

What is the law on exempt accommodation subsidy?

Basic info

Section 140A of the Social Security Administration Act 1992 requires the Secretary of State for Work and Pensions to pay subsidy to local authorities administering the Housing Benefit scheme. Section 140B says the detailed rules governing the calculation of the subsidy are to be set out in an Order made by the Secretary of State.

Part III of the Income-related Benefits (Subsidy to Authorities) Order 1998 (SI 1998/562) is where those detailed rules may currently be found. Article 13 says that the rate of subsidy is 100% of the authority's "qualifying expenditure" (which is defined in Article 11 as correctly paid Housing Benefit) after deducting expenditure in certain categories listed in Articles 14 to 17C. Those categories have their own prescribed rates of subsidy - not always 100%. The relevant categories in the context of exempt accommodation are:

- Article 16: high rents
- Articles 17B and 17C: temporary homeless accommodation provided by a housing association

Article 16 of the Subsidy Order

Article 16 says that subsidy in a "rent allowance" case is calculated under Schedule 4 to the Order unless:

- The temporary homeless accommodation rules apply, or
- The tenancy is excluded from referral to the Rent Officer (this mainly affects registered housing associations)
 - "Rent allowance" means the Housing Benefit claimant does not pay his/her rent to the same local authority that administers the Housing Benefit claim - in such cases the benefit is in the form of a "rent rebate" to which Article 16 does not apply: see s134(1A) and (1B) of the Social Security Administration Act 1992.

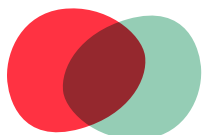
Therefore the following exempt accommodation cases come within the scope of Article 16:

- Cases where the landlord is a charity, voluntary organisation, unregistered housing association or English shire county, but not a registered housing association, and
- Rarely, cases where the landlord is a registered housing association but the local authority has referred the rent to the Rent Officer because it considered the rent to be unreasonably high

Schedule 4

Paragraphs 7 and 8

Paragraphs 7 and 8 of Schedule 4 deal with cases where the Rent Officer has



determined a Claim Related Rent (CRR). The amount of subsidy is:

- Para 7(b): In a case where the CRR is greater than or equal to the eligible rent used to work out the claimant's Housing Benefit, 100%
 - Notice it is the eligible rent to which the CRR is compared, not the HB award
- Para 8(1)(b): In a case where the eligible rent exceeds the CRR:
 - Para 8(2): if the HB award is less than or equal to the difference between the eligible rent and the CRR the subsidy is:
 - Zero unless paragraph 10 applies, or
 - 60% if paragraph 10 applies
 - Para 8(3): if the HB award exceeds the difference between the eligible rent and the CRR the subsidy is:
 - Zero on an amount equal to the difference between the eligible rent and the CRR unless paragraph 10 applies, or
 - 60% of the difference between the eligible rent and the CRR if paragraph 10 applies
 - Plus in either case 100% of the amount of Housing Benefit paid in excess of the difference between the eligible rent and the CRR

Note that paragraphs 7(b) and 8(1)(b) contain some obsolete references to service charges being added to the CRR: this only applies to benefit awards in respect of a period before April 2003.

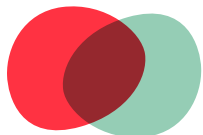
Paragraph 10

Paragraph 10 of Schedule 4 applies where the eligible rent for Housing Benefit has not been restricted for any of the following reasons:

- The pre-1996 form of Regulation 11(3) of the Housing Benefit (General) Regulations 1987 applies
 - This has since been revoked and replaced by Regulation 13(4) of the Housing Benefit Regulations 2006, with the pre-1996 wording preserved in Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006
 - Regulation 13(4) makes it more difficult for the local authority to restrict the eligible rent when the claimant belongs to a list of protected groups
- The pre-1996 form of Regulations 11(3A) or (4) or 12(2) applies
 - Now Regulations 13(5) and (7) and 13ZA(2) of the 2006 Regulations as preserved in Schedule 3 to the Consequential Provisions Regulations
 - These rules prevent the local authority from restricting the eligible rent or an increase in the eligible rent for 13 weeks or 12 months respectively where
 - The claimant was able to afford the payments when s/he took on the commitment to pay them, or
 - A member of the family or a relative living in the same home has died

Articles 17B and 17C

These Articles set the rate of subsidy for temporary homeless accommodation provided by a registered housing association to enable the local authority to discharge a homelessness function. It is possible that accommodation of that kind could satisfy the definition of exempt accommodation, but paragraph (1)(d) in each of the two Articles says that they do not apply to exempt accommodation.



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This in turn means that the subsidy calculation in a rent allowance case excluded from Articles 17B and 17C by paragraph (1)(d) in each of those Articles reverts to the rules in Article 16 and Schedule 4 above.