

Housing Benefit and Council Tax Benefit

General Information Bulletin

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<http://www.dwp.gov.uk/housingbenefit/>

HB/CTB G3/2008

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Contact	Queries about the <ul style="list-style-type: none">• technical content of this bulletin, contact details are shown at the end of each section• distribution of this bulletin, contact Corporate Document Services Ltd Orderline<ul style="list-style-type: none">- Tel: 0113 399 4040- Fax: 0113 399 4205- Email: orderline@cds.co.uk• bulletin in general, contact Kath Murphy<ul style="list-style-type: none">- Kath.Murphy@dwp.gsi.gov.uk
Who should read	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
Action	For information

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Commissioner's cases

- 1 We are aware of the following cases that are awaiting decision by a Commissioner.
CH/3530/07 Right to reside pre April 06 workseeker. JSA claimed
CH/3036/05 Whether the date of a claim for IS has any effect on the date of a claim for HB
CH/3244/07 Whether or not HB should be paid to the landlord – reg 95(1)(b)
CH/4018/07 Whether HB should cover any costs for providing care or support
CH/1778/07 Whether an overpayment of HB is recoverable and from whom
CH/3590/07 When a re-determination of a Rent Officer's determination can be carried out
CSH/616/07 RP award backdated 12 months – overpayment of HB – should the tribunal have taken the gross amount of an RP award into account
CSH/566/07 Tribunal did not have sufficient evidence to support its decision
CH/3160/07 Tribunal did not make sufficient findings of fact or consider all the relevant issues

The cases have arisen since 1 November 2007.

- 2 Thank you to those authorities that have let us know about cases they are appealing. Please notify us of cases at the point that the application for leave to appeal is made to the Commissioners' office, or the appeal is lodged following grant of leave by a Chairman. Please let us know if a case reference (CH/.. or CSH/..) has been allocated.

Queries

- 3 If you have any queries about cases before the Commissioners or courts, please contact us by
 - Email: ACI-Office-Support-Leeds@dwp.gsi.gov.uk, or
 - Fax: 0113 232484

Employment and Support Allowance: the impact on Housing Benefit and Council Tax Benefit

Introduction

- 4 We have already given outline information of the effects of Employment and Support Allowance (ESA) on Housing Benefit (HB) and Council Tax Benefit (CTB) in previous editions of HB Direct and More Direct. Once the regulations making the amendments are laid in April 2008 we will issue full guidance. However, to aid with planning here is a detailed summary of the effects before the regulations are made. Please note that until the regulations are laid before Parliament, currently scheduled for April 2008, the changes remain proposals.

Background

- 5 From October 2008, ESA will replace Incapacity Benefit (IB), Severe Disablement Allowance (SDA) and Income Support (IS) on the grounds of incapacity or disability for new customers. There will be two types of ESA, either income-related (ESA(IR)) or contributory (ESA(C)). Both elements will be payable up to state pension qualifying age.
- 6 Both elements will be payable in two stages, the assessment phase and the main phase. During the assessment phase (usually 13 weeks) a basic amount will be awarded. Also during the assessment phase the customer will have a work capability assessment (WCA) which will determine eligibility to ESA. If the WCA determines that a customer is eligible, an extra component will be awarded from week 14, resulting in a higher level of benefit. This will be either a work-related activity component or a support component – the latter will be awarded to the 5-10% whose physical or mental condition affects them most severely. If the WCA threshold is not met, ESA will cease.
- 7 ESA's structure cannot be directly compared with the existing IB system. The basic amount payable, ie the assessment phase rate and the component will be the same for both elements. Premiums will only be awarded in ESA(IR). The disability premium will not be a part of the structure of ESA. However, equivalents to the other IS premiums will be payable, provided the qualifying conditions are met.
- 8 The HB/CTB regulations will be amended to adapt the HB/CTB provisions to accommodate the new components in the ESA structure; to ensure that ESA has the same effect on HB/CTB as the benefits it will replace and to ensure that the number of losers compared with the existing system is kept to a minimum. Many of the changes are technical and simply ensure that the right relationship between ESA and HB/CTB is established from the outset. Other changes are important to ensure ESA policy intentions are met.

The changes to HB/CTB

Receipt of ESA(IR)

- 9 The rules for calculating ESA(IR) will be based on those of the income-related benefits (apart from the disability premium). Therefore, receipt of ESA(IR) will mean entitlement to full eligible HB/CTB as does receipt of IS, income-based Jobseeker's Allowance (JSA(IB)) and Pension Credit (SPC), guarantee credit.

Extending existing provisions to ESA

- 10 There are many well established rules in the HB/CTB provisions that Ministers wish to extend to ESA. The regulations will be amended to provide that
- The working age HB/CTB provisions apply to ESA(IR) recipients but the pensioner HB/CTB provisions do not – as is the case for IS and JSA(IB) customers
 - Non-dependants receiving ESA(IR) will attract the lowest rate deduction in HB and a nil deduction in CTB, as is the case where the non-dependant is receiving IS or JSA(IB) – see paras 19-21
 - Recipients of ESA(IR) will not be excluded from HB/CTB under the persons from abroad provisions – as is the case for recipients of IS and JSA(IB)
 - Like IS or JSA(IB) recipients, ESA(IR) recipients cannot receive HB if their ESA(IR) includes an amount to cover housing costs
 - In line with the provisions for IS and JSA(IB), HB may continue for four weeks if the person becomes entitled to ESA(IR) which includes an amount for housing costs
 - Recipients of ESA(C) or people who would be entitled to ESA(C) if they had sufficient National Insurance contributions will be exempt from the restrictions on unreasonable rents provisions. This currently applies to recipients of IB or people who would be had they sufficient National Insurance contributions
 - In line with recipients of IS or JSA(IB) recipients of ESA(IR) shall not be a 'young person' and so will not be included in the calculation of the applicable amount
 - A non-dependant's income may not be used to assess HB/CTB rather than the claimant's if the non-dependant is receiving ESA(IR) as is the case when the claimant is receiving IS or JSA(IB)
 - When ESA(C) is reduced because a pension or councillors' allowances are paid, the reduced amount of ESA(C) will be taken into account – this is in line with the current provisions for IB
 - ESA(IR) may be used in the mechanism for reducing notional capital where the person is deemed to have reduced their capital in order to obtain or increase HB/CTB
 - Continuing payments may be made where the customer is leaving ESA(IR) for Pension Credit
 - Students receiving ESA(IR), ESA(C) or who are treated as having limited capability for work under the provisions of the Welfare Reform Act will be eligible for HB/CTB
 - ESA is brought into the provisions for the time and manner in which claims are to be made so that for example a HB/CTB claim may be sent to the DWP office where the customer is also claiming ESA
 - Like people on IS or JSA(IB), people on ESA(IR) need not report changes affecting ESA(IR) to the LA
 - People receiving alternative maximum CTB must report if any of the adults in the dwelling cease to be entitled to ESA(IR)
 - HB must be paid to the landlord when an amount of ESA is being paid to the landlord to clear arrears of rent, as is the case when IS or JSA is being paid to the landlord
 - ESA will be a benefit from which LAs may recover an overpayment of HB/CTB
 - Recipients of ESA(IR) will attract a deduction from council tax due when they are living with a person liable for council tax

- Concessionary payments of ESA(IR) will be disregarded as income
- Arrears of, or compensation paid in respect of, ESA(IR) will be disregarded as capital for 52 weeks
- Payments of ESA in excess of £5000 will be disregarded for up to a year
- ESA(IR) recipients will receive the same information in their decision notice as a person
 - on IS or JSA(IB)
 - not on IS or JSA(IB)
 - not entitled to HB/CTB
 - receiving alternative maximum council tax – where one of the matters included is whether any second adult is on IS/JSA(IB)/SPC

Aligning the structure of HB/CTB with that of ESA

Aligning the personal allowances

- 11 As is the case for IB or SDA paid without IS, ESA(C) will be taken into account in full as income where ESA(IR) is not also awarded. There will not be disability premium in ESA. Therefore, there will not be one in HB/CTB for ESA customers (although it will still be awarded where the HB/CTB customer is not an ESA customer). Instead the same component awarded in ESA will be added to the HB/CTB personal allowance at the same time it is awarded in ESA. The component will have the same name in HB/CTB as it has in ESA.
- 12 There will be only one rate of each component, ie unlike the disability premium there will be no couple rate. In the case of a couple where both are ESA customers and both have entitlement to a component, the component appropriate to the HB/CTB claimant will be added to the personal allowance.
- 13 As is the case for the disability premium a component will only be awarded in working age HB/CTB.
- 14 In ESA the personal allowances will be based on age during the assessment phase. Therefore, single people aged less than 25 will receive a lower basic amount than someone aged at least 25. Once the main phase starts and a component is awarded, all ESA recipients will receive the amount for those aged at least 25, irrespective of their age. The HB/CTB will reflect that policy.

Substitute references for receipt of a disability premium or Incapacity Benefit

- 15 Receipt of a disability premium enables certain HB/CTB customers to receive extra 'benefits' which are
- the £20 weekly earnings disregard
 - the additional earnings disregard (currently £15.45 a week)
 - up to £300 per week disregard of child care costs from earnings or other income
- 16 When the existing condition is receipt of the disability premium or the short-term higher or long-term rate of IB the substitute will be receipt of either of the components.

ESA reduced because of a sanction

- 17 ESA can be sanctioned when, for example, the customer fails to attend a work focussed interview. The sanction is a reduction in the weekly amount payable. Where ESA(C) is reduced because of a sanction the full unsanctioned amount will be taken into account in the HB/CTB calculation.

Extending the short linking rule

- 18 There is a linking rule in the IB provisions allowing a customer to leave benefit for up to eight weeks and return in the same benefit position as when they left. This provision will be taken forward into ESA and extended to 12 weeks. The same provision will also be carried forward into HB/CTB for ESA customers. It is used in the childcare charges provisions which currently provide that the disregard will apply if
- the customer satisfied the conditions for the disregard before leaving HB/CTB, and
 - satisfies the conditions on return to HB/CTB, and
 - the gap is less than 8 weeks

The 8 week condition will be extended to 12 weeks.

Non-dependant deductions

- 19 Currently in HB if the non-dependant is less than age 25 and on IS/JSA(IB) the non-dependant deduction is nil. The policy rationale for this is that usually the IS/JSA(IB) personal allowances for people aged under 18 and 25 are lower than those aged at least 25. During the assessment phase, ESA recipients aged less than 25 will receive a rate based on the JSA(IB) rate for those ages. However, the rate will be increased to the at least 25 rate once the person reaches the main phase.
- 20 The HB provisions will be that the non-dependant deduction will be nil when the non-dependant is
- receiving ESA(IR)
 - aged less than 25, and
 - receiving the assessment phase personal allowance

However, from the start of the main phase, when the increased personal allowance and component are awarded, a non-dependant deduction will be made.

- 21 If the award of the main phase component and increased personal allowance is delayed and then backdated to week 14 of the ESA(IR) claim the deduction will only be applied when the decision is made to award the component and increased applicable amount, not from when the increased amounts are payable. This will avoid creating an overpayment through no fault of the HB claimant.

Enquiries

- 22 For further advice or information please contact Christine.Watkins@dwp.gsi.gov.uk

Change of policy for LA notifications supporting Two Strikes legislation

- 23 On 11 February 2008 Jobcentre Plus will complete rollout of the FRAIMS computer system. All prosecutions, administrative penalties, and cautions will be recorded on to the system to support Two Strikes legislation, including the migration of current data.
- 24 From 11 February 2008 LAs should provide all notification details to their local sector Fraud Investigation Service (FIS) for input. Notification forms include: cautions (LA C1 and C5), Adpens (ADPEN 9 and 21) and prosecutions (WIB4a).
- 25 If arrangements have not already been set up, LAs should consider contact with the local sector FIS to ensure that the transfer of this work is managed successfully.
- 26 Form WIB4b is no longer required.
- 27 Do not send any forms to the Two Strikes team at Rochdale from 11 February 2008.

Queries

- 28 If you have any queries about this subject, please contact
James Ablewhite
Fraud and Error Policy Team
James.ablewhite@dwp.qsi.gov.uk

Social Security Fraud Act 2001 Authorised Officers

- 29 In recent months there has been a steady increase in the number of LA investigation staff requesting PINS 9A training for Social Security Fraud Act 2001 (SSFA) Authorised Officers (AOs). In addition, the database of all SSFA AOs, held by FIS Operational Intelligence Unit (OIU) at Rochdale, is being revised and there are concerns that the information held may not be up to date.
- 30 Both these issues could lead to the powers granted under SSFA being questioned, particularly in the light of recent events with regard to the safety and security of government data.

Background

- 31 When the new powers were debated in Parliament, assurances were given that the new powers would be exercised with the utmost care and sensitivity and that substantial safeguards would be put in place. One of these safeguards was to restrict the numbers of AOs, both within DWP and LAs.
- 32 The SSFA Code of Practice, which governs the use of these powers, states that the numbers of AOs will be strictly limited. It goes on to say that: '*Local authorities must take all reasonable steps to keep to a minimum the number of officers authorised to use these powers*' (4.22). Furthermore that: '*Local authorities should consider whether it would be possible to work with another local authority to reduce the number of sources from which organisations may receive requests for information*'.

Present situation

- 33 Since 2002 the number of SSFA AOs within LAs had gradually increased but recently there has been a sharp increase. In addition there has been a sharp increase in the number of LAs wanting the required PINS 9A training and in the number of officers per LA being put forward.
- 34 A review of the existing database of SSFA AOs on the secure website is also being conducted as it is apparent that some of the AOs, from both DWP and LAs, have been on the list for some time and may no longer be employed as investigators.
- 35 These issues have raised concerns within DWP as to whether the assurances originally given to Parliament are in danger of being breached. It is also important that the assurances given about the existence of a clear separation of duties between investigating officers and intelligence gathering staff are being upheld.

Local Authority SSFA AOs

- 36 It is therefore clear that the current situation, whereby LAs can appoint as many SSFA AOs as they wish, cannot continue without a serious risk that the powers granted under the SSFA 2001 are challenged. This in turn could lead to a review of the necessity of these far reaching powers as used by both LAs and DWP.
- 37 A number of options were originally proposed to limit the number of LA SSFA AOs. These were
- using National Anti Fraud Network (NAFN) to provide the service
 - sitting LA staff in DWP OIUs
 - channelling LA enquiries through DWP OIUs
 - LAs getting together with their neighbouring authorities
- 38 The use of NAFN, funded by DWP for this purpose, and LAs getting together are still valid options and LAs are encouraged to adopt them.
- 39 However, as these options have not worked we have to take further measures to restrict the number of LA SSFA AOs. Therefore, with immediate effect, we are restricting the number of SSFA AOs to no more than one per LA, as agreed with your representatives, to resolve the current situation. Any officer nominated should only be involved in intelligence gathering duties.
- 40 In addition, to ensure that the SSFA AO database is accurate, we will be writing to LAs who already have officers on the database to restrict them to one and to ensure that the details of that officer are accurate.
- 41 You can get details of who is on the database from
Colette Cooke
OIU Manager
2nd Floor
Newgate House
1 Newgate
Rochdale
OL16 1XA
Tel: 01706 714160
Email: Colette.Cooke@Jobcentreplus.gsi.gov.uk.

- 42 We have also informed our colleagues within Learning & Development that PINS 9A training can only be made available to one officer per LA.
- 43 With these measures in place we hope to significantly reduce the risk of the SSFA powers being challenged.
- 44 These restrictions do not apply to LA Authorised Officers under s109 and s110 Social Security Administration Act 1992.

Queries

- 45 If you have any queries about this subject, please contact Graham Dove
Email: Graham.Dove@dwp.gsi.gov.uk

Security Performance Measures 2007/08

Introduction

- 46 This section updates you on the outcome of a review of PM10 targets and the latest position regarding measurement of the Security Performance Measures.

PM10 revised targets 2007/08

- 47 DWP have undertaken the promised mid-year review of PM10 (number of reductions in benefit entitlement) which indicated that the targets were too demanding, as the majority of LAs would not meet them. The Minister has approved a reduction to these targets for 2007/08.
- 48 The original PM10 targets were derived from a baseline of actual reductions achieved nationally between December 2005 and November 2006, with a 20% increase (see *HB/CTB Circular A20/2006*). The 20% increase has been reduced to 10% so the revised targets are the equivalent of 110% of the original baseline.

Measuring PM10

- 49 Because of the suspension of HBMS data extracts since November 2007, DWP will measure PM10 over the period 1 April to 30 September 2007. Each LA's target for this period will be 50% of the revised target as described above. As a result, almost half of all LAs will now achieve or exceed their PM10 target. Annex 1, sent with this bulletin, contains full details for each LA of revised targets and performance achieved in 2007/08.

Measuring PM11

- 50 PM11 measures the percentage of HBMS data matches resolved within two months. This data is gathered from STATS 124, so LAs' performance will be scored on the first two quarters of 2007/08 - ie, April to September 2007.

Measuring PM16

- 51 PM16 measures the number of successful sanctions achieved per thousand caseload in the year and DWP recognise that a number of LAs may have been affected by the absence of data matches and the Risk Score Review List. PM16 will be measured over the first six months of the year, and new targets are currently being developed to score LAs' performance against this measure. Details of how PM16 is to be scored will be made available in due course.

Further information

- 52 Further information can be found on the DWP web-site at <http://www.dwp.gov.uk/housingbenefit/faq/sec-perf-measures.asp>
- 53 If you have any queries about this subject, please contact Fraud-Error-Policy@dwp.gsi.gov.uk