# Supported housing regulation consultation – Housing Benefit implications for housing providers

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# Introduction

The government has launched a consultation on its plans to implement measures set out in the Supported Housing (regulatory Oversight) Act 2023.

The consultation includes proposals on:

- Implementing national supported housing standards, a licensing scheme and a new planning use class (please see Emma Lindley's blog 'Supported housing regulation: Consultation – was it worth the wait?')
- Changes to the Housing Benefit (HB) regulations:
  - Potentially linking HB to the licensing regime in England and to new or existing frameworks in Scotland and Wales
  - Defining care, support and supervision in HB regulations in England, Scotland and Wales.

This briefing focuses on the proposed changes to the current HB regulations for supported accommodation and how they are likely to affect housing providers, residents, HB services and local authority finances.

The consultation closes on 15 May 2025.

# Summary

- The proposals will mean a major change for supported housing providers. Where providers obtain a licence, their residents will be eligible for HB for their housing costs. However, it is likely that there will be vulnerable residents in accommodation which fails to obtain a licence who will have to find suitable alternative accommodation and the support that they need
- There are implications for a number of council departments and external organisations if accommodation (currently treated as exempt) is unable to obtain a licence. Residents who require care, support or supervision would have to find, or have help to find, alternative licensed accommodation. The government says it is working with partners and local authorities to consider how best to support residents who find themselves in these circumstances and is exploring what practical and financial help should be made available. The government acknowledges that individuals will need to be supported where a licence is refused and their entitlement to HB changes or they have to claim the housing element of Universal Credit. There is a hint that may be some 'mitigations' in these situations

- This change requires a corporate approach including a cross departmental implementation plan, including affected parts of the local authority and external stakeholders, for example charities and the voluntary sector. Providers may wish to set up a working group across the local authority area, including HB services, supported accommodation providers and commissioners, to identify the key issues. These could include the requirements for obtaining a licence, identifying where there a gaps, what improvements and changes may be necessary and an action plan for moving residents where a licence is refused
- Where accommodation does not meet the criteria for a licence, residents will no longer be entitled to HB at the higher rate and their housing costs (from HB or Universal Credit) will be based on the rates for general needs accommodation in the social rented sector or on the Local Housing Allowance rates as appropriate. It is highly unlikely that these amounts will be at the levels previously paid. Failure to obtain a licence could affect the feasibility of a scheme but it is to be hoped that accommodation which is of good quality and where appropriate accommodation and care, support or supervision is provided would be able to obtain a licence
- The government has already identified that there are some 'rogue landlords' who will be unlikely to be able to obtain a licence and who will close schemes and move out of this market. This is particularly likely where the residents do not need and/or there is no provision of care, support or supervision. In this situation, former residents cannot be found to be intentionally homeless. Homeless departments will need to identify such people and ensure that they do not slip through the net
- These changes are likely to take some time to implement. In the meantime, providers may wish to talk to HB services about supported accommodation schemes and the level of care, support or supervision provision. HB services have to be satisfied that there is a need for the care, support or supervision and that this is provided. Most HB services will ask providers to give a breakdown of rent and service charges and will ask for high level information about the need for and the of provision of care, support or supervision
- The DWP guidance on HB for supported housing claims includes information which might help providers who have questions around defining care, support and supervision. However, the final decision about whether the accommodation meets the criteria for being treated as 'exempt' is subjective and based on caselaw and consideration of each claimant's needs. It is therefore not possible to give an absolute definition of the amount of care, support or supervision provision that is sufficient to be eligible for Housing Benefit.

# Which accommodation is included in this consultation?

'Supported housing' in the consultation has the same meaning as 'supported exempt accommodation' in the Supported Housing (Regulatory Oversight) Act 2023. This matches the definition of specified accommodation in the HB Regulations 2006, please see below for the details.

The HB section of the consultation mainly uses the term supported housing to mean accommodation which is treated as specified in HB. This briefing will use both terms as appropriate.

By April 2026 it is expected that specified accommodation, along with temporary accommodation, will be the only types of accommodation for which local authority HB services still provide assistance with housing costs for working age claimants.

There are four categories of specified accommodation in HB:

### Exempt accommodation

Exempt accommodation is defined as either:

- Accommodation provided by a non-metropolitan county council in England, a housing association, a registered charity or a voluntary organisation where that body or a person acting on their behalf provides the claimant with care, support or supervision
- A resettlement place.

### Managed properties

This is designed to cover supported housing which does not meet the definition of exempt accommodation because the care, support or supervision is provided by someone who is not the landlord or someone acting on their behalf. Managed properties is the term used by the DWP to describe this category and is not a legal definition.

This applies to accommodation:

- Which is provided by a non-metropolitan county council in England, a housing association, a registered charity or a voluntary organisation
- Into which the claimant has been admitted in order to meet a need for care, support or supervision
- Where the claimant receives care, support or supervision.

**Domestic violence refuges**

This applies to accommodation which:

- Is provided by a local authority, a housing association, a registered charity or a voluntary organisation, because the claimant has left their home as a result of domestic violence
- Consists of a building, or part of a building, which is used wholly or mainly for the non-permanent accommodation of persons who have left their homes as a result of domestic violence
- Care, support or supervision is not required to be provided.

**Hostels**

This applies to accommodation which is:

- Owned or managed by a housing authority
- A building that does not contain self-contained dwellings and where board, or facilities for the preparation of food is provided
- Not a care home, but where the claimant receives care, support or supervision.

Where the accommodation does not meet this criteria, it is not treated as specified accommodation and the normal HB/Universal Credit regulations apply such as Local Housing Allowance and bedroom tax.

The consultation asks whether the proposed licensing scheme should apply to all specified accommodation.

This consultation covers all four types of specified accommodation and local authority finances but the main issues for HB services are around exempt accommodation.

# Why are changes to the HB regulations needed?

There has been concern for some time about the high levels of rent and service charges being charged by some landlords in the supported housing sector.

A few years ago the government set up HB pilots to identify the main issues and to trial processes for dealing with claims from people living in exempt accommodation. The results, along with other research, informed the Supported Housing (regulatory Oversight) Act.

## Financial loss to the local authority

Local authorities are having to fund shortfalls in central government HB subsidy for exempt accommodation. Local authorities report high losses, in some cases running into millions of pounds for relatively small councils.

The HB regulations which deal with exempt accommodation are over 30 years old (the 1989 Rent Office referral rules still apply) and no longer reflect the way this type of accommodation has changed since then. Incidentally, it is called 'exempt' because it is exempt from HB changes which were introduced in 1996.

What the government calls 'rogue landlords' have entered the supported accommodation market and are charging high rents for accommodation which is not always satisfactory and for providing 'care, support or supervision' which can be nominal or non-existent. HB services report high losses of central government subsidy due to abuse of the scheme by these rogue landlords.

Where the landlord is a registered housing association, the local authority normally receives full subsidy on eligible rent and service charges.

The HB service must refer the rent to the to the rent officer where the landlord is a:

- Registered housing association and the HB service considers that the rent is unreasonably high or the accommodation is unreasonably large
- Not-registered housing association, a registered charity or a voluntary organisation.

In these cases the level of central government subsidy is based on the market rent figure provided by the rent officer.

The legislation and case law mean that in most cases HB services have little choice but to pay HB at a level above the market rent. The shortfall between the rent officer's market rent figure and the amount of HB paid has to be met by the local authority from its own resources.

It is a difficult situation. These claimants are vulnerable. The majority need care, support or supervision. The regulations and a considerable amount of caselaw, mean that HB services often have little choice but to pay the high rents charged which means a financial loss to the council.

Previous governments have not addressed the problem, presumably because of the complex balance between housing vulnerable people and the possibility of abuse of the HB scheme. HB services have to try to protect public funds while at the same time recognising the needs of vulnerable people.

### Whether accommodation can be treated as specified

Being treated as specified accommodation (and exempt accommodation in particular) is more advantageous for landlords and for residents as:

- Housing costs are paid through HB, normally directly to the landlord. If the accommodation is not considered to be exempt, these are claimed through Universal Credit and would normally be paid to the claimant except in limited circumstances
- There is no benefit cap on the rent for the specified accommodation
- The level of housing support is likely to be higher through HB than through Universal Credit, but this comes with a financial loss to the local authority as central government does not always meet the whole cost of HB paid for these types of claims.

## What are the proposed changes?

While the changes to the licensing regime apply to England only, the HB proposals apply to the whole of Great Britain (England, Wales and Scotland).

HB pays housing costs for the eligible rent and for any eligible service charges, but not for the costs of care, support or supervision which are ineligible service charges for HB.

### Defining care, support and supervision for the purposes of specified accommodation in HB regulations across Great Britain

For most categories of specified accommodation, part of the criteria is that care, support or supervision is provided to residents. In this consultation, the government is seeking views on including a definition of care, support and supervision in the HB regulations.

*Definition of care, support or supervision*

Currently HB services spend a significant amount of time and resource deciding if the criteria for the accommodation to be treated as exempt is met, including whether care, support or supervision is provided and whether it is less than 'minimal'. They have to rely increasingly on complex case law to help with their decision making. The criteria for managed properties, domestic violence refuges and hostels is more clear cut.

HB services have been asking for some time for the definition of exempt accommodation (including the definition of care, support or supervision) to be set out clearly in legislation. Current decisions are subjective as they have to be based on a comparison of charges for rent and service charges and on the interpretation of case law (which is time consuming and complex).

For England, the government is proposing using existing legislation and standards to define:

- Personal care – the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Support and supervision – the national supported housing standards. For England, the DWP is also exploring whether, in addition to defining support and supervision, the HB regulations should outline that any support or supervision provided should be delivered in line with the new national supported housing standards, which are part of this consultation.

There are also similar arrangements for defining care, support or supervision in Wales and Scotland which are outlined in the consultation.

The government is seeking views on whether these are sufficient for HB administration.

*Threshold for amount of care, support and supervision*

The consultation also asks for views on including a threshold in the HB regulations as to the amount of care, support or supervision individuals in specified accommodation should receive to be eligible for HB under the specified accommodation rules. Currently, the care, support or supervision provided by the landlord, or a third party on its behalf, must be 'more than minimal'. This requires HB services to make subjective decisions which may not always be consistent.

The consultation states that the government believes that there should be a clear expectation of supported housing providers as to the levels of care, support or supervision residents receive. This would not only give local authorities more power to hold poor providers of supported housing to account, it would also improve the consistency of HB decision making across local authorities.

There is also a question in the consultation regarding the amount of evidence a HB service can reasonably request to establish the amount of care, support or supervision residents receive. HB services sometimes need to ask for information about the level of care, support or supervision and whether it is actually provided to help it decide whether the accommodation meets the criteria for specified accommodation.

**Linking HB eligibility to licensed provision in England and exploring opportunities to link to other frameworks in Scotland and Wales**

The government is also proposing linking entitlement to HB for a specified accommodation resident to the licensing regime. It says that this link can only be introduced successfully if the licensing regime operates across England.

As the HB proposals would apply to the whole of Great Britain, the government also needs to consider the implications for Scotland and Wales including whether any equivalent changes need to be made. It states that if it links HB eligibility to the frameworks in Scotland and Wales, these would be made using powers under the statutory framework which underpins the HB regime.

If HB eligibility were to be linked to obtaining a licence, unlicensed schemes would no longer be treated as specified accommodation for HB.

A resident may choose to appeal the HB decision if they lose their entitlement, due to their provider not being licensed. The landlord would have separate rights of appeal against the licensing decision.

# Implications

The proposed changes to the current HB regulations for specified accommodation will affect housing providers, residents, HB services, adult social care, the planning department and local authority finances:

- If unlicensed schemes were to be treated as ineligible as specified accommodation for HB, claimants would be expected to claim the housing element of Universal Credit (if they are working age) or continue to receive HB, presumably not as exempt accommodation, (if they are pension age). The amount of support with housing costs to which an individual is entitled may change as different rules will apply and because of individual circumstances
- Providers who fail to obtain a licence may decide to continue operating as general needs accommodation. In this situation, vulnerable individuals are likely to have insufficient funding for their rent and may also lose the care, support or supervision that they need. This would have implications for the viability of any scheme that chooses to do this as the amount of rental income is unlikely to be as high as it would be if the accommodation were treated as exempt. For most, if not all, working age claimants this would mean that housing costs would be paid through Universal Credit where, in addition to the reduced amount for housing costs, the default is payment of housing costs to the claimant. This would need to be addressed for this group of claimants
- If a provider who fails to obtain a licence decides to close a scheme, vulnerable former residents would have to find alternative accommodation. In this situation former residents cannot be found to be intentionally homeless. The consultation also states that if a tenant chooses to remain in supported housing where a licensing offence has been committed, they may be able to apply to a tribunal for a determination of rent.

# Conclusion

The government has stated that it wants to tackle the problem of 'rogue landlords' setting up as supported housing providers to take advantage of the HB scheme but it is still having to tread a cautious path between the needs of vulnerable people and the abuse of public funds.

Local authorities were hopeful that the new legislation would address the financial losses they are currently experiencing, in addition to providing a definition of care, support or supervision. It seems that the former is unlikely to happen and there will still be a financial impact on local authorities.

In the meantime, the current HB regulations will continue to apply until the licensing scheme starts and it is likely that this will take some time to go through the parliamentary process and to set up and roll out

# About the author

**Sue Beasor** has worked in benefits for several years. She has worked at a senior level in a number of local authorities and has spent more than 25 years working closely with social housing providers.

Sue is an HQN associate and experienced trainer and consultant whose work includes delivering benefits and management training for local authority benefits services and social landlords, managing the implementation of legislation and organisational changes and analysing the effects of welfare reforms, particularly how they impact on the social housing sector.

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