



The Housing Benefit Amendment Regulations (2009)

SSAC Consultation Response

6th February 2009

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1. CPAG welcomes the opportunity to respond to the Social Security Advisory Committee's consultation on the proposals by the Department for Work and Pensions' (DWP) proposals to limit housing benefit (HB) payable under the local housing allowance (LHA) rules to the rate allowable for a five bedroom house, regardless of the size of the claimant's household. This will largely affect claimants in the private rented sector.
2. The reason given for this proposal is essentially that it is difficult to assess the appropriate LHA for properties of 6 bedrooms or more because of the lack of suitable comparators. There is a high level of variance in the comparators available, and larger properties are often at the luxury end of the market.
3. Although the reason given for this proposal is concerns raised by the Rent Service, the DWP acknowledges that the issue has recently been "highlighted" in media reports of a case where a high rent for a 7 bedroom property was met by HB.
4. CPAG does not accept that there is a case for changing the rules for the following reasons.
 - a) It is not clear what purpose would be served by this change. At paragraphs 27 of the Explanatory Memorandum and paragraph 31 of the Equality Impact Assessment the DWP acknowledges that in some areas there is little difference between the LHA rates for five bedroom and the rates for larger properties, which begs the question, why change the rules? There is no assessment of the cost savings these proposals would produce, and the DWP says only 1% of claimants would be affected.
 - b) It is not clear why there should be any more difficulty in calculating the LHA for properties of 6 bedrooms and over than there was in calculating the local reference rent for these properties, which also required suitable comparators.
 - c) The LHA was introduced less than a year ago, in April 2008. Prior to that it had been extensively piloted and evaluated. We are not aware that this issue was identified as a problem.
 - d) The DWP accepts the case highlighted in the press is one of only a handful of examples.

CPAG therefore opposes these proposals.

5. For the reasons set out below, we believe these proposals conflict with the government's target of eradicating child poverty in the UK by 2020. The government is currently consulting on legislation to end child poverty in support of this aim. Administrative convenience is no reason to introduce measures that increase child poverty.
6. We are concerned that government policy is being made in response to stories in the tabloid newspapers, which are often irresponsible and politically motivated.
7. CPAG's concerns about the proposals are set out below. We make reference to the DWP's Explanatory Memorandum (EM) to SSAC and its Equality Impact Assessment (EIA).

CPAG's concerns

8. We have a number of serious concerns about the effect these proposals would have. The information about the make-up of households currently entitled to 6 or more bedrooms in the explanatory memorandum is not clear. We know that virtually all have at least one child living with them, but otherwise we do not know how many are large families, or how many have non-dependants. This in itself is a concern, as it is difficult to know what the policy impact of the proposals is if there is no accurate information about who they will affect.
9. However we believe it is sufficiently clear the proposals will impact most on children in groups already at high risk of poverty as follows.

Large families

10. The proposals will affect households containing a couple or lone parent with 5 or more children depending on the ages and sexes of the children. They will therefore impact on children living in large families, which are defined as families with three or more children. These children are at high risk of poverty, 42%, and they make up 40% of children living in poverty¹.
11. The DWP acknowledges that almost all the households affected will have at least one child living with them, and that half of these will be living below the poverty line. Their "extremely tentative" estimate is that under 3,000 households will be affected. This seems to be based on a poverty line of 60% of median household income, and an assumption that therefore 60% of the 5,000 households affected will be below the "poverty line". This ignores the fact that because HB is a benefit for claimants on a low income, most if not all the households affected will be below 60% median income for the general population.
12. The DWP tells us at paragraph 21 EM that families will still be able to rent accommodation of the right size because 20% of 6 bedroom plus properties are available at the 5 LHA bedroom rate. It is not clear how this figure has been worked out or whether it applies to every Broad Rental Market Area. Assuming it is right, it raises the further question of what will happen to those families whose rent is not covered by the 5 bed LHA rate.
13. Our understanding is that when they reach the anniversary date for their claim, or if there is a change in the size of their household, and they still need a property of 6 or more bedrooms, their HB will be recalculated on the basis of the LHA for a five bedroom property. These families will have 13 weeks' transitional protection. After that where there is a shortfall, some will have to move into overcrowded accommodation, some will have to make up the shortfall from their income, and some may have to be re-housed by local authorities as the DWP acknowledges at paragraph 20 EM.
14. We submit this proposal is likely to have the effect of placing children in larger families at greater risk of living in overcrowded and sub-standard accommodation than is already the case. There are already 900,000 children living in overcrowded accommodation in England, without the space to play and do their homework. Living in cramped conditions affects children's health

¹ Child Poverty: the Stats; Analysis of the Latest Child Poverty Statistics, CPAG Policy Briefing October 2008 p10

and educational attainment. Accidents are more likely, infectious diseases spread more readily, mental health problems such as stress and anxiety are more likely too². The following quote encapsulates the problems this causes:

“All I want is my own room. Then when I’m sick I can just lie down and shut the door.” (Ben, aged 10 with sickle disease)³

15. The DWP acknowledges at para 17 EM that of an estimated 5,000 households entitled to the LHA for a property of more than 5 bedrooms, many are already living in overcrowded accommodation. Indeed this is cited as a mitigating factor (para 32 EIA). The fact that many already live in overcrowded accommodation is not a reason further to exacerbate overcrowding.
16. The suggestion that family members can sleep in living rooms (para 33 EIA) is not acceptable; in addition to the overcrowding problems listed above, children sharing bedrooms or sleeping in living rooms often have their sleep disturbed by other family members and are too tired to keep up at school⁴.
17. These proposals are likely to make a bad situation worse, and place children already living in poverty in even greater poverty. They may encourage families to split up into smaller units so they do not have to overcrowd themselves.

Households affected by disability

18. The DWP has considered its disability equality duty and considers that the proposal could impact on the duty to eliminate unlawful disability discrimination because a household with a severely disabled member and a bedroom entitlement over 5 bedrooms may feel they are further restricted in the type of property they can rent. They believe, however, that only 500 families will be affected - see para 22 and 23 EM.
19. We are concerned that these proposals will impact on another group of children at high risk of living in poverty; those in households affected by disability. These children face a 38% risk of living in poverty⁵.
20. The Explanatory Memorandum contains a table at para 22 which shows no correlation between the number of bedrooms required by a household and the likelihood of there being a person with a disability in the household. The DWP concludes that given the small numbers affected overall, the numbers of households containing claimants who are severely disabled are likely to be very small.
21. The DWP’s figures seems counter intuitive; it might be thought those with disabilities would tend to need additional bedrooms and therefore live in larger households, because of the need to live with carers. Paragraph 35 EIA shows that 4/5 of households entitled to 5 or more properties have non-

² See At Greatest Risk; the Children Most Likely to be Poor ed Gabrielle Preston, Chapter 4, Children in Acute Housing Need, Sue Regan and Jenny Neuberger

³ Ibid p 44

⁴ Ibid p 56

⁵ Child Poverty: the Stats; Analysis of the Latest Child Poverty Statistics, CPAG Policy Briefing October 2008 p10

dependants living with them. Non-dependants may be in a variety of circumstances, but it seems likely that some of them at least will be elderly relatives needing care.

22. It is not clear what the DWP's figures at paragraph 22 are based on; if it is those in receipt of disability benefits it is worth considering that not all those with severe disabilities may be receiving the benefits they are entitled to.
23. Paragraph 20 EIA suggests that claimants are not entitled to an additional bedroom for a live-in carer (this seems to conflict with paragraph 23). This is not our understanding. A claimant is entitled to a bedroom for a carer provided the carer normally occupies the property as his/her home⁶.
24. It is right, that the additional space needs of disabled claimants are not recognised by the size criteria. For instance as the memorandum accepts, there is no provision for additional rooms for storing medical equipment. CPAG has received a number of calls on its advice line about cases where occupiers who are expected under the size criteria to share a bedroom, are unable to do so because of disability. A recent example is as follows:

A six year old who cannot share with a sibling due to the severity of her illness (Tuberous Sclerosis). She can have up to 50 seizures a night which are violent and noisy. She also has severe behavioural problems and is prone to breaking anything and everything in reach. The care team are looking at padding out the room and installing a special hospital type bed, which will take up a lot of space, as this is a progressive illness which will require more adaptations and equipment as time goes on.

There is no provision in the current size criteria to allow for an extra bedroom for a child in these circumstances.

25. CPAG would argue that far from the size criteria being restricted, the evidence suggests they should be relaxed to add a discretion to allow an additional room in these circumstances.
26. CPAG would argue that even if it is right that 500 households will be affected, that is 500 too many. On the DWP's own evidence virtually all of them will contain children. Further these households are already likely to be at very great risk of poverty. The effects of these proposals upon them could be severe, and potentially counter-productive. Adult disabled family members could be forced to leave the household and rent their own accommodation - at greater expense to the public purse.
27. Where adult claimants face shortfalls in their housing benefit because of these changes, these will have to be met from other family income, and will therefore reduce the money available for children living in the household.

⁶ The carer may, however, count as a non-dependent and a deduction may be made from the claimant's HB unless the carer is employed by a charity or voluntary sector and a charge is made for his/her services, or the claimant is excluded from having deductions made, for instance because s/he is registered blind or in receipt of the care component of disability living allowance.

These children are therefore likely to be placed at even greater risk of poverty.

BME households

28. The Explanatory Memorandum accepts that BME households are likely to be disproportionately affected by these proposals, since their figures show that non-white ethnic groups are disproportionately represented in the households entitled to six or more bedrooms. They therefore accept these proposals may “impact” the DWP’s race equality duty to eliminate unlawful discrimination.
29. Children in households of Pakistani and Bangladeshi origin are at 63% risk of living in poverty and make up 8% of the children living in poverty⁷. Again, children already at greatest risk of poverty are likely to be worst affected by these proposals.
30. The DWP suggests that the effects of the proposals may be mitigated by families using living rooms as bedrooms (see above), by transitional protection and by discretionary housing payments. We submit that none of these is acceptable mitigation for overcrowding families.
31. Local authorities do not generally award discretionary housing payments long term, so these will only effectively act as an extension of transitional protection, assuming families can get them at all. Discretionary payments are no substitute for entitlement to benefit as of right. Further, we understand discretionary payments can take a long time to assess, and local authorities’ review procedures for refusals are also often lengthy. There is also a concern about whether this new group of cases will take up funds from already overstretched DHP budgets.
32. In addition, we have the following concerns.

Households in the private sector

33. These proposals will discriminate against households in the private sector by comparison with council and most housing association tenants, who do not face rent shortfalls in larger properties. The reason why some large households are in privately rented accommodation is because local authorities do not have sufficient housing stock of the appropriate size available for them. We question whether the DWP has consulted the Department for Communities and Local Government on these proposals.

Landlords

34. A number of suggestions have been made in the Explanatory Memorandum and the Equality Impact Assessment that Landlords have been exploiting the rules to; raise rents to LHA levels (para 16 EM), partition properties into more bedrooms (para 31 EIA), and charge excessive rents (para 13 EM). These are all housing issues, they need to be dealt with by legal controls over landlords, not by penalising housing benefit claimants. There is no indication the DWP is working with the Department for Communities and Local Government on these issues (see above).

⁷ Child Poverty: the Stats; Analysis of the Latest Child Poverty Statistics, CPAG Policy Briefing October 2008 p10

Right to family life

35. It seems likely that these proposals will result in families having to split up, overcrowd themselves, or even become homeless. They are also likely to have a disproportionate impact on BME or other groups. Case law suggests that the housing benefit scheme engages Article 8 European Convention on Human Rights, either on its own, or taken together with Article 14. Article 8 states as follows:

Everyone has the right to respect for his private and family life, his home and his correspondence

36. We submit these proposals need to be evaluated taking into consideration whether they are compatible with Article 8.

About CPAG

CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement.

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