Sanjay and Reena are a couple who pay rent of £200 a week. A one bedroom LHA rate of £220 applies to them.

Because their rent is lower than the LHA rate their maximum rent is £200 a week.

Example 2 – joint tenants

Carl and Simon are joint tenants and pay rent of £150 a week. A shared room rate of £77 applies to each of them.

The LA apportions the rent equally between them (£75 each).

Both Carl and Simon have a maximum rent of £75

Example 3 – joint tenants within the same household

Andrew is married with three children under 10 years of age. He is a joint tenant with George, his father, and they form a single household.

They pay rent of £200 a week. The four bedroom LHA rate of £210 applies to both Andrew and George.

The LA apportions £150 of the rent to Andrew and £50 to George.

Andrew's maximum rent is £150

George's maximum rent is £50

Example 4 – joint tenants with a shared non-dependant

Amanda and Susan are joint tenants and pay rent of £300 a week. They do not live as part of the same household.

Their friend Suki is staying with them whilst she looks for her own accommodation.

A two bedroom LHA rate of £155 applies to both Amanda and Susan. The LA apportions the rent equally between the two (£150 each).

This gives Amanda and Susan a maximum rent each of £150.

The non-dependant deduction for Suki is apportioned between them.

2.124 The maximum rent is the eligible rent for the purposes of calculating the HB entitlement unless the customer is protected. [See Chapter 8 – Protection rules.](#)

2.125-2.999

Chapter 3

Local Housing Allowance – awarding and reviewing benefit

About this chapter

3.001 This chapter

- gives guidance on the Local Housing Allowance (LHA) rate which applies at the date of claim
- explains how long the maximum rent based on the LHA rate applies for
- explains how changes of circumstance affect the maximum rent

3.002 – 3.009

Date of claim

3.010 As LHA rates are reviewed annually each April you need to apply the LHA rate that is current at the date of their claim or at the date you treat their claim as made.

3.011 If you treat a claim as made from an earlier date you should use the LHA rate which applied on that date. For example the customer makes a claim in May 2014 and in June 2014 successfully asks for it to be awarded from March 2014. The claim is assessed and - for the period prior to April 2014 - the LHA rate applicable from *April 2013* is applied. Any over/underpayment resulting from initial payment at the May 2014 rate will need to be recovered/reimbursed.

HB Reg, 83 and HB (SPC) Reg 64

3.012-3.019

Period for which the LHA rate applies

3.020 Once an LHA rate has been used to determine the maximum rent, that maximum rent will normally apply until the following April. The circumstances in which a new maximum rent should be determined are limited. See [Changes of circumstances`](#) later in this chapter.

3.021 The move to annual CPI up-rating of LHA rates for April 2013 and 1% from April 2014 means that all claimants will have their benefit assessed each April when the new LHA rates take effect and the anniversary date will become superfluous. Setting the rates annually also provides an opportunity to simplify the previous review arrangements.

The D&A Regs 2001 have been amended to ensure that changes in the annual LHA rate take effect from the same date as all other up-rating takes place in HB (1st April or 1st Monday in April).

Each LA will reassess claims with LHA rates received from the Valuation Office Agency.

3.022-3.049

Changes of circumstances

3.050 There are four circumstances in which the maximum rent might be re-determined with a new LHA:

- a change occurs which entitles the customer to a different category of dwelling, for example if there is a change in the number of occupiers or an occupier has a relevant birthday which changes the category of dwelling
- there is a death in the household which does not trigger a change in the category of dwelling, for example the customer's spouse dies, see [Protection following a death](#) later in this manual
- the customer changes address.
- Increase / decrease in rent.

HB and HB (SPC) Reg 13C(2)(d)

3.051 In these circumstances, you must determine a new maximum rent using the appropriate annual LHA rate which is current at the date the change occurs.

HB and HB(SPC) Reg 13C(2)(d)

3.052 If a single person reaches the age of 35 you should establish if the category of dwelling for the customer should change. If the customer is living in shared accommodation the shared room rate will continue to apply and there is no need to determine a new maximum rent. If the category of dwelling changes because the customer is living in self-contained accommodation or has the exclusive use of two rooms, you should determine a new maximum rent using the current LHA rate.

3.053 If the change in the number of occupiers or household make-up does not affect the category of the dwelling then you need do nothing further (but see paragraph 3.054 for death of a linked person).

3.054 On the death of a linked person you must determine a new maximum rent. However, if this reduces the eligible rent then the protection rules should be applied. See [Chapter 8 – Protection rules](#).

3.055 A change of address will require you to determine a new maximum rent using the appropriate LHA rate which is current on the date of change.

HB and HB(SPC) Reg 13C(2)

3.056-3.069

Date the change of circumstances takes effect

3.070 The normal rules apply when a change of circumstances leads to a redetermination of the maximum rent so that, for example:

- a change to the category of dwelling because of a change in the number of occupiers or a relevant birthday would be effective from the benefit week that starts after the date the change of circumstances occurred.
- a change of address becomes effective on the first day the customer occupies the new dwelling as a home and is liable to pay rent for that dwelling.

HB Reg 79, HB(SPC) Reg 59

3.071-3.079

Late notification of a change of circumstances

3.080 The rules applying to late notifications are unchanged. If the customer has good reason for the late notification, the new maximum rent will take effect in accordance with paragraph 3.070. If the customer does not have a good reason and the change is:

- favourable, it will apply from the date of notification
- unfavourable, it will apply from the date of the change of circumstances.

3.081 If the customer does not report a change of circumstances on time, the new maximum rent is based on the LHA rate applicable at the time of the change, not when the change was notified.

HB Reg 79, D&A Reg 8 and HB(SPC) Reg 59

3.082-3.099

Rent increase/decrease

3.100 LHA cases can be reviewed where there has been a change in rent since the annual review, either an increase or a decrease. This is to avoid the situation where tenants could be faced with a shortfall in meeting their rent until their case could be reviewed the following April.

HB and HB (SPC) reg 13C(2)(d)(i) (ii), (iii), (iv)

3.101 Example

(1A) Patrick and his partner pay rent of £300 per week for a four-bedroom

house. The LHA rate is currently £285. The anniversary of their claim is September 2013.

In April 2013 their claim will be reassessed based on the annual LHA rate of £290. Their new annual review date will be April 2014.

(1B) In August 2013 the landlord notifies Patrick that he is decreasing the rent to £280 a week from September 2013 in return for payments being directed to the landlord.

Patrick tells the LA who apply the rent decrease and commence payments to the landlord. As Patrick's rent is now lower than the LHA rate, the weekly eligible rent will be £280 from September 2013. There is no change to the annual review date.

Please note that LHA rates used in above example have been used for illustrative purposes only and do not reflect rates for any particular BRMA area

3.102 (2) Tina and her husband pay rent of £100 a week for a two-bedroom house.

The LHA rate applied to their claim is currently £150. The anniversary date of their claim is September 2013. In April 2013 their claim was reassessed based on the annual LHA rate of £145. Their next annual review date is now April 2014.

In August 2013 the landlord notified Tina that he would increase the rent to £135 a Week from September 2013 when the tenancy was due for renewal. Tina told the LA Who applied the rent increase. The weekly

eligible rent is now £135 from September 2013(based on the LHA rate from April 2013). There is no change to the annual review date.

3.103-3.109

Joint tenants with a change in rental liability

3.110 In the unlikely event a joint tenancy is changed to include an additional joint tenant or where a joint tenant leaves, this will not normally trigger a new maximum rent determination for the original joint tenants. This is because none of the circumstances at HB and HB(SPC) reg 13C apply.

3.111 An exception would be where the joint tenants form a common household. In these circumstances the departure of a joint tenant would lead to a reduction in the number of people occupying the dwelling and the category of dwelling applicable to the remaining tenant(s) would change.

3.112-3.999

Chapter 4

Local Housing Allowance – paying benefit

About this chapter

4.001 To encourage personal responsibility and financial inclusion, benefit is normally paid to the customer rather than the landlord when a claim is assessed according to Local Housing Allowance (LHA) rules. The provision for customers to choose to have their benefit paid to the landlord has been removed for LHA cases only.

HB Reg 96(3A) and HB (SPC) Reg 77(3A)

4.002 This chapter covers:

- when you should pay benefit to the landlord
- when you can make payment to the landlord
- the fit and proper person test
- the eight week rule
- circumstances in which the instrument of payment can be payable to the landlord
- payments on account
- Department for Work and Pensions (DWP) deductions to cover rent arrears
- recovery of overpayments.

4.003 See also the [Local Housing Allowance Good Practice Guide – paying benefit and applying the safeguards](#)

4.004-4.019

When you should make payment to the landlord

4.020 The following rules continue to apply to LHA cases as they do to all other rent allowances cases. Payment to the landlord is required if a tenant:

- has built up rent arrears of eight weeks or more except where it is in the overriding interest of the customer not to make direct payments to the landlord, or

- is having deductions from their income-related benefits such as Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)), income-related Employment and Support Allowance (ESA(IR)) or Pension Credit to pay off rent arrears
HB Reg 95(1)(a) and (b) and HB (SPC) Reg 76 (1)(a) and (b)

4.021 The provision to make direct payment to the landlord because the tenant has arrears of eight weeks or more is covered in more detail later in this chapter, see [Eight week rule](#).

4.022-4.039

When you can make payment to the landlord

4.040 Although payment of benefit should be made to the customer in the majority of cases, there will be some tenants who cannot manage their own rent payments or others who choose not to use their benefit for the purpose it is intended. The LHA arrangements include safeguards to stop these tenants falling into unmanageable difficulties. Local authorities (LAs) have discretion to make payment to the landlord if:

- they consider that the tenant is likely to have difficulty managing their financial affairs. For example, if the tenant is known to have a learning disability or a drug/alcohol problem that would mean they are likely to have difficulty handling a budget (see [Chapter 5](#) for detailed guidance)
- it is improbable that the customer will pay their rent. For example, if the LA is aware that the tenant has consistently failed to pay the rent on past occasions without good reason (see [Chapter 6](#) for detailed guidance)
- a direct payment has previously been made under HB Reg 95 or HB (SPC) Reg 76 in respect of a current award of HB (more than eight weeks arrears or deductions from a DWP-administered income-related benefit in respect of arrears – see [Eight week rule](#) later in this chapter)
- the LA considers that it will assist the customer in securing or retaining a tenancy (see [Chapter 7](#) for detailed guidance).

HB Reg 96(3A) and HB(SPC) 77(3A)

Please note that before any payments are made to the landlord, it is good practice to have the landlord sign a landlord declaration form. Taking this step will make it easier to recover any overpayments paid to the landlord.

- 4.041 To prevent the possibility of arrears accruing, you can make payment to the landlord for a maximum of eight weeks whilst you are gathering evidence to reach a decision about payment to the person's landlord.

HB Reg 96 (3B) and HB(SPC) Reg 77(3B)

- 4.042 You should regularly review cases where direct payments are being made. It is good practice to keep a database of all requests to pay the landlord with details of the decisions reached. Rarely should direct payment be made in perpetuity. Vulnerable tenants, or those with rent arrears, should be encouraged to seek budgeting advice (see Chapter 5 and Chapter 6, [Referral to financial advice services](#)).

4.043-4.049

'Overriding interest' and 'Fit and proper person' test

- 4.050 Even where the tenant has eight weeks rent arrears, direct payments are not mandatory if it is not in the tenant's overriding interests to make them. For example:

- a new tenant is in arrears from the outset because the frequency of rental payments is two monthly. In these cases the rent arrears will fall below eight weeks as soon as HB is paid
- the tenant is withholding rent pending the landlord carrying out essential repairs, or
- the landlord is not a 'fit and proper person'.

HB Reg 96 (3) and HB (SPC) Reg 77(3)

- 4.051 The expression 'fit and proper person':
- refers to the suitability of the landlord to receive direct payments of Housing Benefit (HB)
 - allows LAs to refuse to make direct payments in cases where they are not satisfied the landlord is fit and proper because, for example the landlord is, or has been engaged in fraudulent HB activity.

- 4.052 Even if a landlord is deemed not to be a 'fit and proper person' it may be the case that, having balanced the risks, you may still

decide to make payments direct to them if it is in the customer's interests to do so. For example, the customer is at risk of eviction if direct payments are not made.

HB Reg 96(3)(b) and HB (SPC) Reg 77(3)(b)

4.053 If the landlord's honesty in connection to HB has never been in question, you must assume they are a 'fit and proper person' and decide the question of direct payments on that basis. [See HB and CTB Guidance Manual A6.196-213.](#)

4.054-4.059

Eight week rule

4.060 If the tenant builds up rent arrears of eight weeks or more, the landlord may start action to evict them. Once arrears have reached eight weeks, you will be required to make direct payments to the landlord under the general provisions in HB Reg 95 (1)(b) and HB(SPC) Reg 76(1)(b) unless it is in the overriding interests of the customer not to do so (see [Overriding interest](#) and [Fit and proper person](#) test earlier in this chapter).

4.061 Rent is in arrears once the date it is due to be paid has passed, regardless of whether it is due to be paid in advance or in arrears.

Example 1

John is due to pay his rent monthly in advance on the first day of the month. He pays rent on 1 August but loses his job on 28 August. He claims HB on 28 August. His rent is due on 1 September but he fails to pay his rent on that day.

The LA decides to pay his HB two-weekly in arrears and makes two payments equivalent to four weeks rent during September. The tenant does not pass any of his benefit to his landlord.

He fails to pay another month's rent when it is due on 1 October. On the 2 October he is in arrears by two months' rent. The landlord tells the local authority. The LA should make payment direct to the landlord from that point.

Example 2

Suki pays her rent weekly in advance but gets into difficulty when she stops work. She claims HB on 30 October and fails to pay her rent on the 2 and then the 9 November. She gets her first fortnightly payment of HB in week commencing 16 November but fails to pay any rent to her landlord. The LA is unaware of the situation until the landlord contacts them on 22 December to say that she has missed eight weeks' payments. The LA makes direct payments to the landlord from that date.

- 4.062 In both these examples the LA must pay the HB to the landlord because the tenant is in arrears by eight weeks, unless it is in the tenant's overriding interests not to do so. However, if the LA becomes aware that the tenant is failing to pay their rent before eight weeks' worth of payments have been missed it should consider direct payment under the safeguards. Additionally, if there is already a history of non-payment it would be prudent to make direct payments to the landlord for a maximum period of eight weeks while a decision is being reached.
- 4.063 Most private sector tenancy agreements make provision for rent to be paid on a weekly or monthly basis. Tenancy agreements which stipulate less frequent payment, for example two-monthly in advance, could have the effect of placing a tenant in eight weeks arrears before they have received any benefit. You should consider carefully whether the tenancy agreement has been constructed intentionally to obtain direct payments to the landlord. In these circumstances you should consider whether it is in the tenant's overriding interests to not make direct payments (see '[Overriding interest](#)' and '[Fit and proper person](#)' test earlier in this chapter).
- 4.064 -4.079

Circumstances in which the instrument of payment can be payable to the landlord

- 4.080 LAs have a broad discretion to send the customer a one-off cheque or similar instrument of payment payable to the landlord or make a payment into the landlord's bank account following a decision on a new claim or change of circumstances when:

- the customer has not already paid rent for the period covered by the payment, and
- it would be in the interest of the efficient administration of HB.

HB Reg 96(2) and HB (SPC) Reg 77(2)

4.081 You should consider making payment directly to the landlord's account, by cheque or similar instrument of payment payable to the landlord when:

- the customer has recently moved to the property and does not yet have a track record of paying rent to the landlord so as to safeguard the tenancy, or
- substantial arrears of benefit are owing to the customer.

4.082 Before crediting the landlord's bank account you will need to confirm with the customer and/or landlord that rent is still due for the period concerned. It is possible that the customer may have already paid the rent while HB was being assessed, and that the payment should therefore be made to them, rather than the landlord.

4.083 You may decide it is preferable to pay by cheque as the customer will have the chance to identify whether the landlord is owed that money before it is banked.

4.084 This provision only applies to the first payment of rent allowance. Normal rules apply to future payments, and for LHA claims this will mean that these will normally be made to the customer, subject to the application of the safeguards.

4.085-4.089

Payment on account

4.090 The LA's duty to make payment on account arises on the 14th day after the claim is made in LHA cases, just as in non-LHA cases. If no request for further information has been made by the 14th day or a request has been made, but the customer has good cause for failing to supply the material requested, the LA must make a payment on account.

HB Reg 93 and HB (SPC) Reg 73.

4.091-4.099

DWP deductions to cover rent arrears

- 4.100 Any landlord can ask the DWP for deductions from income related benefits such as IS, JSA(IB), ESA(IR) or Pension 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 other privately rented accommodation. This provision is for their current landlord only.
- 4.101 Third Party Deductions (TPD) 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. The landlord can make a request for TPD from their local Jobcentre Plus office or from the Pension, Disability and Carers Service.
- 4.102 TPD for rent arrears can only be considered once the debt has reached four times the full weekly rent accrued over a period of eight weeks or more. They can include an amount to clear the arrears and an amount to cover any current service charges paid as part of the rent.

4.103-4.109

Split overpayments/recovery of overpayments

- 4.110 After an overpayment has been calculated, decisions need to be made on whether it is recoverable and who it is recoverable from, for example from the customer or the person to whom the benefit was paid (for example the customer's deputy, agent or landlord) or both. If it has been paid to the landlord, it could either be recoverable from the landlord or the customer, depending on what or who has caused the overpayment, for example who has misrepresented or failed to disclose information. Where the overpayment was paid direct to the customer, it will only be recoverable from the customer.

- 4.111 When a decision has been made that an overpayment is recoverable from the landlord, you cannot recover more than was originally paid to the landlord in benefit, for example any ongoing benefit recovery must be invoiced to the claimant.

Social Security AA 1992, Section 75(3), HB Reg 100, 101 and HB (SPC) Reg 81, 82

- 4.112 When there is split liability for an overpayment you must decide who you are actually going to recover the overpayment from, for example from either or both the landlord and tenant. See [HB/CTB Overpayments Guide](#), Who are you going to recover from?

4.113-4.999

Chapter 5

Identifying customers who are likely to have difficulty paying their rent

About this chapter

- 5.001 This chapter covers:
- a definition of ‘safeguards’
 - data protection
 - identification of people who do, and those who do not, meet the safeguard criteria
 - sourcing and evaluating evidence
 - reaching and reviewing decisions
 - referral to a financial advice service.
- 5.002 [Chapter 6](#) provides guidance on the identification of tenants who are unlikely to pay their rent.
- 5.003 [See also the Local Housing Allowance Paying Benefit and Applying the Safeguards – Good Practice Guide.](#)
- 5.004-5.009

Definition of safeguard

- 5.010 The term ‘safeguard’ is used where direct payment to the landlord helps customers who might not otherwise be able to pay their rent themselves.
- 5.011 Statute does not set out conditions that must be satisfied in order for a local authority (LA) to apply the safeguards in this chapter. However, the overriding consideration should be to act in a way that is in the best interests of the customer.
- 5.012-5.019

Data Protection

5.020 The customer's consent to approach individuals or organisations for information must always be held, unless there is already an established legislative gateway permitting the information to be disclosed to you. The LA should also ensure it obtains, or retains, only such information as is necessary to make a decision.

5.021-5.039

When to consider making payments to a landlord

5.040 Payment of benefit may be made direct to the landlord where the LA considers that the claimant is likely to have difficulty in relation to the management of his financial affairs. That is, direct payment will serve as a safeguard to ensure that rent is paid on time and the customer and family can continue to maintain their home. The LA should consider whether the extent to which the customer has difficulty managing their affairs means that they are unable to pay rent to their landlord on time. Most customers are capable of managing their own financial affairs and you should assume that they are making payments of rent to their landlord unless there is evidence to the contrary.

HB Reg 96(3A)(b)(i) and HB (SPC) Reg 77(3A)(b)(i)

5.041-5.049

People who do not meet the safeguard criteria

5.050 Do not make direct payments to the landlord on safeguard grounds when:

- someone has been appointed to act on behalf of a customer who is 'unable for the time being to act' until such time as the customer ceases to have a deputy acting for them
- it would supersede the support being given to tenants to help them take responsibility in managing their own affairs, or
- it is the landlord who is the person likely to have difficulty managing his affairs.

For example, direct payments should not be considered where the landlord is known to be experiencing financial difficulties.

5.051-5.059

How to identify customers who may meet the safeguard criteria

5.060 Customers, or persons acting on their behalf, may make representations to the LA that they are unlikely to pay their rent because of difficulty in managing their financial affairs. Information that is already held within the LA may also be taken into account without the need for a formal representation by the customer.

5.061-5.069

Indicators that a customer may have difficulty paying their rent

5.070 There are no indicators that will determine definitively that a person may have difficulty in paying their rent. Therefore, you should examine each case on its merits having given consideration to the facts in the case. A customer who is unable to pay their rent may have certain conditions that make handling financial affairs more difficult for them but you must never decide that a customer has satisfied the safeguard criteria simply because they match one or more of these indicators. For instance, a person recovering from a gambling addiction may have difficulty in managing their financial affairs but attempting to do so may be an important part of their rehabilitation process.

5.071 The following list contains some of the characteristics that may indicate that a customer is likely to have difficulty in paying their rent. When considering these characteristics, it is important to ask for, and evaluate, evidence of the effect of these characteristics on the ability to pay rent and then to consider whether direct payments are likely to be in the customer's interests.

- People with learning disabilities – people with more severe learning difficulties will usually have deputies to help manage their financial affairs. In cases of less severe learning difficulties you may wish to consider evidence from some of the sources noted in paragraph 5.092 below.
- People with medical conditions – consider medical conditions that seriously impair a person's ability to manage on a day-to-day basis, eg mental illness (schizophrenia, depression, and

age-related mental deterioration such as early stages of Alzheimer's disease or senile dementia).

- Illiteracy or an inability to speak English – people unable to read, write or speak English may have greater difficulty in paying their rent. Consider the effect that this inability has rather than the inability itself. Consider evidence from welfare organisations, ethnic minority link groups etc.
- Addiction to drugs, alcohol or gambling.
- People in specific circumstances such as fleeing domestic violence, care leavers or having recently left prison.
- People with a housing need or at risk of homelessness – many households who have a housing need or are at risk of becoming homeless approach the local housing authority for help in finding alternative accommodation. Often they seek help from the housing authority because they are unable to obtain a home without assistance. This may be because they have no income, a low income, problems with debt, or problems with previous tenancies which have failed. There may also be financial barriers to households obtaining a letting in the private rented sector. Consequently, these are people who are likely to have difficulty paying their rent.

5.072 In some cases, housing authorities prevent homelessness by helping the household to obtain accommodation in the private rented sector. Typically, these authorities may help households to obtain a private tenancy by providing the landlord with a cash or cashless bond that provides security against non-payment of rent or damage to the property. Housing authorities may also offer landlords an incentive payment or placement fee, and in some cases, a rent deposit. Housing authorities may also provide support to the tenant during the period of the tenancy.

5.073 In other cases, for example, where homelessness cannot be prevented, the housing authority may have a duty to secure accommodation for someone under the homelessness legislation (Part 7 of the Housing Act 1996). The authority may make arrangements with a private landlord to provide a direct letting to the person, either as temporary accommodation or, if the person agrees, as settled accommodation that brings the duty to an end. Most housing authorities offer assistance arrangements directly or through a voluntary sector partner as part of their strategic approach to preventing homelessness. Where a person obtains a private tenancy with assistance from

a local housing authority (an LA-assisted tenancy), this will often be reliable evidence that a person has had difficulties managing their rent in the past and in many cases safeguarding is likely to be appropriate.

- 5.074 People unable to pay their own rent will often have difficulty managing financial affairs more generally. This inability to manage financial affairs may be demonstrated by:
- severe debt problems/recent county court judgements
 - un-discharged bankruptcy
 - an inability to obtain a bank account
 - the Department for Work and Pensions making deductions from Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or Pension Credit in respect of household debts, eg housing costs such as service charges or utility bills. You should only consider this as being an indicator if part of the debt is still outstanding
 - the customer is in receipt of Supporting People help – additional evidence can come from information that is already available from benefit systems
 - the customer is in receipt of help from a homeless charity or in contact with the LA's homelessness team.

5.075 The LA Homelessness Service or Homelessness Prevention Team has statutory responsibilities for providing help and advice to prevent homelessness and for assessing applicants for housing under the Housing Act 1995. The team is likely to have, or can obtain, evidence needed to assess whether a person meets the safeguarding criteria. This will include information on any vulnerability issues which may lead to difficulty in paying the rent due, for example to medical or addiction problems, an offending background or difficulty in managing financial affairs. These matters are considered routinely in any assessment of a homelessness application and work to prevent homelessness. Any assessment of a homelessness application will include whether a person has made themselves intentionally homeless, for example as a result of deliberately not paying their rent. This evidence is likely to be useful in any assessment as to whether a person is unlikely to pay their rent.

5.076-5.089

Evaluating evidence

- 5.090 You should seek and evaluate evidence about the customer's circumstances that will allow you to make an informed decision on whether the safeguard criteria should be applied. The LA should always aim to gather all the relevant information to enable it to make a decision. It is good practice for LAs to write to the customer to ask for evidence, followed by a phone call or face to face discussion. If the information requested is still not forthcoming, then where possible you should liaise with Housing Benefit (HB) visiting officers so that they are able to obtain the required information as part of their planned visit. If the customer has language difficulties and/or possible physical or mental disability that prevent them from providing answers to your questions, you may want to refer to existing procedures in dealing with those customers. You may also want to refer the customer to other areas of the LA such as social services, if you feel they would benefit from such a referral.
- 5.091 You should also obtain, where practicable, written evidence from any relevant third party. The written evidence does not have to be addressed to the LA but if it is not, you should consider the data protection implications if it contains information not relevant to your decision. In these cases alternative evidence should be obtained. Also, the older the evidence, the less reliable it is likely to be.
- 5.092 The evidence you receive or seek will depend on the circumstances of the case. The following is a list of possible sources:
- care workers
 - qualified medical practitioners (some GPs charge for providing this information and so customers should not be asked for evidence that they do not already have)
 - Community Mental Health Teams
 - social services departments
 - Supporting People Teams
 - supporting organisations for people with addictions, including Drug and Alcohol Action Teams
 - Probation Officer or Youth Offending Officer
 - LA Homelessness Prevention Team

- agencies involved in resettlement and homelessness prevention
- women's refuges
- Children's Services
- financial help groups
- creditors
- courts, both judgments and solicitors' correspondence.
- money advisers.

Note: This list is not exhaustive.

- 5.093 An inability on the customer's part to provide supporting evidence will need careful evaluation. On the one hand, it might indicate that the need for direct payments does not, in fact, exist. On the other, it could of itself provide the evidence that the customer has difficulty managing their own affairs. When evaluating a lack of supporting evidence, you should consider what information the customer has been asked to produce and the efforts that they have made to produce it. If you are in any doubt, you should consider referring the customer to an independent adviser for further help.
- 5.094 You should attach degrees of weight to each source of information.
- 5.095 Accept with confidence evidence from government bodies, banks and building societies, health professionals and agencies involved in homelessness prevention/resettlement.
- 5.096 You should normally take evidence from welfare organisations, such as the Citizens Advice Bureaux and recognised charities, alongside letters from legal representatives, at face value. If the customer is in receipt of a rent deposit guarantee, consider evidence from the rent deposit arrangements administrators.
- 5.097 Evidence from the customer, their friends and family is important but may require careful evaluation. Ultimately, you must consider whether payments direct to the landlord are genuinely in the best interests of the customer.

- 5.098 Landlords do have a valid role to play, but their evidence alone (or together with the customer's) may not be sufficient when deciding whether the safeguard criteria have been satisfied. Further evidence may therefore be required to substantiate the evidence already held.
- 5.099 Wherever possible, evidence should be in writing. However, a written declaration is not necessarily evidence that the criteria should be applied, just as its absence is not evidence that it should not. Customers most in need of safeguard action might have difficulty in making representation on their own behalf and be less able to produce evidence to support that need. You should consider the evidence provided and make further enquiries when and where necessary. Where representation is received from the customer without the support of an agency or representative it may be appropriate to offer further help or assistance with their application.
- 5.100-5.109

Making a decision

- 5.110 You must decide, when you have gathered sufficient information and evidence, whether to make payments direct to the landlord.
- 5.111 Do not delay making payment of HB in order to await the outcome of your decision. Where a decision on whether the customer meets the safeguard criteria cannot be made quickly you should consider making payment to the landlord in the meantime. Payment can be made pending a decision for up to eight weeks. Where you decide to make payment to the landlord whilst awaiting the outcome of your decision, you should set a firm deadline of no more than eight weeks for concluding your enquiries and making a decision, having regard to all the available evidence at that time.
- HB Reg 96(3B) and HB(SPC) Reg 77(3B)*
- 5.112 If you have been unable to establish the facts to your satisfaction because the customer has failed to co-operate in your investigation, you must decide what weight you attach to this failure. Just because someone has failed to provide evidence you should not necessarily decide that direct payments should not be made. However, where evidence of this has been requested, it is reasonable to expect a response. Where no

response is received, even after referral to a welfare organisation, this evidence should be considered in the context of the other information before you.

5.113 In some cases it will be obvious that the person is likely to have difficulty in managing their affairs; in others you will need to reach a decision by carefully balancing the facts. Ultimately, your decision should rest on an assessment of what is in the best interests of the customer.

5.114 Make a record of your conclusion and issue a letter to the customer, landlord and any person affected explaining your decision and rights of appeal against the decision.

5.115 If you decide to pay the landlord because the tenant has satisfied the safeguard criteria, pay the landlord the HB-eligible rent. Ineligible charges such as fuel and water would be deducted from the contractual rent for HB purposes, whether or not they are a condition of the tenancy agreement, but may be covered by LHA if they are a condition of the right to occupy the dwelling. If the ineligible charges are a condition of the tenancy agreement, then payment must be split with the landlord paid the HB-eligible rent and the remainder to the claimant. It will then be the claimant's responsibility to pass the payment on to the landlord or utility company directly.

Schedule 1 of HB Regulations 2006 identifies those service charges which are not eligible.

5.116 You may decide a customer does not satisfy this safeguard criterion but nevertheless it is likely that they will not pay their rent. You should then consider making direct payments as an 'unlikely payer'. See [Chapter 6](#), Identifying customers who are unlikely to pay their rent.

5.117 There are three main factors to consider when reaching a decision.

- Is the customer likely to have difficulty in paying their rent? If they are, you may decide that it is appropriate to make direct payments.

- Is it in the interests of the customer to make direct payments? In most cases, it is in the long-term interests of the customer to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably.
- Could the customer pay their rent themselves with appropriate help and support? Many customers, who might otherwise have difficulty in managing their own financial affairs, may be able to do so if given initial help. In these cases, you should consider referring the customer to advice agencies, whether internal or external, for help. However, you should not automatically decide against direct payment to the landlord simply because help or advice has been suggested.

5.118-5.129

Reviews

5.130 The procedures relating to appeals and reconsiderations are outlined later in [Chapter 9](#). The ‘person affected’ rules have not changed as a result of LHA, so a customer or landlord may appeal against a decision regarding direct payments and both be advised of the outcome of any such decision.

5.131 If you decide that safeguard action is appropriate, you should also consider setting a diary date in order to conduct a review of your decision. If you feel that the conditions experienced by the customer are likely to be of a short-term nature, you should set an appropriate review date (not exceeding 12 months) to look again at the decision. Where the condition is likely to be of a long-term nature, you may decide that it is not appropriate to set a review date. You may also wish to set a review date where a customer has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the customer.

Note: Where payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the customer requests a review.

5.132-5.139

Referrals to financial advice services

- 5.140 Direct payments to the landlord are not the only way in which practical help may be provided. Advice agencies can provide practical advice and support for customers that may allow them to pay their rent. Customers may initially have difficulty in paying their rent themselves but may be capable of doing so after having received appropriate help and advice, such as understanding their liability to pay rent or opening a bank account. Advice agencies may also have a role in helping, and referring to the LA, customers who may have intractable difficulty in paying their rent. For instance, they may help the customer to prepare a package of relevant information and documentation in support of an application for landlord payment. Having this information ready collated should make decision making more straightforward.
- 5.141 It is recommended that all LAs have formal procedures in place to refer customers to advice agencies, whether internal or external, for money advice or help in managing their financial affairs.
- 5.142 Referrals may be made regardless of the outcome of the decision on making direct payments. Where it has been decided not to make managed payments, the customer may still benefit from the provision of money advice. Alternatively, where managed payments are being made, money advice might help a customer towards eventually managing their own financial affairs.
- 5.143-5.999

Chapter 6

Identifying customers who are unlikely to pay their rent

About this chapter

- 6.001 This chapter focuses on people who consciously fail to pay their rent as opposed to those who have difficulty managing their affairs. It covers how to source and evaluate supporting evidence and making and reviewing a decision. It also deals with making direct payments to the landlord, referrals to advice services and provides guidance on who should not be considered as unlikely to pay their rent.
- 6.002 The guidance relating to data protection issues at [paragraph 5.020](#) applies equally to tenants who are unlikely to pay their rent.

6.003-6.009

Making direct payments when a customer is ‘unlikely to pay’

- 6.010 Direct payments to the landlord may be made where ‘the relevant authority considers that it is improbable that the customer will pay his rent’. Most customers are capable of managing their own affairs and it should be assumed that they will make payments of rent to their landlord unless there is evidence to the contrary.
- 6.011 Direct payments to the landlord would not normally be made under this provision if you consider that the landlord is not a ‘fit and proper person’ (see [paragraphs 4.050-4.053](#) above) to receive them. However, even if the landlord is not considered to be ‘fit and proper’, having balanced the risks, you may still make payments direct if it is in the customer’s overriding interests to do so.

HB Reg 96(3)(a), (3A)(b)(ii) and HB (SPC) 77(3)(a) and (3A)(b)(ii)

6.012-6.019

Identifying tenants who are unlikely to pay their rent

6.020 Statute does not set out conditions that must be satisfied in order to consider that a customer is unlikely to pay their rent. This condition relates to people who deliberately decide not to pay their rent, as opposed to not paying rent due to difficulty in managing their finances.

6.021 If the customer builds up rent arrears of eight weeks or more, the landlord may commence action to evict the customer. Once arrears have reached eight weeks, the local authority will be required to make direct payments to the landlord under the general provisions in Reg 95 (1)(b) and HB(SPC) Reg 76(1)(b) unless it is in the overriding interests of the customer not to do so (see [Chapter 4, 'Overriding interest' and 'Fit and proper person' test](#)). There is, however, no requirement for a customer to reach the eight week 'trigger' before an LA decides whether to make direct payments under the safeguard provisions. Where there is evidence that the customer will not be likely to pay their rent, LAs should make a decision much earlier in order to safeguard the position of both tenant and landlord and to avoid abuse of public funds.

HB Reg 96(3)(b) and HB(SPC) Reg 77(3)(b)

6.022-6.029

People who should not be considered as unlikely to pay their rent

6.030 Do not consider the following people as being unlikely to pay their rent:

- people who have been appointed to act on behalf of a customer who is 'unable for the time being to act, and
- the customers they act for, until such time as they cease to have a deputy acting for them

6.031-6.039

Identifying potential unlikely payers

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

- the customer
- the customer's
 - landlord
 - family and/or friends
 - probation officer
- LA/council rent deposit arrangements, Homelessness Prevention Team (their role is explained in detail in [Chapter 5, paragraph 5.075](#)) or housing advice officers
- welfare organisation, including money advisors
- social services departments
- DWP local offices such as Jobcentre Plus and Pension Centres
- homelessness charities/organisations
- Supporting People Teams

Note: This list is not exhaustive. Always aim to get written representation from any of the sources listed above.

6.041-6.049

Evidence from landlords

- 6.050 Landlords do have a valid role to play, but their evidence alone (or together with the customer's) may not be sufficient when deciding whether the safeguard criteria have been satisfied as they do have a financial interest in the outcome of any decision. Further evidence may therefore be required to substantiate any evidence already held.
- 6.051 Landlords should be encouraged not to wait for the eight-week period to be reached before contacting the LA. If the landlord informs you that a tenant is in arrears with their rent, but that the arrears have not yet reached the equivalent of eight weeks' money owed to the landlord, you should consider interviewing the customer to discuss the non-payment of rent. Where the customer is unwilling to co-operate in any interview to gather evidence from relevant sources, after assessing all information received, you may consider making direct payments immediately or making a referral to help or advice services before the arrears reach the eight-week point.

6.052-6.059

Evaluating evidence

(See also [Chapter 5, Indicators that a customer may have difficulty paying their rent.](#))

- 6.060 In reaching a decision you should seek and evaluate evidence about the customer's circumstances that will allow you to make an informed decision as to whether they are unlikely to pay their rent. There are three main factors to consider when reaching a decision.
- Is the customer unlikely to pay their rent? If they are, you may decide that it is appropriate to make direct payments.
 - Is it in the interests of the customer to make direct payments? In most cases, it is in the long-term interests of the customer to manage their own affairs and make their own payments of rent. However, certain individuals may simply not be able to do this reliably.
 - Would the customer be likely to pay their rent themselves with appropriate help and support? Many customers, who might otherwise be unlikely to pay, may be able to do so if given initial help. In these cases, you should consider referring the customer to advice agencies, whether internal or external, for help.
- 6.061 When you are given reason to believe that the customer will not pay their rent, you should seek to substantiate this belief. One of the key considerations will be past behaviour. If a customer has a history of not paying their rent, this may indicate to you that they may not do so in the future (although past behaviour does not necessarily determine future actions).
- 6.062 You should endeavour 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 non-payment of rent see [Chapter 4, Payment on account](#)). However, it should be remembered that where a customer is deliberately not paying their rent they may be unwilling to co-operate in attending an interview. If so, a decision will need to be made on the facts of the case provided by the sources listed in [Chapter 5, paragraph 5.092](#).
- 6.063 It will not be sufficient to make direct payments simply because the customer has said that they will not pay their rent. You will need to consider factors such as:

- why they say they will not pay their rent
- whether they have paid rent in the past to the same landlord or more generally
- how they would pay rent if they were not entitled to Housing Benefit (HB)
- whether rent arrears have built up and what action has been taken by the customer or landlord
- whether payment by automated credit transfer and then standing order would provide a solution
- whether the landlord is likely to have exerted pressure on the customer
- whether other tenants renting from the same landlord have made similar representations.

6.064 When considering past behaviour, evidence must be compelling; occasional missed payments do not demonstrate that the customer is unlikely to pay their rent in the future. 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
- how far back are the missed payments? More recent and persistent non-payment will carry greater weight. For instance, one payment missed 18 months ago is not sufficient evidence that the customer will not presently pay their rent
- has the customer been evicted for rent arrears from any recent tenancy or is there a record of their current or previous landlord having issued notice due to rent arrears caused by non payment
- is the tenant experiencing wider cash flow or debt problems and making payment to non-priority creditors rather than prioritising payment of rent? If so, financial literacy or budgeting advice may be more appropriate.

6.065 Ultimately, you should make a decision based on what is in the best interests of the customer (which includes whether the customer is at risk of losing their home due to being unlikely to pay the rent), not the landlord, and the fact that most customers will benefit from paying rent for themselves.

- 6.066 When evaluating evidence, you should consider factors such as:
- does the individual's landlord already receive direct payments in respect of other tenants?
 - has the landlord shown that he has tried to recover the missing payments from the customer?
 - does it appear that pressure has been brought to bear on the customer to present their circumstances in a particular light?

6.067-6.079

Making a decision

- 6.080 When you have gathered sufficient information and evidence, you must make a decision on whether the customer is an unlikely payer and whether direct payments are appropriate.
- 6.081 Do not delay making payment of HB in order to await the outcome of your decision. Where you make initial payments to the customer, how they manage initial rent payments should contribute to your ultimate decision.
- 6.082 You should always consider making payment to the landlord whilst awaiting the outcome of your decision, particularly if this will take time. Payment can be made to the landlord for up to eight weeks in these circumstances. You should set a firm deadline for concluding your enquiries and making a decision within this timescale.
- HB Reg 96(3B) and HB (SPC) Reg 77(3B)*
- 6.083 If you have been unable to establish the facts to your satisfaction because the customer has failed to co-operate in your investigation, you must decide what weight you attach to this failure. However, where evidence of this has been requested, it is reasonable to expect a response. Where no response is received, this evidence should be considered in the context of the other information before you.
- 6.084 Make a record of your conclusion and issue a letter to the customer, landlord and any person affected, explaining your decision and rights of appeal against the decision.

- 6.085 The existence of rent arrears can be 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. In addition, also consider periods where payment has been made direct to the landlord, there has been a shortfall between the amount of HB paid and the rent charged, which has not been paid and which the landlord has not made any attempt to collect. It may be that the landlord, by lack of action, has contributed to the level of arrears. More recent history of non-payment may therefore be a more reliable indicator than that of past history.

Also see [Chapter 5, Making a decision.](#)

6.086-6.099

Reviewing a decision

- 6.100 There are two types of review that you may undertake:
- on appeal from a person affected, ie the normal Decision Making and Appeals process
 - a review of circumstances some time after your decision, to establish whether it is still appropriate. It is good practice for LAs to set an event date in the future to allow the decision to be reviewed. The time set will vary depending on the circumstances of each case. Generally review dates are set for 6 or 12 months.
- 6.101 The procedures relating to Appeals and reconsiderations are outlined later in this manual. The 'person affected' rules have not changed as a result of LHA, so a customer or landlord may appeal against a decision regarding direct payments and both be advised of the outcome of any such appeal.
- 6.102 If you decide that direct payments are appropriate, you should set a diary date in order to conduct a review of your decision. How far in the future you set the diary date will depend on whether the customer's circumstances are likely to change. Where payments are likely to be long term you may wish to review your decision annually. You may also wish to set a review date where a customer has been referred to advice agencies for help in managing their financial affairs. The decision may still be reviewed if there is a relevant change in circumstances or if requested by the customer.

6.103 Where direct payments are being made due to rent arrears, the LA should estimate the length of time it would take to clear any arrears by this method combined with the tenant's own contributions or any DHP award and to review the case when it is estimated that arrears should have been repaid.

6.104 There may be instances where, due to the level of arrears, repayments may take a significant period of time. However, an annual review will enable you to request up-to-date information on the level of arrears. These should be checked to establish if the tenant is taking appropriate measures to reduce the arrears. Lump-sum or additional payments could also have been made by the tenant, and therefore the arrears repaid at a date earlier than expected by the LA.

Note: Where payment is being made to the landlord, this arrangement should continue until a review is completed, a change of circumstances occurs or the customer requests a review.

See also [Chapter 5, Reviews](#).

6.105-6.119

Referrals to financial advice services

6.120 Customers who are considered unlikely to pay their rent should be encouraged to seek money advice. In many cases, effective advice on handling money and everyday expenses may remove or reduce the need for direct payments to be made, even where failure to pay is deliberate.

See also [Chapter 5, Referrals to financial advice services](#).

6.121-6.999

Chapter 7

Using direct payments to the landlord to safeguard tenancies with affordable rents from 1 April 2011

About this chapter

7.001 This chapter covers:

- background to the safeguard introduced from 1 April 2011
- who should apply for direct payment
- what is an affordable rent
- evidence or a reduction in rent for existing customers
- applying the safeguard to new tenancies
- notifying and reviewing the decision to make payment to the landlord
- changes of circumstance
- making customers and landlords aware of the safeguard
- liaising with homelessness prevention teams and advisors.

7.002-7.009

Background to the safeguard

7.010 From 1 April 2011 an additional safeguard enables local authorities (LAs) to make payment direct to the landlord where they consider that it will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant and there should be evidence that negotiations have been made with the landlord to reduce the rent to a level within the LHA rate for the property.

HB Reg 96(3A)(b)(iv) and HB (SPC) Reg 77(3A)(b)(iv)

7.011 This safeguard is intended to help exert a downward pressure on rents for Housing Benefit (HB) customers and was implemented from April 2011 alongside the reforms to reduce

LHA rates. See also Chapter One - Changes to the LHA arrangements from 1 April 2011 paragraphs 1.020-1.029

- 7.012 The changes to LHA rates introduced from April 2011 mean that some customers will have a shortfall between their HB entitlement and their contractual rent. Some may need to move, but in other cases it may be possible for the customer (perhaps with specialist help, for example from the LA homelessness prevention team) to negotiate with the landlord a reduction in the rent to a level which they can afford.
- 7.013 This safeguard provision facilitates the negotiation, as some landlords are likely to agree a reduction in the contractual rent in exchange for benefit being paid directly to them. In other cases, the provision could encourage landlords to let at rent levels that HB tenants can afford or to open up a let to HB customers in the first place.
- 7.014 The customer can only be accepted as being able to retain or secure a tenancy if the rent is at a level you consider they can reasonably afford whilst in receipt of HB. If the customer continues to have a shortfall which they cannot meet they will be unlikely to be able to meet their rental commitment and will be at risk of eviction. In these circumstances, they will not be able to retain the tenancy and so the safeguard will not apply.
- 7.015 It is intended that, once direct payments are being made under the safeguard, they will continue unless the rent becomes unaffordable. [See paragraphs 7.064 -7.067](#)
- 7.016 We expect the safeguard to remain available until claimants move onto Universal Credit.
- 7.017 Where this provision does not apply, for example the landlord will not reduce the rent, you can consider whether safeguarding is appropriate under the unable or unlikely to pay safeguard provisions. (See [Chapter 5](#) and [Chapter 6](#))
- 7.018-7.019

Who should apply for direct payment?

- 7.020 Normally the initial approach for a direct payment should come from the customer but you may also be contacted, for example by the:
- landlord
 - housing advice officers or the homelessness prevention team
 - welfare advice organisations, including money advisors.
- 7.021 You may also identify cases where direct payments might provide a landlord with an incentive to reduce a rent or take on a HB tenant, and you could take steps to suggest it to both the customer and the landlord.
- 7.022 In most cases, the customer is likely to agree to direct payments to their landlord if the alternative is losing their tenancy or not being able to secure a new tenancy. If the customer is against direct payments it is for you to make a decision in their best interests. The normal considerations on whether the landlord is a fit and proper person apply. See [Chapter 4 paragraphs 4.050-4.053](#)

7.023-7.029

What is an affordable rent?

- 7.030 The intention is that the rent should be at a level which is affordable to the tenant. In the vast majority of cases this will be the LHA rate which applies to the customer and on which their maximum rent determination is based. However, some tenants may decide that they can pay slightly more than the LHA rate if they have other resources. For example they may have resources such as capital to meet a shortfall, or could ask a non-dependant to make payments in excess of their HB deduction. However you must be satisfied that the rent is affordable to the customer. Examples of when the safeguard might apply are at [Annex A](#).

7.031-7.039

Evidence of a reduction in rent for existing tenancies

- 7.040 For existing tenants, you will need to confirm that there has been a genuine reduction in the rent charged by the landlord and that the reduced contractual rent is in the tenancy agreement. The claimant will be paid up to the contractual rent

charge if this is below the existing LHA rate as there is no longer an excess payment within LHA.

- 7.041 For existing customers who achieve a reduced rent at their current address the evidence should be clear, for example a written agreement from the landlord to vary the rent or, if the tenancy has been renewed, it is at a lower rent than before. In some cases, it may simply be a case of checking the rental agreement.
- 7.042 If your homelessness prevention team or another team providing advice has been involved with negotiating a reduction on behalf of the tenant, they also could provide you with supporting evidence.
- 7.043 If you are not satisfied that there is a genuine reduction in the contractual rent you should not apply the safeguard.
- 7.044-7.049

Applying the safeguard to new tenancies

- 7.050 The safeguard can also apply to customers seeking new tenancies who might not otherwise be able to secure a property with a rent which is affordable. You should not apply the safeguard unless you are satisfied that the rent has been reduced and is affordable or the letting would not have been made without direct payments and the rent charged is affordable.
- 7.051 To establish that there has been a reduction you may wish to ask the landlord to supply evidence that a tenancy at the address has previously been agreed at a higher rent.
- 7.052 If you are aware that the landlord has routinely let to HB customers at affordable rents without direct payments it would be reasonable to expect that they would continue to take on new tenants without direct payments. It is not the intention that the safeguard be used to make payment to the landlord as a matter of routine.
- 7.053-7.059

Notifying and reviewing your decision to make payment to the landlord

7.060 Once you have made a decision to pay HB to the landlord, you should notify the customer and the landlord in the normal way. Additionally, both the customer and their landlord need to be aware that direct payments are conditional on the rent being kept at an affordable level whilst the customer remains at the address. Any increase in the rent could affect the decision to make payments to the landlord.

7.061 You should review the decision to make direct payment if the customer reports:

- an increase in their rent (see paragraphs 7.070-7.073)
- a change in circumstances that results in a change in the category of the dwelling (see [paragraphs 7.080-7.083](#)).

7.062-7.063

Customer reports an increase in the rent

7.064 If the landlord increases the customer's rent the action you take will depend on whether or not you are able to determine a new maximum rent as follows. You may wish to advise customers specifically to inform you of an increase in rents immediately, to ensure that the new safeguard continues to be applied appropriately.

7.065 If the rent increases, substantially above the relevant maximum LHA level it would not be appropriate to continue to apply the safeguard and you will need to consider if payments should revert to the customer. However, you may wish to consider if either of the other safeguards under HB reg 96(3A) or HB (SPC) reg 77 (3A) apply to the customer or if the customer has rent arrears amounting to eight weeks rent before making a decision to end direct payment to the landlord.

7.066 If the new rent is equivalent to the relevant LHA rate or is at a level the customer is able to afford you can continue to pay HB to the landlord. If the rent is no longer affordable you should not continue direct payments under the new provision.

7.067 If there is a reduction in the LHA rate which leaves the customer with a shortfall, you could review the decision to make direct payments. However, as the change is out of the landlord's control you may consider it unreasonable to cease paying them directly.

7.068-7.079

Customer reports a change that affects the category of dwelling

7.080 If the customer reports a change that leads to a reduction in their maximum rent, for example a non-dependant leaves the household and their category of dwelling changes, the new maximum rent may result in a shortfall against the contractual rent. In these circumstances, the landlord may reduce the rent further, especially for long-established tenancies. However, it is less likely that landlords may be able to reduce the rent to the lower LHA rate in these circumstances.

7.081 You can continue to pay HB direct to the landlord whilst the customer considers their options. You may consider it appropriate to award a Discretionary Housing Payment (DHP) if the customer needs time to find alternative accommodation or there are reasons why they are unable to move.

7.082 If the customer reports a change that means a higher LHA rate could apply to them, the landlord may at the same time increase the rent to take advantage of the higher rate. You will need to consider if the increase is both reasonable and affordable for the customer. For example, did the property have more bedrooms than the customer was previously entitled to and do the customer's new circumstances mean that the property is the right size for the household? In these circumstances you may consider it reasonable to continue paying the HB direct to the landlord.

7.083-7.084

Making customers and landlords aware of the additional safeguarding provision

7.085 You may wish to continue to make claimants and landlords aware of this safeguarding provision using good practice such as:

- including information in letters to customers during annual up-rating calculations
- providing information on your authority's website
- Maintaining good relations with landlords
- Updating stakeholder newsletters with information about the safeguarding provisions.
- Advising customers about the more recent changes to the LHA scheme, such as the abolition of anniversary dates and the move to annual up-rating of LHA in April each year.

7.086 Publicising the changes and encouraging customers to approach their landlords in advance of any reductions to their benefit will help them to have timely negotiations and avoid the customer getting into arrears with their rent.

7.087-7.099

Liaising with your LA homelessness prevention team and other teams giving advice

7.100 Customers may seek housing advice from the LA, particularly if they have got into difficulties with their tenancy. Ensuring that teams giving housing advice are aware of this safeguard will help them provide advice to customers and negotiate with a current landlord or new landlord on their behalf.

7.101 In particular, you may wish to clarify which teams should have responsibility for advising customers on negotiating with the landlord or, if necessary, negotiating on their behalf. Your authority may have teams providing advice on money and budgeting who could be involved. Closer working across your LA is likely to help prevent a customer's housing problems from getting out of control and help prevent homelessness.

7.102-7.999

Chapter 8

Protection rules

About this chapter

8.001 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:

- for the first 13 weeks of a customer's claim if they were previously able to pay the rent without the help of Housing Benefit (HB)

HB and HB (SPC) Reg 12D(5)

- for a year following the death of a linked person

HB and HB(SPC) Reg 12D(3)

The following protection rules and circumstances have not been covered in detail in this chapter.

- for nine months following a reduction in the customer's eligible rent following changes to the way in which Local Housing Allowance (LHA) rates were set from 1 April 2011. The nine month transitional protection applied to existing claimants in receipt of LHA before April 2011 and was applied from their first anniversary date after the reforms were introduced effective 1 April 2011. This transitional protection came to an end in December 2012.

HB and HB (SPC) Reg 12M

- at the point of national rollout (7 April 2008) for claims in Pathfinder and Second Wave Group authorities (this applies only to those 18 local authorities (LAs) and is not described in detail here)

HB Schedule 10, 12E to 12K, HB (SPC) Schedule 9, 12E to 12K

8.002-8.009

13-week protection

8.010 The customer can have their eligible rent protected for 13 weeks where a relevant authority is satisfied that the customer:

- 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

HB and HB (SPC) Reg 12D(5)

8.011 The protected rent will be the higher of:

- their eligible rent determined under HB and HB(SPC) Reg 12B (gross rent less ineligible services), or
- their maximum rent determined under HB and HB(SPC) Reg 13D

8.012 The protection will continue until:

- the first 13 weeks of the award come to an end
- there is a change that would result in a new award and that exceeds the current eligible rent
- the customer moves
- there is a bereavement in the family that requires you to apply HB and HB(SPC) Reg 12D (2).

HB and HB(SPC) Reg 12D(7)(b)

8.013 At the end of the 13-week period the maximum rent based on the LHA rate which was current at the date of claim should apply. You will also need to take account of any other changes that could have affected the LHA rate during the time of protection, for example 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 and HB(SPC) Reg 12D(8)

8.014-8.039

Protection following a death

- 8.040 Where there is a death of a linked person the customer can be protected for a year from any decrease in their eligible rent.
- HB and HB(SPC) Reg 12D(3)*
- 8.041 A linked person is:
- a member of the customer's family
 - if the customer is a member of a polygamous marriage, any partner of his and any child or young person for whom he or a partner is responsible and who is a member of the same household
 - any relative of the customer or partner who occupies the same dwelling as the customer, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the customer ceased to occupy it.
- 8.042 The customer can, for the purpose of the bereavement protection, continue to be treated as occupying the dwelling if they are temporarily absent from home even if they have let or sublet the property.
- 8.043 The eligible rent will be the higher of:
- the eligible rent that applied on the day before the death occurred (if it is a new claim and no eligible rent existed then the eligible rent will be the gross rent less services, taking into account the number of persons liable and any proportion applicable to residential/commercial accommodation)
- or
- the maximum rent calculated by reference to the LHA rate which applies to the customer.
- 8.044 The eligible rent based on the bereavement protection will continue until:
- 12 months have elapsed from the date of death
 - the relevant LA determines a new maximum rent which is equal to or exceeds the protected eligible rent because of a change to the category of dwelling
 - the customer moves to a different property

- there is a subsequent death and a further comparison is done to establish the protected amount. The maximum rent applicable following the subsequent death is compared to the eligible rent on which current HB entitlement is based and the highest of the two is applied. If this rule is applied the 12-month count starts from the date of the subsequent death.

HB and HB (SPC) Reg 12D(7)(a)

8.045

At the end of the 12-month period the maximum rent which would have applied had there been no protection should be used to calculate HB entitlement. You will also need to take account of any other changes that could have affected the LHA rate which applies, 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 rate applicable on the date of the child's birth would be used to determine the maximum rent and you would determine a new LHA date.

HB and HB (SPC) Reg 12D(8)

Example of protection following a death

David lives with his wife Susan and their four children. Their maximum rent is based on the four bedroom LHA rate.

Their eldest son John dies on 15 November 2012. The LA determines a new maximum rent under the size criteria – the LHA rate for a three bedroom property now applies to them. As this results in a lower maximum rent, HB reg12D (7) protects them so that their eligible rent remains at the level used to calculate their HB on the day before the death occurred.

The protection applies for the period from 15 November 2012 until 14 November 2013. At the end of the 12-month period the protection ceases. The maximum rent will now be based on the three bedroom LHA rate that was applicable in April 2013.

Example where protection following a death will not apply

Alan Smith lives with his brother Paul in a two bedroom property. They are joint tenants and each pays a half share of the rent. They both get HB and their maximum rent is based on the shared room rate.

Paul dies on 14 March 2013. As both brothers had a separate right of occupancy Paul is not a linked person and therefore the protection does not apply.

Following the death of Paul, Alan's maximum rent will be based on the one bedroom LHA rate.

If Alan had been the tenant and his brother Paul lived with him as a non-dependant, Paul would have been a linked person. Alan's maximum rent would have been based on the two bedroom LHA rate. Following Paul's death, because the new maximum rent would be based on the one bedroom LHA rate, Alan would have a protected eligible rent for 12 months equal to his maximum rent prior to Paul's death.

8.046-8.999

Chapter 9

Appeals and reconsiderations

About this chapter

- 9.001 The customer can not appeal against or ask for a reconsideration of the Local Housing Allowance (LHA) rate or the Broad Rental Market Area (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.
- 9.002 This is because any decision would have to be applied to all customers who have had their maximum rent based on the LHA rate and BRMA, and any appeal could potentially change the LHA rate for customers who have not appealed and who are content with their allowance.
- 9.003 Claimants only have a right of appeal on issues relating to how the LHA has been applied to them - e.g. which size category are they entitled to, which BRMA their dwelling is located in. Claimants would have to seek judicial review on any other issue e.g. the amount at which the maximum LHA has been set, whether a BRMA boundary should be drawn differently.
- 9.004- 9.009

Accidental (slip of the pen) errors

- 9.010 If the rent officer makes an accidental or arithmetical error, they will make a substitute determination and notify the local authority (LA) affected. This will trigger an adjustment of the LHA that applies to affected customers.

*Rent Officers (Housing Benefit Functions) Order 1997 and
Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 Article 7A(4)*

- 9.011 The rules on the date from which the change takes effect are designed to be favourable to the customer. If the customer's benefit would:
- increase, the change is backdated to the date the customer's maximum rent was first calculated using the erroneous LHA rate

- reduce; the reduction is a change of circumstances that only takes effect from the point that the LA receives notification that the rent officer has amended the determination. Any overpayment arising from delay is a non-recoverable LA error

HB and HB (SPC) Reg 18A

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

9.013-9.019

Appeal rights of persons affected by a decision of LHA

9.020 As is currently the case, any person affected by a decision relating to the direct payment of HB may appeal against that decision. Persons affected may include the customer or the landlord.

9.021 There is a standard format for written submissions to the Tribunal Service that must be adhered to. 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 (HB) according to the Local Housing Allowance (LHA) rules, will normally have their HB paid to them rather than their landlord. This is because the aims of the LHA are to extend choice and encourage responsibility among tenants. The LHA enables tenants to trade between the quality and price of property by deciding how much rent to pay within the LHA rate and to take responsibility for paying it to their landlord. This in turn will equip tenants of working age with the necessary skills for the transition from benefit to work, a key Housing Benefit Reform objective. To do this effectively, tenants need to take responsibility for their rent payments to their landlord.

It is recognised that some tenants may not be capable of managing their affairs leading to them falling behind with their rent payments. There will also be a small percentage who will refuse to make their rent payments or who will have already accumulated at least eight weeks' of rent arrears. In these cases, local authorities will still be able to make payments direct to the landlord as a safeguard to avoid eviction.

From 1 April 2011 an additional safeguard allowed local authorities to make payment direct to the landlord where they considered that it will assist the customer in securing or retaining a tenancy. For a tenancy to be secured or retained it is implicit that the rent should be affordable to the tenant.

Annex A

Examples of the application of the safeguard provision

Saskia makes a new claim for HB in May 2011 after a period of six months in employment. The rent for her studio flat is £180 a week. The LHA rate for one-bedroom properties in the area in which she lives is £174 and the LA starts to make payment to her at that rate.

Saskia contacts the HB team to ask if she might be able to get a Discretionary Housing Payment to meet the shortfall. The HB team tells her that she can make an application but that she might be able to get her landlord to reduce her rent in return for direct payment. They ask if she feels able to talk to her landlord about it or would she prefer some support. Saskia decides to approach her landlord herself and the benefits team advises that they will need confirmation from the landlord that he will reduce the rent.

The landlord agrees the reduction in rent providing that benefit is paid direct to him and makes an adjustment to the rental agreement. The LA agrees to make direct payments.

Simon and his family live in London. They rented a four-bedroom property at £500 a week. The LA told Simon that his eligible rent would be capped at £400 from March 2012, taking effect from December when transitional protection ended.

Simon discussed his situation with his landlord who was not prepared to lower the rent. He was unsuccessful in finding anywhere else in the immediate area within the £400 limit and sought housing advice from the LA. The homelessness prevention team approached a landlord who had suitable accommodation advertised above the £400 cap. They negotiated on Simon's behalf. The landlord agreed to take Simon as a tenant at a rent of £400 in return for direct payments. The homelessness prevention team went on to liaise with the HB team to agree direct payments to the landlord and helped Simon apply for a Discretionary Housing Payment towards his deposit on the new property.

Yusef lives in a two-bedroom flat with his wife and 25 year-old daughter. His rent is £200 a week and his LHA rate is currently £205.

He is advised by the LA that as *from April 2014 the maximum LHA* will reduce to £190. There is a non-dependant deduction for his daughter of £29.60. The LA advises Yusef about the availability of direct payments to landlords if they agree to a reduced rent. He discusses a reduction in rent with his landlord. The landlord is prepared to reduce the rent to £195 a week in return for direct payments of HB but no further. However, Yusef's daughter is prepared to contribute more than the £29.60. Yusef takes written confirmation of the reduction in rent to his LA and tells them that his daughter is going to make up the shortfall. The LA agrees to pay HB to his landlord but Yusef has to ensure that his daughter's contribution is paid to the landlord.

Adam and his wife pay rent of £150 a week for a one-bedroom flat. The LHA rate from April 2013 is £155.

In June 2012 the landlord notified Adam that she was increasing the rent to £170 a week from August 2013 when the tenancy is due for renewal. Adam tells the LA his landlord is unwilling to renew the tenancy without a rent increase. Adam approaches the homelessness prevention team for advice. The team contacts the landlord and asks her if she will be prepared to limit the increase in the rent in return for direct payment. The landlord agrees and renews the tenancy at £155 a week and the local authority commences direct payments to her.

Maria needs to leave her current tenancy because she cannot afford her rent because of a reduction in her LHA rate. She has two children aged less than 10 years. A friend puts her in touch with a landlord of a two-bedroom flat for which he charges £230 a week. The LHA rate for a two bedroom flat reduced to £225 per week in April 2013.

The landlord has not let to anyone on benefit for some time as a previous tenant left without paying the rent. He says that he is willing to let to Maria and her two children, if HB is paid direct to him. The LA agrees to pay HB direct, as otherwise it would not have been possible for Maria to secure the tenancy and she would have been at risk of being made homeless.