

Housing Benefit: The Proposed Changes

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During the Uprating Statement on 30 November 1994 the Secretary of State for Social Security outlined plans aimed at stemming the growth of public expenditure on Housing Benefit. An explanatory memorandum on the Government's proposals was published in March 1995; this is currently being considered by the Social Security Advisory Committee (SSAC). This paper sets out the Government's proposals and discusses them in the light of some of the responses submitted to the SSAC by interested organisations. It is expected that regulations implementing the proposals will be laid before Parliament in May/June of this session.

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CONTENTS

	Page	
I	Summary	1
II	Restricting housing benefit: the current arrangements	2
III	The case for change	4
IV	The Government's proposals	6
	A. Local reference rents	6
	B. Localities and property types	8
	C. Local authorities' discretion	8
	D. Subsidy	8
	E. Pre-Tenancy Determinations (PTDs)	9
	F. Affected claimants	9
V	Responses to the proposals	10
	A. General reactions	10
	1. Timetable and operational issues	10
	2. The case for change	10
	3. Impact on the private rented sector	14
	4. Impact on housing associations	16
	B. Responses to specific proposals	17
	1. Local reference rents	17
	2. Localities	18
	3. Property types	18
	4. Local authority discretion	19
	5. Pre-Tenancy determinations	20
	6. Rights of review	21
	7. Subsidy	21
	8. Affected claimants	22
	9. Savings	22
VI	Alternative options	22

I Summary

Since the Government removed the system of rent control on new private sector and housing association tenancies created after 15 January 1989 in England and Wales, and 2 January 1989 in Scotland, expenditure on Housing Benefit (HB) on these tenancies has risen by 350 per cent. Other factors identified by the Government as having cost implications for HB include an increase in the overall number of housing association tenants; increased unemployment resulting in more people needing to claim HB than previously, and inflation.¹

During his Up-rating Statement on 30 November 1994 the Secretary of State for Social Security outlined plans aimed at stemming the growth of public expenditure on HB. In addition to limiting the time which tenants who are absent from home can have their rents met by HB and increasing contributions from people who are working and living within a household which is in receipt of HB, Mr Lilley advised that HB would be restricted to the average rent for each particular type of property in a claimant's area. Local authorities are to be given discretion over which people should attract assistance above the average rent level.

It is envisaged that the measures to limit HB in respect of rents above the average will only apply to new private sector claimants after October 1995; existing claimants will be affected only if they change address.

In March 1995 the Secretary of State asked the Social Security Advisory Committee (SSAC) to consider the Government's HB proposals; an explanatory memorandum on the changes together with draft regulations were submitted to the Committee. It is expected that regulations implementing the proposals will be laid before Parliament in May/June of this session. The main changes will appear in the *Housing Benefit (General) Amendment Regulations 1995* and the *Rent Officers (Additional Functions) (Amendment) Order 1995*.

Although the Government has indicated that projected savings from the new scheme are difficult to estimate, in the long run savings in the order of £200 million, inclusive of the expected effects on the behaviour of landlords and tenants, are expected.²

¹ HL Deb 23.1.95 c.858

² Dss Memorandum to the SSAC, *Housing Benefit for Private Sector Tenants*, 9.3.95

II Restricting housing benefit: the current arrangements

Entitlement to HB is calculated by comparing the needs and resources of the household, taking their liability for rent payments into account. The assessment of individual claims and the administration of the system is the responsibility of local authorities.

When the Government implemented the deregulation of rents on new private sector and housing association tenancies created after 15 January 1989³ (hoping that this would act as a stimulus to the private rented sector) there was concern that rent levels would increase sharply, financed by HB.⁴ To counter this, rent officers were given a duty to carry out functions in relation to the operation of the housing benefit scheme;⁵ in performing these functions it was envisaged that their role would be one of "protecting public funds".⁶

On receipt of a new HB claim local authorities are required to refer most applications from persons occupying private sector tenancies to the local rent officer.⁷ The rent officer's role is to consider the accommodation on which the HB claim is being made and determine whether the contractual rent is significantly higher than the rent which the landlord might reasonably be expected to obtain under the tenancy at that time, having regard to the rent of similar dwelling in the locality and assuming no entitlement to housing benefit. Advice on how rent officers are to approach this task, particularly in circumstances where no direct market evidence is available, was included in a 1989 study of the private rented housing market commissioned by the Department of the Environment (DoE) from Price Waterhouse.⁸ As there is no strict formula for assessing the reasonableness or otherwise of deregulated rents, a rent officer's valuation is essentially based on judgement.

If a rent officer deems the contractual rent⁹ to be higher than that which the landlord might reasonably be expected to obtain for the tenancy he will provide the local authority with his determination of the maximum rent which the landlord should charge. The rent officer's confirmation of the contractual rent, or his determination of a lower rent, is known as the "property specific rent". If the accommodation which the claimant is occupying exceeds the prescribed size criteria the rent officer will also provide a notional rent figure for a property of the appropriate size.

³ Part I of the *Housing Act 1988* in England and Wales & the *Housing (Scotland) Act 1988* from 2 January 1989

⁴ DoE & DHSS Consultation Paper *Deregulation of the Private Rented Sector: Implications for Housing Benefit*, 1987, (Dep 3269)

⁵ *The Rent Officers (Additional Functions) Order 1990* [SI 1990/428] as amended by SI 1993/652 and SI 1994/568

⁶ Dep 3269, para 7

⁷ regulation 12A of the *Housing Benefit (General) Regulations 1987* [SI 1987/1971]

⁸ DoE *Study of the Private Rented Housing Market*, 1989

⁹ the rent actually charged for the tenancy

In addition, since April 1994 rent officers have been required to identify rents which are "exceptionally high", *albeit* appropriate, given the type of property concerned.¹⁰ In these instances the officer provides the authority with a notional rent figure for a property of the appropriate size which reflects the highest rent which is not exceptionally high which the landlord might be expected to obtain. Where a rent officer gives more than one figure the lowest is applied as the property specific rent.

Since April 1991, local authorities have been bound to take account of whether a claimant's accommodation is unreasonably expensive and/or too large when assessing entitlement to HB¹¹ (previously they had the power to do this but no obligation to exercise that power). The property specific rent figure provided by the rent officer is *advisory*; authorities are not obliged to restrict HB payments to the level of rent determined by the rent officer. Indeed, no restrictions may be made if someone in the household is:

- 60 or over; or
- incapable of work; or
- a child or young person;

unless the local authority consider that suitable cheaper alternative accommodation is available *and* it is reasonable for the household to move. No restrictions can be made within 12 months of the death of anyone in a claimant's household whose circumstances would have been taken into account in deciding whether or not to impose a restriction.¹² Restrictions are also prohibited for the first 13 weeks of the benefit period if someone in the claimant's household was able to meet the housing costs when they first moved in¹³ unless they were previously receiving HB within 52 weeks of the beginning of their current benefit period.¹⁴

If a claimant is not covered by any of the above exemptions and the authority is of the view that their rent is too high or the accommodation is too large for their needs, it may restrict the eligible rent¹⁵ to whatever amount it considers appropriate. The authority must take account of the individual circumstances of each applicant and have regard to the cost of suitable alternative accommodation; the eligible rent cannot be reduced below the cost of comparable alternative accommodation.¹⁶

¹⁰ SI 1994/568

¹¹ regulations 11(2)(a) & 11(2)(c) of SI 1987/1971

¹² regulation 11(3A) of SI 1987/1971

¹³ regulation 11(4) of SI 1987/1971

¹⁴ regulation 11(5) of SI 1987/1971

¹⁵ "eligible rent" is the amount of a claimant's rent or other payments which are taken into account for the purpose of calculating HB entitlement

¹⁶ *R v London Borough of Brent ex parte Connery* (1989) QB

suitable alternative accommodation; the eligible rent cannot be reduced below the cost of comparable alternative accommodation.¹⁶

Local authorities also have the power to restrict HB in the event of a rent increase which is deemed to be unreasonably high or where it is less than twelve months since the last rent increase.¹⁷ No restrictions may be made where someone in the household has recently died.¹⁸

Where a claimant's eligible rent is determined to be equal to or less than the property specific rent, the authority receives a subsidy of 95 per cent towards the HB payment from the DSS.¹⁹ If the eligible rent is above the property specific rent no subsidy is payable unless the authority cannot restrict the eligible rent because the tenant falls into a vulnerable group. In these cases subsidy is paid at 60 per cent above the determination. The reduced rate of subsidy is intended "as an incentive for authorities to exercise their discretion properly in considering whether it is reasonable to expect the tenant to move".²⁰

III The case for change

Please note the end of the first sentence below should read £10 billion.

The Government is concerned that expenditure on HB has doubled in real terms since 1988; projected expenditure for 1994/95 is £10 billion. Expenditure on HB in the private rented sector has increased by 350 per cent since 1988. In its memorandum to the Social Security Advisory Committee²¹ (SSAC) the Government states, "the current system now requires some restructuring to achieve better targeting of public expenditure" and highlights the following areas on which it believes attention should be focused:

- The current HB arrangements are based on property specific assessments of rents. However, although a rent may be appropriate for a specific property it is not necessarily reasonable for HB to meet that rent in full, where the general level of rents in the area is lower.
- There is no real incentive for tenants receiving HB to choose cheaper accommodation or negotiate lower rents with their landlords, unlike private sector tenants who meet their full housing costs.

¹⁶ *R v London Borough of Brent ex parte Connery* (1989) QB

¹⁷ regulation 12(1) of SI 1987/1971

¹⁸ regulation 12(2) of SI 1987/1971

¹⁹ regulation 4 of the *Housing Benefit and Council Tax Benefit (Subsidy) Order 1994*

²⁰ DSS Memorandum to the SSAC, *Housing Benefit for Private Sector Tenants*, 9.3.95

²¹ *Ibid*

- The current arrangements for protection for 'vulnerable groups' are highly prescriptive. All people receiving HB who fall into these groups receive protection, regardless of their individual needs and circumstances. Furthermore, these arrangements allow private sector landlords to target these groups and charge higher rents in the knowledge that local authorities will find it difficult to restrict benefit.

The proposals are therefore intended to target HB by relating entitlement more closely to the generality of local rents for similar properties; to give tenants an incentive to negotiate a lower rent or find alternative cheaper accommodation; to discourage the development of a separate market for people receiving HB; to remove the prescriptive approach to vulnerable groups; and to support the Government's aim of ensuring that social security provision does not outstrip the country's ability to pay for it.

Three alternative options for meeting the above objectives were considered and rejected:

- **rent ceilings:** this would have involved setting a maximum on the level of rent which HB would meet. It was rejected on the ground that landlords would raise rents up to the ceiling and tenants would have little incentive to seek cheaper housing.
- **minimum contribution:** this would have involved all tenants making a fixed contribution to their rent in order to give them an interest in the level of rent and any increases. This was rejected as it was viewed as a crude mechanism and one which would have penalised tenants with lower than average rents for the area.
- **standard allowance:** this would have involved the payment of a standard allowance for rented housing costs to encourage tenants to seek cheaper accommodation. It was recognised that rents vary too widely to set a single allowance and that a system of standard allowances would produce anomalies across client groups and boundaries.

IV The Government's proposals

The Government is proposing that:²²

- HB will generally continue to meet in full rents which are at or below the generality of rents for the area. This level will be indicated by a representative figure known as the *local reference rent*.
- Even where the rent is above the local reference rent, HB will meet half the excess between the local reference rent and the property specific rent.
- The current definition of "vulnerable groups" will no longer apply. Instead, local authorities will have greater discretion to allow higher amounts of HB in cases of exceptional need, based on the circumstances of the individual tenant.
- A system will be introduced to provide prospective tenants with pre-tenancy determinations of the likely amount of rent which HB will meet.

A. Local reference rents

The calculation of local reference rents will be central to the new system of assessing HB entitlement. The Government is intending that rent officers will continue to make rent determinations in respect of individual properties. They will also take on responsibility for determining the local reference rent for properties of a similar size in the same locality.

The rent officer, in each individual case, will be required to determine two figures representing the range of rents in the locality for properties of a similar size to that of the claimants. In determining these figures certain "exceptionally high or low" rents are to be disregarded. The local reference rent will be the mid-point between the two figures. The Government's memorandum to the SSAC advises that: "the local reference rent is not a

²² Ibid

mathematical average, but is designed to represent a fair reflection of normal local rents, based upon the rent officer's database of local rents".²³

Where a claimant's property specific rent is at or below the local reference rent their maximum eligible rent for HB purposes will be the property specific rent, as at present. Where the property specific rent exceeds the local reference rent the maximum eligible rent will be the local reference rent, plus half the difference between the two figures. In addition, there is to be an overall maximum eligible rent for HB of twice the local reference rent.

Local authorities will retain their powers to restrict eligible rent further where the rent is exceptionally high or where the accommodation is judged too large for the needs of the occupant(s). The DSS has supplied the following examples of how local reference rents will operate in practice:²⁴

- **Property specific rent less than local reference rent:**

Contractual Rent:	£90
Property Specific Rent	£70
Local Reference Rent	£80

Maximum Eligible Rent for HB **£70**

- **Property specific rent equal to local reference rent:**

Contractual Rent	£90
Property Specific Rent	£80
Local Reference Rent	£80

Maximum Eligible Rent for HB **£80**

- **Property specific rent more than local reference rent:**

Contractual Rent	£90
Property Specific Rent	£80
Local Reference Rent	£70

Maximum Eligible Rent for HB is £70 + [50% of (£80-£70)]= £75

²³ Ibid

²⁴ Ibid

B. Localities and property types

The Government has decided that rent officers should determine what a "locality" will be. Because the concept is one which rent officers are already familiar with,²⁵ the Government is "confident that rent officers will have no problems with its interpretation in the context of their HB work."²⁶ It is proposed that the localities will be fluid and will vary in size.

Within each locality, it is proposed that the local reference rent will be calculated by looking at the rent of "similar properties", ie properties with the same number of bedrooms and other rooms suitable for living in.

C. Local authorities' discretion

Under the existing provisions certain vulnerable groups are protected from HB restrictions.²⁷ It is proposed that this protection will be removed; instead, authorities will be given broad discretionary power to pay HB above the maximum eligible rent (up to the contractual rent) in cases which are judged to be exceptional. The aim of this measure is to allow authorities to make local decisions based on local needs.

The total amount of discretionary expenditure will be limited by a Permitted Totals Order which will comprise a cash-limited central Government subsidy, and any resources the authority wishes to contribute from its own funds, subject to a statutory maximum. The level at which the cash-limit will be set is to be decided following discussions with the Local Authority Associations.

D. Subsidy

As now, local authorities will receive full (95 per cent) subsidy on the maximum eligible rent. The reduced subsidy (60 per cent) which is paid to authorities for spending above the property specific rent for vulnerable groups is to be replaced by the cash-limited sum described above. The 60 per cent subsidy will continue to be paid for vulnerable groups who are currently claiming HB while they remain in the same accommodation. The impact of the changes on administrative expenditure by local authorities is under consideration.

²⁵ particularly when setting fair rents under s.70 of the 1977 *Rent Act*

²⁶ *Ibid*

²⁷ see page 3

The right of local authorities to request a redetermination of the property specific rent is to be extended to local reference rents. HB claimants are to be given the right to request an authority to seek a redetermination of either the property specific rent or the local reference rent on their behalf.

E. Pre-Tenancy Determinations (PTDs)

Prospective tenants are to be given the option of obtaining an assessment of the amount of rent which HB will meet before entering into a tenancy agreement. An application for a PTD will be dealt with by the local rent officer via the authority; landlords will be required to provide certain information and, where necessary, access to the property concerned. The PTD will indicate the local reference rent and the property specific rent plus an explanation of how these figures are used.

If an HB claim is made in respect of accommodation on which a PTD has been obtained the PTD will be binding on the authority as long as the conditions under which the tenancy is offered remain the same. The length of time for which a PTD will remain valid and its effect on local authorities is under discussion with the Local Authority Associations and the Institute of Rent Officers.

F. Affected claimants

It is proposed that the new arrangements will apply to new HB claims and to existing HB claimants who move to a new address after 1 October 1995. As existing HB claimants who do not move will still receive HB under the old scheme, authorities will be required to administer the two schemes in parallel. Established tenants who make a fresh claim for HB will be dealt with under the new scheme.

Local authority tenants will not be affected by the proposals. HB applications from housing association tenants may be referred to the rent officer where the rent is considered to be unreasonably high or where the tenant is over accommodated.

Existing HB claimants will remain on the old system if they have a break in entitlement for less than four weeks. The protection provided where the tenant could afford the rent before claiming HB and following a death in the household will continue.

V Responses to the proposals

A. General reactions

1. Timetable and operational issues

The Local Authority Associations are critical both of the timetable for consultation on the changes and of the timetable for their introduction. The Association of Metropolitan Authorities' (AMA) submission notes:²⁸

"If, as planned, amending regulations are laid in May/June, this will allow only four months for local authorities to implement the necessary administrative and software changes. On many occasions in the past, the Local Authority Associations have made it very clear that a minimum of six months is necessary for any significant administrative change to the scheme. The AMA would argue that the changes should be deferred to 1 April 1996."

The Association of District Authorities (ADC) is unhappy with the level of detail in the Government's memorandum on operational issues such as the calculation of local reference rents and the exercise of discretion in "exceptional cases". It argues that, "without an extension [*to the timetable for implementation*], the responsibility for any administrative difficulties faced by claimants must rest squarely with the Department, not local authorities."²⁹

2. The case for change

While a number of respondents to the proposals are in agreement with the Government over the undesirability of the spiralling housing benefit bill, there is no general consensus that the fundamental causes behind rising expenditure have been identified or addressed.

The four claims which the Government makes regarding the current behaviour and activity of landlords and tenants in the private rented sector (see page 5) are questioned by the Chartered Institute of Housing (CIOH), the AMA and Shelter. Firstly, the Government's assertion that "although a rent may be appropriate for a specific property it is not necessarily reasonable for HB to meet that rent in full, where the general level of rents in the area is

²⁸ para 2

²⁹ ADC's submission para 8

lower" has led the CIOH to point out, on the basis of examples cited by its members, that rent officers are not always in touch with rises in market rents.³⁰ If reference rents are set too low, or are not revised promptly in response to market increases, there is concern that claimants will face real hardship in finding and maintaining accommodation.

Secondly, it is felt that the existing system *does* give tenants an incentive to shop around for cheaper accommodation. The CIOH notes that local authorities can and do use the provisions which enable them to restrict HB payments where rent levels are unreasonable.³¹ DoE statistics reveal that 41 per cent of the cases referred to rent officers in 1993 (308,430) had their eligible rents reduced by an average of 19 per cent (see table below).³²

Housing Benefit referrals to rent officers
England (a)

	All cases			Cases where rent reduced					
	Mean referred rent (£ p.a.)	Mean determined rent (£ p.a.)	Mean Number of cases	Mean referred rent (£ p.a.)	Mean determined rent (£ p.a.)	Mean difference (£ p.a.)	Mean difference per cent	Number of cases	% of cases where rent reduced
1989 (b)	2,232	2,049	261,140	3,190	2,364	-826	-22%	57,740	22%
1990	2,660	2,427	403,510	3,654	2,764	-890	-21%	105,470	26%
1991	3,112	2,834	524,540	4,051	3,111	-940	-20%	155,100	30%
1992	3,379	3,060	659,810	4,212	3,297	-915	-20%	229,650	35%
1993	3,612	3,238	754,410	4,303	3,391	-912	-19%	308,430	41%

Notes: (a) excluding Housing Association cases
(b) last nine months only

Sources: *Housing and Construction Statistics: September Quarter 1994 Part 2, Department of the Environment*

It is widely questioned whether the assumption that tenants are able to negotiate lower rents with their landlords is realistic; many respondents refer to the lack of bargaining power which prospective tenants possess which is exacerbated where cheaper accommodation of the same type is in short supply within an area. Both Shelter's and the CIOH's submissions to the SSAC refer to recent research by Professor Peter Kemp³³ which found that tenants attempt to negotiate lower rents but are, on the whole, unsuccessful; out of the 50 per cent of tenants in his survey who tried to negotiate lower rents only half were successful. Tenants whose benefit is restricted and who cannot negotiate the rent level down or find cheaper alternative accommodation are faced with the prospect of meeting the shortfall out of their Income

³⁰ CIOH's Consultation Response, April 1995, p.3

³¹ Ibid, p.4

³² table supplied by Bryn Morgan of the Social and General Statistics Section of the Library

³³ of the Centre for Housing Policy at the University of York

Support entitlement or, building up rent arrears which can ultimately result in eviction. Shelter's submission notes:³⁴

"Shelter's casework statistics show that 19 per cent of clients approached us from the private rented sector [*in 1993*] - the most common reasons for seeking advice were rent arrears or HB problems. It is notable that almost one fifth of all statutorily homeless households in 1994 were made homeless from the private rented sector. Shelter's experience as providers of housing advice suggests that a major cause of homelessness is arrears arising from housing benefit shortfalls."

As authorities' discretion to pay additional benefit to claimants is to be cash limited, there is a view that the proposals will increase their financial burdens by giving rise to duties under the homelessness provisions³⁵ and the *Children Act 1989*,³⁶ which may ultimately offset any direct savings in the DSS's budget,

Finally, the CIOH dismisses the Government's reference to the "possibility that in some areas HB rents lead the market for private sector tenancies" as "anecdotal"; the Institute is of the view that the majority of landlords actually prefer not to let to HB claimants owing to the stigma attached to households in receipt of benefit and the delays which HB administration can be subject to.³⁷ Research sponsored by the Joseph Rowntree Foundation (JRF) into the private rented sector in 1994 found, from a representative sample of landlords in Britain, that three-quarters of the landlords (or their agents) most preferred to let to people in work; they least preferred to let to the unemployed and students. In regard to HB claimants the research found:³⁸

"Only a small minority of landlords preferred tenants to be on Housing Benefit. The great majority of landlords and agents said that they preferred to let to people who were not receiving Housing Benefit, or had no preference either way. Investment-motivated landlords had views on this that were little different from those of other types of landlord."

³⁴ Shelter's submission to the SSAC para 5.1

³⁵ Part III of the *Housing Act 1985*

³⁶ Association of District Council's (ADC) submission to the SSAC, April 1995, para 12

³⁷ CIOH's Consultation Response, April 1995 p.5

³⁸ JRF *The Supply of Privately Rented Homes*, March 1995, pp10-11

Landlords and their agents gave a great variety of reasons why they preferred not to let to people on Housing Benefit. These were mainly to do with difficulties surrounding the administration of the scheme, such as delays in processing claims and the perceived "red tape" and "hassles" involved in letting to people on Housing Benefit; the undesirable image which some landlords had of benefit recipients; and the financially insecure position of people receiving such payments."

There is concern amongst respondents to the proposals that the restriction of rents to local reference rents will directly result in the development of a separate market for people receiving HB, one which is characterised by lower rents for poorer quality accommodation.³⁹

The Government's suggestion that landlords routinely exploit the provisions which prevent local authorities from restricting HB for certain vulnerable groups by targeting them and charging higher rents is widely rejected. For those organisations which acknowledge that some abuse does take place, it is argued that this should be viewed in the context of the overriding need to protect vulnerable groups.⁴⁰ The CIOH argues that landlords are, on the whole, ignorant of the existing regulations.⁴¹ The JRF study⁴² found that the landlords and agents of a quarter of the properties in the survey had no preference over the household type which they prefer to have as tenants; just under a quarter of the landlords said that people with children (one of the current vulnerable groups) were their least preferred household type.

Respondents have identified the growth in HB expenditure in respect of private sector tenants as being primarily the result of the removal of rent controls on tenancies created after the enactment of the *1988 Housing Act*. The Government's encouragement of the use of this sector for housing low income families, eg homeless families,⁴³ is cited as a factor which has contributed to rising HB spending. It is pointed out that rents on housing association and council tenancies have also increased in recent years in line with the Government's desire that rent levels on these properties should more accurately reflect their market value. Additionally, the Government's policy of moving from bricks and mortar subsidies to personal subsidies is viewed as a central factor behind the overall increase in HB expenditure. This view has been endorsed by the SSAC:

³⁹ AMA's submission to the SSAC, para 4

⁴⁰ ADC's submission to the SSCA, April 1995, para 13

⁴¹ CIOH's Consultation Response, April 1994, p.5

⁴² *The Supply of Privately Rented Homes*, March 1995, p.9

⁴³ see DoE *Access to Local Authority and Housing Association Tenancies*, January 1994

"the growth in [*housing benefit*] expenditure is substantially the result of deliberate Government policy to switch expenditure from bricks and mortar subsidy to direct subsidy of individual rents through housing benefit. The switch inevitably increases the level of the rents which need to be subsidised and, consequently, the expenditure on housing benefit."⁴⁴

The SSAC's recent report on HB, which was prompted by the general review of social security expenditure, points out that the growth in the cost of HB has actually been offset by savings in other areas of Government expenditure, such as the reduction in bricks and mortar subsidies, and surpluses in the Housing Revenue Account subsidy calculation as a result of higher rents.⁴⁵ The report goes on to note that Chief Rent Officers believe average rent levels to have stabilised after the dramatic rises seen in the early years of deregulation⁴⁶, thus the SSAC concludes:⁴⁷

"It could therefore be misleading to extrapolate the trends of recent years and assume that rent inflation will continue at the same rate. This, together with an expected reduction in unemployment as the economy recovers, may bring about a reduction in the growth of housing benefit, making extensive or radical, cost driven, reform less urgent."

3. Impact on the private rented sector

Reviving the private rented sector is an important objective of the Government's housing policy. The *1988 Housing Act* deregulated rent levels on new private sector lettings created after 15 January 1989 and made it easier for landlords to regain possession of their properties with the aim of stimulating private sector provision. Other Government measures aimed at increasing the supply of private rented housing are described in the PQ reproduced below:⁴⁸

37. **Mr. Hendry:** To ask the Secretary of State for the Environment what plans he has to boost the private rented sector.

Sir George Young: We have already taken action to boost the private rented sector by introducing deregulation measures in the Housing Act 1988 to

⁴⁴ SSAC, Ninth Report 1993, p.49

⁴⁵ SCA *The Review of Social Security: Housing Benefit*, Paper 3, May 1995, para 2.1

⁴⁶ the annual growth in the mean determined rent for private sector tenants slowed to 5.3% in 1993/4 having risen by over 20% over the previous two years

⁴⁷ para 2.9

⁴⁸ HC Deb 1.12.93 c.551W

encourage landlords to bring their property on to the market. Landlords are now able to let property under assured and assured shorthold tenancies and charge market rents. Specific initiatives launched last year include the rent-a-room scheme, under which householders no longer have to pay tax on rent from a lodger in their home if the gross amount of the rent is no more than £3,250, the flats-over-shops scheme, under which £25 million is being made available through local authorities over three years to bring flats over shops back into residential use, and, the housing associations as managing agents scheme, which allows housing associations to act as an intermediary between potential private landlords and tenants in order to encourage more empty property to be let.

In January 1994 the DoE published a consultation paper in which the Government's proposals for amending the duties of local authorities to homeless people were set out.⁴⁹ The paper proposes that authorities should be able to discharge their duty to homeless households by placing them in private rented accommodation:⁵⁰

"An essential element of our strategy for meeting the needs of those who are badly housed is to make the best use of all forms of existing housing stock. This is not confined local authority and housing association property. There is considerable scope for developing the private rented sector to meet housing needs. Our proposals therefore encourage partnerships between local authorities and private landlords in order to increase access to good quality housing in the private rented sector."

Various surveys carried out by bodies such as the Office of Population Censuses and Surveys (OPCS) and the Association of Residential Letting Agents (ARLA) have confirmed that there has been an increase in the supply of privately rented accommodation since 1988; however, a significant number of these lettings are thought to have come about as a result of the property slump, which has meant that people have rented out their homes instead of selling them. There is a feeling amongst housing commentators that when, and if, property prices rise, the number of private lettings will fall.⁵¹ A survey of lettings managed by agents, carried out by Peter Kemp on behalf of the DoE, found that 22 per cent were owned by people who were currently unable to sell.⁵²

⁴⁹ *Access to Local Authority and Housing Association Tenancies*

⁵⁰ HC Deb 20.1.94 c.843W

⁵¹ OPCS *Private Renting in England in 1990, 1992*

⁵² *The Supply of Privately Rented Homes*, p.11

Although the Government's stated objective is to increase the supply of private rented housing, it is suggested that housing benefit restrictions may act as a disincentive to landlords where they mean that an adequate rate of return cannot be obtained by letting to low income households;⁵³ this outcome would have implications on the viability of the Government's policy of housing homeless households in this sector. Mr Robert Jones, chair of ARLA, is reported as having stated that HB restrictions will result in poorer quality housing with fewer good landlords staying in the market.⁵⁴ A number of housing commentators have remarked upon the apparent inconsistencies in the Government's formulation of policies on rents and HB.⁵⁵ The PQ below gives the Government's position on the likely impact of the proposals on the supply of private rented housing:⁵⁶

Mrs. Maddock: To ask the Secretary of State for Social Security what research he has undertaken on the effect of the changes to the eligible amount of rent for housing benefit purposes announced in the December 1994 Budget on the willingness of private landlords and potential private landlords to let properties.

Mr. Roger Evans: No specific research on the impact on landlords of the proposed housing benefit changes has been undertaken. However, the Department of the Environment has been undertaking more general research into the motives, experience and future intentions of landlords. Both Departments will be monitoring closely the impact of the proposed changes on both landlords and tenants through on-going research surveys and specific studies as necessary.

There is also concern that reduced returns to landlords will result in a drop in maintenance within the sector which already contains the highest number of unfit properties. The English House Condition Survey 1991 found that 20.5 per cent of all occupied unfit dwellings (1,354,000) were in the private rented sector.⁵⁷

4. Impact on housing associations

The *1988 Housing Act* introduced a "mixed" capital funding regime for new housing association development under which a proportion of scheme costs must be met by private finance. The average housing association grant (HAG) rate has been progressively reduced from 75 per cent in 1989/90 to 58 per cent in the current financial year. The Government's stated objective is to eventually reduce average HAG rates to 55 per cent.

⁵³ Shelter's submission, para 2.7

⁵⁴ *Inside Housing* "New benefit rules fail to tackle abuse, say agents" 9.12.95

⁵⁵ see *Housing Magazine* "Rent asunder" May 1994, pp22-23

⁵⁶ HC Deb 28.2.95 c.552W

⁵⁷ para 7.22

It was recognised that rent controls on newly developed housing association properties would have to be removed in order to attract the interest of private financiers; hence the 1988 Act provided for new tenancies created after 15 January 1989 to be assured tenancies on which associations are able to set their own rent levels. The average rent on new housing association lettings in 1989 was £23.64; by the third quarter of 1994 this had risen to £45.63.⁵⁸ Much debate has taken place over the affordability of housing association rents and desirability of reducing HAG rates any further.⁵⁹

Local authorities may restrict the HB paid to housing association tenants where the rent is considered to be unreasonably high or where the tenant is over accommodated. This will continue under the new arrangements. Although in the Government's view, "most cases are unlikely to be referred to rent officers", where referrals of housing association rents *are* made, the cases will be compared against an average of deregulated private sector rentals in the same way as other private sector cases.

Most associations believe that in the short run their rent levels will not be above local reference rents and, therefore, tenants who claim HB will be unlikely to face rent restrictions; however, there is recognition that in some regions association rents are already at or above private sector levels.⁶⁰ In the longer term, if the local reference rent system forces down private sector rent levels by any substantial degree, there is some concern that association rent levels *will* be referred to rent officers, particularly if rent levels continue to be forced up by HAG rate cuts. If this scenario is realised associations could see a withdrawal of private finance by investors who will not wish to see their returns threatened by HB restrictions. Given that 83 per cent of new housing association tenants in 1993/94 were eligible for HB, the impact of eligible rent restrictions could be far reaching.⁶¹

The National Federation of Housing Association's (NFHA) submission to the SSAC argues that residents of certain supported and sheltered housing should be exempt from the HB changes as the high service charge element in rents for this type of accommodation may push them above local reference rents. There is also concern that HB restrictions will threaten the viability of initiatives such as housing associations as managing agents (HAMA) scheme and housing association leasing (HAL). The rents on these schemes, which bring empty private sector property into use, are set at a market level to encourage private owners to lease their properties and also include a management charge. If comparisons are made between HAMA and HAL rent levels and those on other private rented stock it is suggested that they could

⁵⁸ HC Deb 15.3.95 c.891W

⁵⁹ see Library Research Paper 93/72 *Housing Association Rents and Affordability*

⁶⁰ NFHA CORE return figures for 1993/94 show that in the Northern region the mean determined weekly rent for a two bed private property was £42.33, while the housing association new let rent for an equivalent property was £44.26

⁶¹ *HA Weekly* "CORE exposes poverty levels" 6.1.95

fall well above the local reference rent.⁶² However, as the rent levels on these properties are negotiated with their owners when the lease agreement (often lasting 5 years) is drawn up, there is no scope for associations to renegotiate rent levels downwards following the imposition of HB limits. As HAMA has been instrumental in reducing the use of bed and breakfast establishments as temporary accommodation for homeless households, any restrictions on its use may feed back into increased public expenditure on less suitable forms of temporary housing.⁶³

B. Responses to specific proposals

1. Local reference rents

There is some general agreement amongst respondents with the principle that rent officers should be responsible for calculating local reference rents; although Shelter's submission remarks on the lack of consistency between rent officers in determining reasonable market rents under the current system.⁶⁴ The need for a transparent and intelligible method of calculating the local reference rent is emphasised by numerous respondents. The Local Authority Associations are particularly concerned that their staff will be responsible for explaining the calculation to claimants and that their success will determine whether or not the claimant will appeal or request a redetermination.

The ADC believes that the Government has not provided sufficient clarity on how local reference rents will be calculated. The Government's memorandum states that the method used will not be a mathematical average; however, the CIOH points out that the accompanying draft statutory instrument⁶⁵ contains a specific mathematical formula for calculating reference rents.

The CIOH would rather that a range of reference rents be identified for different types of property, as opposed to using a mid-point figure, in order to minimise distortions. It also sees merit in giving rent officers discretion to vary reference rents in exceptional circumstances, eg where there is scarcity of some types of accommodation within a locality.⁶⁶

⁶² *HA Weekly* "NFHA issues warning on housing benefit changes" 24.3.95

⁶³ *Inside Housing* "Rent ceilings will deal HAMA blow" 17.3.95

⁶⁴ Shelter's submission para 6.2

⁶⁵ *The Rent Officers (Additional Functions) (Amendment) Order 1995*

⁶⁶ CIOH's submission para 15

"In such circumstances the calculation of a reference rent would be meaningless where there was no active market with which to make a comparison. One instance of this might be the size of the dwelling. For example, there may be almost no active market in five bedroomed properties in a locality."

Shelter's submission questions the desirability of extending the role of rent officers given their relative lack of accountability. The issue of whether the service will be able to cope with the demands which the changes will bring for rent officers is also raised.⁶⁷

2. Localities

The use of localities, rather than local authority areas, as the geographical area for calculating reference rents is widely accepted. Respondents have requested that the boundaries of a locality should be defined (and redefined when necessary) and agreed with the local authority in order to ensure transparency and clarity.

3. Property types

The fact that the Government's memorandum makes reference only to comparing properties within a locality on the basis of their size is viewed as inadequate by most respondents. The AMA, for example, argues that rent officers should be required to calculate a local reference rent for each distinct type of property for which there is a separate market:⁶⁸

"Different properties with the same number of rooms can be perceived very differently in the market. For example, a bedsit and studio are both one roomed properties, but the fact that a studio has a separate kitchen and sole use of facilities means that it commands a premium in the market over a bedsit. Similarly, properties with the same number of rooms will be capable of very different levels of occupancy depending on the size of the rooms. Houses and flats should be distinguished, and garden flats distinguished from other flats. There are also good reasons for differentiating a number of other types of

⁶⁷ Shelter's submission para 6.2

⁶⁸ AMA's submission para 9

accommodation, such as bed and breakfast, adult placement and supported lodgings, houseboats and caravans."

By not taking account of the comparative quality of accommodation in calculating reference rents some respondents feel that there is a danger that people reliant on HB will be forced down market into the poorest housing.

4. Local authority discretion

The replacement of regulation 11(3), which affords protection from HB restrictions to certain vulnerable groups,⁶⁹ with a discretionary system, has not been welcomed by housing commentators. The ADC has apparently been supplied with details which indicate that levels of subsidy and the overall permitted local authority expenditure under the new system will be pitched considerably below the current levels of regulation 11 spending.⁷⁰

As regulation 11 protection only applies when an authority considers that no other suitable accommodation is available, respondents have questioned the nature of the discretion which is being given, for example, if the landlord refuses to reduce the rent and the claimant cannot make up the shortfall from other sources and no other suitable accommodation is available, the authority will either have to pay HB on the excess rent, if this can be accommodated within its cash limited sum, or meet the housing needs of the household under the homelessness legislation.⁷¹ The point is repeatedly made that the regulation 11 definition of vulnerable groups matches very closely with the priority need categories under the homelessness legislation.

Numerous respondents have likened the new scheme to the Social Fund; the difficulties of operating and managing within a cash limited budget are highlighted, as are the higher administrative costs associated with discretionary payment systems. Several respondents have asked for specific guidance to be produced on the use of discretion to avoid an increase in the volume of appeals against HB determinations.

⁶⁹ see page 3

⁷⁰ ADC's submission para 21

⁷¹ Part III of the *Housing Act 1985*

The ADC's submission poses several questions on the operational aspects of the proposals:⁷²

- will claimants on income support automatically be considered to be in exceptional hardship, and if not, to what extent can local authorities reasonably expect claimants to use their income support payments to support their rent?
- can a Review Board award a discretionary payment if a local authority has already exhausted its cash limited sum and if not, is the Review Board still expected to hear appeals for additional payments?
- what happens on the expiry of the benefit review period where discretion has previously been exercised; if circumstances have not changed will the local authority be obliged to make continuing discretionary payments?
- can discretionary payments be time limited?
- provision for authorities' Permitted Total for the exercise of discretion is based on new payment; provision for the following financial year will need to be increased to reflect both new and continuing payments.
- Will there be any form of appeal against, or mechanism for application for extension of an authority's permitted total?

5. Pre-Tenancy determinations

The principle of PTDs has attracted support but there is concern over the additional work and expense which they will entail. The Local Authority Associations have requested that this new area of work be fully funded by the DSS. There is also some feeling that PTDs should be routed directly to rent officers by tenants, and not channelled via local authorities, as this will increase bureaucracy and potential for delays.

⁷² ADC's submission para 25

Shelter has questioned whether PTDs will actually assist prospective tenants if landlords are not willing to hold open a property pending a PTD.⁷³ In addition, once the PTD is known, the success of the system will depend upon tenants being able to negotiate a lower rent; the likelihood of this is discussed on page 11.

6. Rights of review

Shelter regrets that the opportunity to review the operation of existing HB appeals mechanisms has not been taken. Reference is made to the possible lack of independence of Housing Benefit Review Boards, their lack of consistency and the delays which can occur in dealing with an appeal.⁷⁴

The AMA has asked for clarification of several aspects of the review procedure, ie:⁷⁵

- whether the local authority or the claimant will have the ability to request redetermination of the local reference rent alone, or the property specific rent alone, or both together;
- how the timetable for an appeal (14 days) and for a redetermination (28 days) will interact;
- where an appeal relates to the authority's use of discretion to pay HB above the local reference rent, and there is a simultaneous request for a redetermination of the reference rent, the authority will have problems dealing with the appeal until the redetermination is given, but this will automatically put the appeal out of time.

7. Subsidy

The Local Authority Associations have emphasised that the proposals will involve substantial administrative costs and that subsidy will also have to cover the increased workload involved in administering two schemes in parallel, the cost of publicising the changes, the cost of more internal appeals and Review Board hearings, computer software changes, staff training and the cost of PTDs.

⁷³ Shelter's submission p.15

⁷⁴ Ibid p.16

⁷⁵ AMA's submission para 16

8. Affected claimants

The CIOH has argued that established tenants who have previously been able to pay their rent and who are forced to make an HB claim owing to a change in their circumstances, should be excluded from the proposals on the basis that landlords are unlikely to agree to a rent reduction simply because the tenant's personal financial position has changed.⁷⁶ Shelter points out that the ability of an assured shorthold tenant (who form the majority of tenants in the deregulated sector) to renegotiate their rent is limited by the fact that, on signing the contract, they usually commit themselves to a rent level for the full period of the fixed term (these tenancies must have a minimum fixed term of six months). If a tenant in this position has their HB entitlement restricted and has longer than the 13 week protection period left to run on the tenancy, they will face rent liability for rent arrears which they will not be able to escape by moving to cheaper accommodation.⁷⁷

There is concern that the application of the new rules to people who move or who experience a break in entitlement of over four weeks, will act as a disincentive to people to take up temporary or seasonal work and will affect labour mobility. The Local Authority Associations have requested that the "break in entitlement" period be extended from four to at least eight weeks.

9. Savings

Although the Government expects the proposals to produce long term savings of £200 million, a number of respondents have questioned whether this takes account of the expected increase in authorities' administrative costs. There is also concern that no account has been taken of the potential impact of the proposals on other areas of local authority expenditure, ie on homelessness and community care and on duties under the *Children Act 1989*.

VI Alternative options

While housing commentators share the Government's concern over the growth of public expenditure on HB they differ in their preferred approaches to the problem. It is argued that attention should not be focused solely on the private rented sector and that policies are needed to address rising rent levels and investment across all housing sectors.

⁷⁶ CIOH's submission para 32

⁷⁷ Shelter's submission p.17

Research Paper 95/67

In a paper prepared for the SSAC in June 1994 John Perry, Director of Policy at the CIOH,⁷⁸ argues that the withdrawal of capital subsidy across the rented housing sector, coupled with deregulation, has dramatically pushed up rents. The option of cutting benefit entitlement whilst still pursuing market rent policies and cutting capital subsidies will, he suggests, result in hardship for tenants. This paper proposes the following alternative package of measures:

For local authorities

- more capital investment, particularly to improve the existing stock;
- reduced dependency on contributions from housing revenue accounts (HRAs) to capital spending;
- sustaining management and maintenance allowances at least at current levels;
- an end to the process of using HRA surpluses to offset the cost of rent rebates to council tenants;
- limiting rent increases to, for example, DoE guideline levels plus 10 per cent.

For housing associations

- maintaining average housing association grant (HAG) rates at around 63 per cent;
- rent levels to be explicitly considered as a factor in judging whether new development schemes should go ahead;
- attempting to minimise concentrations of social disadvantage when letting new properties;
- increasing the supply of new rented housing.

⁷⁸ *Housing Benefit, Rents and the Government's Housing Policy*

For the private rented sector

- encourage the expansion of the sector into markets where customers have a real choice between renting and buying and are not dependent on HB, rather than into the poorer part of the market;
- consider regional curbs on rent levels eligible for HB to keep rent levels within certain limits, but not in a way which obliges local authorities to fund the balance of high rents from council tax income.

The NFHA is also campaigning for a moratorium on further cuts in HAG rates to take pressure off rent levels (and HB) and to prevent new building for rent from falling any further.⁷⁹ Some commentators feel that a better balance should be struck between personal and bricks and mortar subsidies. The advantages of the former in terms of targeting subsidy are outweighed, in the view of the National Housing Forum, by the degree to which the latter produces affordable quality housing which eases homelessness and poor housing conditions, overcomes the work disincentive problems associated with the benefits system, and contributes to the achievement of other social and economic problems, eg by stimulating the construction industry.⁸⁰

There is no apparent support for the re-introduction of rent controls across the whole of the private rented sector, although a report published in 1994 by the Local Government Information Unit (LGIU) argued that this, and the expansion of social housing, would be preferable to any cuts in HB entitlement.⁸¹

The Labour Party has been critical of the effect of rent deregulation on housing benefit expenditure and has taken a strong line against the Government's plans to expand the use of the private rented sector to house homeless families. The Party has indicated that it would prefer to see a shift back to bricks and mortar subsidies; in the 1994 ROOF Debate on housing the then Opposition Environment spokesman, Jack Straw, stated that his Party would not cut housing benefit.⁸²

The Liberal Democrats' paper, *Opportunity and Independence* (1994), includes a commitment to retain HB and, subject to available resources, make the taper (the rate at which benefit is withdrawn as income increases) more gentle. In addition, they would seek to introduce a

⁷⁹ NFHA *The Rising Cost of Housing Benefit*, 1994

⁸⁰ National housing Forum *Housing and the Social Security Review*, November 1994

⁸¹ *Who Benefits?*, 1994

⁸² *Roof Homefront*, The 1994 ROOF Housing Debate, p.88

Research Paper 95/67

form of housing benefit for home owners which, in time, would be merged with HB into a single unified system for home owners and tenants; mortgage benefit would be financed by the phasing out of mortgage interest tax relief for home owners.

Finally, the SSAC reached the following conclusions after considering HB as part of the social security review:⁸³

"Housing benefit provides financial protection to ensure that those on low incomes can afford their housing costs. It is important to the fabric of society that it should continue to be a prime part of social security provision. The increasing cost of the scheme is a measure of its importance in protecting low paid and unemployed people from the effects of high rents. Radical changes or drastic cuts would be likely to increase poverty, force people into unsatisfactory housing or homelessness and reduce the supply of rented accommodation.

Housing benefit reacts to and affects wider questions of housing policy, which are extremely complex and controversial, but outside the sole responsibility of the Secretary of State for Social Security. It is clear that problems associated with housing benefit cannot be resolved without taking into account the important implications for housing policy, health and social issues, as well as overall public expenditure. The relevant government departments should work towards an overall strategy of support for housing, balancing the needs of those who require most help and the need for an adequate supply of a variety of alternative types of housing."

It is expected that regulations implementing the changes to housing benefit will be laid before Parliament in May/June of this session.

⁸³ SSAC *The Review of Social Security: Housing Benefit*, Paper 3, May 1995, paras 7.1-7.2