

## Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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# HB/CTB A23/2009

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	<p>HB Overpayments and Excess CTB issues</p> <ul style="list-style-type: none"><li>• Amendments to the HB Overpayments Regulations, relating to customers changing address within the same local authority's (LA's) area (from April 2010).</li><li>• In and Out of Work processes – classification of overpayments (immediate).</li></ul>

### Guidance Manual

The information in this circular

- **does not affect** the content of the HB/CTB Guidance Manual
- **does affect** the content of the HB/CTB Overpayments Guide. Please annotate this circular number against *paragraphs 2.44 to 2.48 and 3.61 to 3.75*
- **also affects** the content of the HB/CTB Subsidy Guidance Manual. Please annotate this circular number against *Section 4: Overpayments*

## 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/>
- have any queries about the
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## Amendments to the HB Overpayments Regulations

### Present legislation

- 1 Section 130(1) of the Social Security Contributions and Benefits Act 1992 states
  - (1) *A person is entitled to housing benefit if-*
    - (a) *he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home.*
- 2 This means that a customer is entitled to Housing Benefit (HB) if he is resident in a particular property and liable to make payments of rent for it. Therefore if HB continues to be paid for an address in which the customer is no longer residing, the HB will have been overpaid.
- 3 If the customer moves to another property within the same local authority's (LA) area and continues to claim HB, the move is treated as a change of circumstances on the existing claim. Even though the customer may have delayed reporting the change of address, they will be entitled to HB for the new tenancy for the same period they were overpaid at the previous property.
- 4 When the HB is payable direct to the customer at both the old and new addresses, HB Regulation 102(1A) allows for the overpayment from the previous tenancy to be recovered in one lump sum from the HB owing for the new property. HB Regulation 102(1A) states

*Where-*

  - (a) *a claimant has moved into a dwelling which he occupies as his home;*
  - (b) *a recoverable overpayment of housing benefit is thereafter made direct to him in connection with the dwelling he occupied as his home immediately preceding the date he moved to that dwelling; and*
  - (c) *the same relevant authority which made the recoverable overpayment is paying housing benefit to that claimant in respect of that new dwelling;*

*the relevant authority may at its discretion deduct from the housing benefit it is paying to the claimant in respect of a benefit week an amount equal to the claimant's weekly entitlement to housing benefit at his new dwelling, and may do so for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit.*
- 5 It must be remembered that HB Regulation 102(1A) is a method of recovery. It is not part of the overpayment calculation. The present legislation does not allow an overpayment from a previous property to be offset against the HB owing for the new address. The overpayment from the previous tenancy must be calculated and the customer's HB entitlement at the new property must be awarded. The appropriate subsidy can be claimed for both. The overpayment can be recovered using the HB owing for the new tenancy (if the HB is payable to the customer at both the old and new addresses) and this will not affect the amount of subsidy that can be claimed.

6 HB Regulation 104(1)(c) states

(c) *on the basis of the claim as it would have appeared if any change of circumstances, **except a change of dwelling which the claimant occupies as his home**, had been notified at the time that change occurred.*

This means underlying entitlement (referred to as 'offsetting' by some LAs) cannot be calculated on change of address overpayments. This is because there was no entitlement (or underlying entitlement) to the HB paid for the property in which the customer was not residing.

## Why amendments are needed

7 The Housing Benefit Review for March 2008 estimated that around £150 million of HB a year is overpaid due to 'non-residency'. We calculate that around £35 million of that happens in rent allowance cases where the customer has changed address within the same LA's area and the HB is being paid to the same person at both the old and new addresses. By amending the legislation, so that these overpayments are dealt with as a simple offset rather than recovery, the figures will reduce accordingly.

8 LAs claim 100% subsidy for correctly paid benefit and a reduced rate for overpayments. When an overpayment occurs because a customer has changed address, LAs can claim 40% subsidy for the overpayment and 100% subsidy for the HB awarded for the new address. Currently this means LAs are able to claim subsidy twice for the same period, even though in the majority of cases, benefit has not been paid out twice. This is because the HB for the new tenancy may have been used to recover the overpayment from the previous property. By amending the legislation it will save around £10 million a year in unnecessary payments of subsidy.

## Amendments that are being made

9 The Statutory Instrument 2009 No. 2608 – The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 is available to view at [http://www.opsi.gov.uk/si/si2009/uksi\\_20092608\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092608_en_1). It covers the amendments to the HB overpayments regulations, in relation to customers changing address within the same LA's area, and the amendments that extend the Permitted Work rules to HB and CTB. Guidance on extending the Permitted Work rules to HB and CTB is being issued in a separate circular

10 **Regulation 2** introduces a new regulation, HB Regulation 104A, which allows an LA, when calculating an overpayment, to offset the HB entitlement at the new address against the overpayment from the previous property, thereby reducing the overpayment to nil in the majority of cases. However, the HB must have been payable to the same person (customer, customer's representative or landlord/agent), in respect of both dwellings, for the provision to be applied.

- 11 **Regulation 2** also amends HB Regulation 102, omitting paragraph 1A and references to paragraph 1A, which presently allow an LA to recover, in one lump sum, an overpayment from a previous property from the HB owing for the new address. Paragraph 1A will no longer be needed when HB Regulation 104A is introduced.
- 12 **Regulation 3** makes equivalent amendments to The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, introducing a new regulation, Regulation 85A, and omitting paragraph 1A and references to 1A, in Regulation 83.
- 13 The new provisions do not apply to cases when the HB is paid to different people at the old and new addresses, for example when it is paid direct to the landlord at the previous property and is then paid to a different landlord at the new address, or when it is paid to the landlord at the previous property and is then paid to the customer at the new address. This is to ensure that a customer is not put into rent arrears at their new address.
- 14 The new provisions do not apply to rent rebate cases, as the customer cannot use the benefit credited to the rent account to pay their rent at the new address. The same applies to CTB, as excess CTB from one Council Tax account cannot be 'offset' against CTB credited to another Council Tax account.

**Example 1 – increase in rent**

A customer lives at Property A. They are entitled to £80 HB a week, which is paid direct to them. The customer moves into Property B; at which they are entitled to £90 HB a week, and again they have requested that it is paid direct to them.

The customer delays in reporting the change of address to the LA for three weeks and therefore the LA continues to pay HB for Property A for a further three weeks after the customer has vacated the premises, resulting in an overpayment of £240.

As the customer reported the change of address within one month of it occurring, they are entitled to the rate of HB payable at the new address, Property B, from when they moved.

The LA reduces the overpayment for Property A - £240, by the HB owing for Property B - £270. This means the overpayment is reduced to nil and the balance of £30 can be paid to the customer.

The LA can claim 100% subsidy for the HB entitlement at Property B - £270, but as the overpayment has been reduced to nil, they cannot claim any subsidy for Property A for the three weeks in question.

### **Example 2 – decrease in rent**

A customer lives at Property A. They are entitled to £100 HB a week, which is paid direct to them. The customer moves into Property B, at which they are entitled to £75 HB a week, and again they have requested that it is paid direct to them.

The customer delays in reporting the change of address to the LA for two weeks and therefore the LA continues to pay HB for Property A for a further two weeks after the customer has vacated the premises, resulting in an overpayment of £200.

The LA reduces the overpayment for Property A - £200, by the HB owing for Property B - £150. This means the overpayment is reduced to £50. The LA can recover this from future HB entitlement, applying the maximum recovery rates.

The LA can claim 100% subsidy for the HB entitlement at Property B - £150, and 40% subsidy for the overpayment at Property A - £50 (two weeks at £25).

### **Example 3 – HB paid to landlord and then paid to customer**

A customer lives at Property A. They are entitled to £80 HB a week, which is paid direct to their landlord. The customer moves into Property B; at which they are entitled to £90 HB a week, and they have requested that it is paid direct to them.

The customer delays in reporting the change of address to the LA for three weeks and therefore the LA continues to pay HB for Property A for a further three weeks after the customer has vacated the premises, resulting in an overpayment of £240.

As the customer reported the change of address within one month of it occurring, they are entitled to the rate of HB payable at the new address, Property B, from when they moved.

As the HB is being paid to different people at Properties A and B, the overpayment for Property A cannot be reduced by the HB owing for Property B. The overpayment at Property A could be recoverable from the customer and/or the landlord, depending on who misrepresented or failed to disclose information.

The LA can claim 100% subsidy for the HB entitlement at Property B - £270, and 40% subsidy for the overpayment at Property A - £240 (three weeks at £80).

### **Example 4 – change reported after one month of it occurring**

A customer lives at Property A. They are entitled to £75 HB a week, which is paid direct to them. The customer moves into Property B; at which they are entitled to £100 HB a week, and again they have requested that it is paid direct to them.

The customer delays in reporting the change of address to the LA for five weeks and therefore the LA continues to pay HB for Property A for a further five weeks after the customer has vacated the premises, resulting in an overpayment of £375.

The customer reported the change of address more than one month after it occurred. It is an advantageous change and therefore the date the customer notified the change is treated as the date the change occurred.

**Example 4 – change reported after one month of it occurring (cont)**

The LA reduces the overpayment for Property A - £375, by the HB owing for Property B - £500. This means the overpayment is reduced to nil. The customer is not entitled to the excess HB for Property B - £125 (five weeks at £25).

The LA can claim 100% subsidy for the HB entitlement at Property B - £375, but as the overpayment has been reduced to nil, they cannot claim any subsidy for Property A for the five weeks in question.

**In and Out of Work processes – classification of overpayments**

**Legislation**

15 Statutory Instrument 2008 No.2987 – ‘The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008’ amended the HB and CTB regulations from 22 December 2008 to support the In and Out of Work (IOW) processes, which are designed to streamline the claims process when people leave or start work, and to reduce the number of contacts they need with Jobcentre Plus, the Tax Credit Office and LAs. Please refer to *HB/CTB Circular A26/2008*.

16 When a customer starts work, they have a duty to notify the change of circumstances to the LA. However, in certain circumstances that duty has been discharged, due to the introduction of the IOW processes. HB Regulation 88 has been amended so that it now includes

(6) *Where-*

- (a) *the claimant or the claimant’s partner is in receipt of income support or jobseeker’s allowance;*
- (b) *the change of circumstances is that the claimant or the claimant’s partner starts employment; and*
- (c) *as a result of that change of circumstance, either entitlement to that benefit will end or, where the claimant or claimant’s partner is in receipt of a contribution-based jobseeker’s allowance, the amount of that benefit will be reduced,*

*the claimant may discharge the duty in paragraph (1) by notifying the change of circumstance by telephoning the appropriate DWP office if a telephone number has been provided for that purpose.*

Similar amendments have been made to the CTB Regulations and to the HB and CTB (Persons who have attained the qualifying age for state pension credit) Regulations.

**Into work process**

- 17 Jobcentre Plus will provide customers with a telephone number, which they should use to report that they or their partner have found work. When the customer telephones the Jobcentre to notify a move into work, the Jobcentre will conduct an interview and simultaneously complete an into work statement, form IWK4.
- 18 The Jobcentre will advise the customer about the evidence they need to send to the LA and confirm that the request for evidence has been made on the IWK4. Once the telephone call is completed the IWK4 is sent immediately to the LA by secure email.
- 19 If the LA does not have sufficient information on the IWK4 to make a decision on continuing entitlement, they should check that the 'evidence requested' box on the IWK4 confirms that the Jobcentre has asked the customer to forward evidence to support their in work claim. The LA should apply their normal pending procedures to chase up the evidence in the event that the customer does not supply it. The statutory month within which the customer has to supply evidence to support ongoing entitlement starts with the date it was requested by Jobcentre Plus, that is, the day the IWK4 was completed. The LA should check whether the customer satisfies the qualifying criteria for an extended payment using CIS and award it when appropriate.
- 20 The LA may decide that it is necessary to suspend payment of HB/CTB to avoid an overpayment. The IWK4 may contain sufficient information for the LA to suspend in part and pay a safe amount. When a decision to suspend is made, the normal provisions regarding notifications to the customer and requests for information will apply.

**Classification of overpayments**

- 21 If a customer has notified the Jobcentre that they have started work using the IOW processes, but they have not yet provided all of the information and evidence needed by the LA to process the change, any overpayment would be classified as Claimant error, because the customer has contributed to the overpayment by not providing sufficient information and evidence. An overpayment cannot be classified as an official error if the customer has contributed to it.
- 22 If the LA has everything needed to process the change of circumstances, either on the IWK4 or subsequently forwarded from the customer, any overpayment would be classified as LA official error or Administrative delay (depending on whether the delay in processing the change was due to a mistake) from the Monday following receipt of sufficient information at the LA.

- 23 If it is clear that in all probability the customer's earnings will remove any entitlement to HB/CTB, the LA can make a decision on the basis of the information contained on the IWK4. At the very least, the LA should consider suspending benefit in order to stop the overpayment from continuing. If they do not do so and the overpayment continues, it would be classified as LA official error or Administrative delay, because the overpayment was caused by the LA failing to process the change of circumstances when they had sufficient information available to them and the customer has not contributed to it.
- 24 If however, it is not clear from the IWK4 that the customer has continued entitlement to HB/CTB and the LA decides not to suspend benefit in order to avoid hardship for the customer and their family, then the overpayment would be classified as Claimant error because the customer has contributed to the overpayment by not providing sufficient information and evidence. Please refer to *HB/CTB Circular A15/2009, paras 54 to 59*, which gives further information on suspension and the classification of overpayments.
- 25 If the IWK4 doesn't arrive at the LA but there is a record of the customer reporting they have started work using the IOW processes, and the customer has provided sufficient information to enable the LA to process the change, any overpayment would be classified as Departmental official error from the Monday following the customer notifying the Jobcentre. This is because the customer has satisfied their duty of reporting the change of circumstances to the appropriate office and providing sufficient information and evidence.
- 26 If however, the customer has not provided sufficient information, the overpayment would continue to be classified as Claimant error up until the customer has provided the information and evidence. This is because the customer is contributing to the overpayment by not providing sufficient information and evidence and an overpayment cannot be classified as official error if the customer has contributed to it.