

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A12/2010

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	Changes in the registration of social housing in England

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *A4.1360*, *A4.1400* and *A4.1440*

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
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The eligible rent for those living in social housing in England

Introduction

- 1 The Housing and Regeneration Act 2008 deals with the new registration process for providers of social housing in England.
- 2 This circular summarises the consequential amendments to HB legislation following changes to the registration process for providers of social housing in England. These are found in paragraphs 50 to 61 of Schedule 1 to The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010; SI 2010 No. 671.

Background

- 3 Among other things the Housing and Regeneration Act 2008 separates the two main functions of the Housing Corporation replacing it with two separate agencies which are the
 - Homes and Communities Agency, essentially taking forward the investment role, and
 - Tenant Services Authority (TSA) taking forward the role of regulating all social housing
- 4 Changes to the registration process do away with registered social landlords (RSL) in England only. These are now known as private registered providers of social housing, abbreviated to registered providers (RP).
- 5 It is important to note that there is no change to the registration process in Scotland or Wales and there is no change in the status of housing associations which are not registered. The following changes relate to England only.
- 6 There are three groups of landlords that are now subject to compulsory registration in England
 - existing RSLs which will transfer automatically from the current to the new register
 - Local Authority (LA) landlords which will be placed on the TSA's register by an order made by the Secretary of State, and
 - any bodies which receive funding from the Homes and Communities Agency to develop rented social housing and which also intend to be the landlord of those homes

- 7 The Act, for the first time, defines 'social housing' for legislative purposes. There are two types of social housing which the Act defines: 'low cost rental accommodation' and 'low cost home ownership accommodation'.
- Low cost rental accommodation means homes that are made available at a below-market rent, in accordance with rules that make sure the accommodation is available to people whose housing needs are not adequately met in the commercial housing market.
 - Low cost home ownership accommodation is social housing that is essentially made available on shared ownership or equity percentage terms (both defined in the Act) where the rules make sure the accommodation is available to people whose housing needs are not adequately met in the commercial housing market.

Consequential changes to the Housing Benefit Regulations

- 8 The consequential amendments update references and terminology as well as maintain the status quo in deciding the eligible rent for social housing that is rent allowance. The amendments ensure that the social housing of all private registered providers is subject to the same treatment that tenancies of RSLs enjoyed before.
- 9 The amendments identify the two types of registered providers; those that are non-profit RPs (effectively the same as previous RSLs) and those that are profit-making RPs (effectively private sector landlords). For the purposes of deciding which rules on eligible rent apply the social housing of non-profit RPs will continue to be identified by landlord registration, as is the case now. However, the social housing of profit-making RPs will have to be distinguished from their other housing which will be subject to the maximum rent (LHA) rules.
- 10 There will be no obvious marker that will easily distinguish the social housing of profit-making RPs from their other housing stock. However the most likely methods of identifying them are listed below.
- It is anticipated that in due course the National Register of Social Housing (NROSH) may be able to assist with identifying the status of landlords and their homes. Certainly from April 2010 the new TSA register will list all bodies registered with them classified by whether they are non- or for-profit RPs.
 - Some data may also be available from the Homes and Communities Agency, although the economics of development funding often mean that it is not possible to be certain of the tenure type until quite a late stage.
 - The level of rent will be a key factor. All social housing (not owned by LAs) is subject to the Secretary of State rent direction and so the level of social housing rents should be within predictable tolerances in any given district.

- While most tenancy allocations will be via either LA nomination or through Choice Based Lettings schemes the method of tenancy allocation may not be such a good guide. RPs will be able to let homes directly to applicants and some types of supported housing allocations may arise following referrals from social services or other agencies. However, it is anticipated that there should be some form of LA involvement. Other parts of an LA, such as planning or social services, may have information on where social housing is located.

Calculating the eligible rent

- 11 It is only the social housing of RPs that would be subject to HB regulation 12B in setting their eligible rent based on the various elements of the tenant's contractual rent.
- 12 As you will know the process for establishing the eligible rent in any HB rent allowance case is to first look at HB regulation 12D. Changes to HB regulation 13C(5) mean that all the social housing of RPs, both profit-making and non-profit, are exempt from the maximum rent (LHA). This means that all properties of profit making RPs that are not their social housing will continue to be subject to the maximum rent (LHA) as they would have done previously.
- 13 The next step is to look at HB regulation 12C (if regulation 12D is not applicable) but before this you should consider the Consequential Provisions where the RP dwelling satisfies the definition of 'exempt accommodation' in which case the version of regulations 12 and 13 found in the Consequential Provisions Regulations will apply. Otherwise, HB regulation 12C would only apply when you consider that the tenancy should be referred to the rent officer as it is not one of the 'excluded tenancies'.
- 14 Changes to the definition of 'registered housing association' in HB regulation 2(1) mean that the term now includes all RPs. While all the tenancies of non-profit making RPs therefore come within paragraph 3 of Schedule 2, the new paragraph 3(1A) in Schedule 2 ensures that it is only the tenancies of the social housing of profit making RPs that can ever become 'excluded tenancies'.
- 15 As you will be aware it is under paragraph 3 of Schedule 2 that the LA is **not** required to apply to a Rent Officer for a determination in relation to a registered housing association tenancy except in a situation where the LA consider that
- a the claimant occupies a dwelling larger than is reasonably required by the claimant and any others who occupy that dwelling (including any non-dependants of the claimant and any person paying rent to the claimant), or
 - b the rent payable for that dwelling is unreasonably high
- 16 If neither of these apply HB regulation 12B is used to set the eligible rent based on the elements of the tenant's contractual rent.