

# Scottish Discretionary Housing Payment Guidance Manual

March 2024

## Ministerial foreword for the Scottish Discretionary Housing Payment guidance manual



It is my privilege to introduce the new Scottish Discretionary Housing Payment guidance manual.

In recent years, we have witnessed the impact of UK Government welfare cuts on our communities. The introduction of the bedroom tax, the benefit cap, and the freezing of local housing allowance rates have had a devastating impact on many of our lowest-income citizens. These measures have exacerbated child poverty and increased the risk of homelessness for many families.

While we have taken steps to mitigate these impacts through the Discretionary Housing Payment scheme, we should not be in this position. The need for such extensive mitigation measures highlights the inadequacy of the UK Government's social security system.

We believe in a social security system that is based on dignity, fairness and respect, that supports people when they need it, and that works to prevent poverty and inequality. It is our firm belief that social security should provide a safety net for all. We will continue to call on the UK Government to scrap the bedroom tax, the benefit cap and deliver certainty on local housing allowance support in the future.

In the meantime, the launch of a Scottish Discretionary Housing Payment scheme allows us to make different choices. Tackling poverty and preventing homelessness are key priorities for this Government. We choose to provide financial assistance to those who need extra help with their housing costs, thereby reducing poverty, maintaining tenancies and preventing homelessness.

The Discretionary Housing Payment scheme plays a crucial role in supporting low-income households. This manual is a tool for change, and a step towards a Scotland where everyone has the security of a safe and affordable home.

Shirley-Anne Somerville, Cabinet Secretary for Social Justice

# Scottish Discretionary Housing Payments guidance manual

## Section 1: Manual purpose

- 1.1 This guidance manual is for local authorities (LAs) in Scotland who are responsible for administering Discretionary Housing Payments (DHPs) in connection with the exercise of their power, conferred by section 88(1) of the Social Security (Scotland) Act 2018 (“the 2018 Act”), to give financial assistance to a qualifying individual to meet, or help towards meeting, the individual’s housing costs. DHPs have been fully devolved in Scotland since 2017. The Scottish scheme for DHPs is established under Part 5 of the 2018 Act as of 1st April 2024.
- 1.2 The manual provides guidance and advice on good practice which LAs must have regard to when considering payment of DHPs exercised under the power conferred by section 88(1) of the 2018 Act. This is the first guidance issued by Scottish Ministers. The guidance issued by DWP in relation to the previous DHP scheme no longer has effect in Scotland.

## Section 2: About Discretionary Housing Payments

### 2. About Discretionary Housing Payments

- 2.1 DHPs provide financial assistance to a qualifying individual to meet, or help towards meeting, the individual's housing costs.
- 2.2 DHPs can be paid in support of any tenancy type.
- 2.3 DHPs for mitigation of the removal of the spare room subsidy and benefit cap are to be paid by an LA when they are satisfied that an individual has been affected by these reductions.
- 2.4 At their discretion, LAs may award DHPs to provide support with Earned Income Taper deductions, Non-Dependent deductions, the Shared Accommodation Rate, and where Local Housing Allowance rates do not meet an individual’s housing costs. Please note, this is not an exhaustive list.
- 2.5 At their discretion, LAs may award DHPs for non-welfare reform reasons, such as for rent in advance, deposits, and removals costs. However, it should be noted that the LA may provide these types of support through other mechanisms.

2.6 At their discretion, LAs may award DHPs to eligible individuals who can show financial hardship.

### **3. Housing costs that DHPs can be paid for**

3.1 'Housing costs' are not defined in Part 5 of the Social Security (Scotland) Act 2018 and this approach purposely allows broad discretion for interpretation. In general, 'housing costs' usually refers to rental liability, as well as:

- rent in advance
- deposits
- other lump sum costs associated with a housing need such as removal costs

3.2 Specifically in cases where individuals have been affected by the benefit cap, and have had their benefits reduced by more than their rent, further discretion should be exercised to take in to account other costs associated with housing. Any costs considered to be reasonably incurred in connection with housing to ensure the accommodation is habitable can be considered. For example, but not limited to, housing costs such as electricity, gas, heating bills, and service charges may be paid, in combination with rent, up to the level of the capped amount. LAs may make local policy decisions on what evidence of other housing costs they are willing to accept in support of a claim.

### **4. When a DHP can be awarded**

4.1 A DHP can only be awarded once an individual is in receipt of either:

- housing benefit (HB)
- an award of universal credit (UC) which includes an amount for rent and the end of the first assessment period has passed

4.2 Owner-occupiers are not eligible to receive DHPs, with the exception of Shared Ownership properties which carry a rental liability.

4.3 Having an Alternative Payment Arrangement in place, or the Scottish Choice to have rent paid directly to a landlord, should not affect how an individual's application for a DHP is assessed or the size of any resulting DHP.

### **5. Support for those affected by the removal of the spare room subsidy (bedroom tax)**

5.1 Working Age individuals (and some mixed age couples where one is pension age and one is working age) living in the social rented sector face a reduction to their eligible rent if they are seen to under-occupy their property, based on criteria set by the Department for Work and Pensions. The level of under-occupation is determined by size criteria rules which calculate how many bedrooms are thought to be required for a household. The rates of reduction to the eligible rent for those affected by this policy are:

- 14 per cent where the household is seen to under-occupy by one bedroom
- 25 per cent where the household is seen to under-occupy by two or more bedrooms

5.2 We are committed to fully mitigating the removal of the spare room subsidy and expect that anyone affected who applies for a DHP should receive one to cover their shortfall.

5.3 LAs should continue to check whether an individual is actually exempt from the removal of the spare room subsidy in the first instance, as well as provide support to those affected who wish to move to a smaller property.

5.4 Additional funding is provided annually to LAs to support individuals affected by the removal of the spare room subsidy. Each authority may wish to consider how best to administer this type of DHP to ensure efficiency.

## **6. Support for those affected by the benefit cap**

6.1 Since April 2013 the total amount of benefit paid to working age individuals has been subject to a cap determined by the UK Government. The benefit cap is applied either through HB or UC, as appropriate.

6.2 The benefit cap is applied by LAs through HB payments. When a household's total benefit entitlement exceeds the benefit cap level, the LA reduces the level of HB by the excess amount.

6.3 Where UC is in payment the benefit cap is applied through UC.

6.4 LAs are provided with information which identifies capped individuals alongside other data that is shared to support individuals who may be eligible for the Council Tax Reduction (CTR) Scheme.

6.5 We have committed to mitigating the benefit cap as fully as possible within devolved powers and expect that anyone eligible who applies for a DHP for benefit cap mitigation should receive one to the maximum amount permitted by the DHP scheme.

6.6 In cases where the capped amount exceeds rent, other reasonable costs associated with housing can be included. For example, electricity, gas, heating bills, and service charges up to the level of the capped amount or total housing costs (whichever is lower).

6.7 We expect consideration to be given as to whether an individual can be made exempt from the cap in the first instance. LAs should assess if individuals are eligible for any of the exemptions in Section 11. Exemption from the benefit cap is preferable to mitigation.

6.8 Those that are affected by the benefit cap will continue to have access to and receive support from work coaches in Jobcentre Plus to help them find work.

People in receipt of Working Tax Credit, or in UC who earn above the current earnings threshold, are exempt from the benefit cap.

6.9 The Scottish Government annually provides additional funding to LAs to support individuals affected by the benefit cap. Each authority may wish to consider how best to administer this type of DHP to ensure efficiency.

See **Section 11: Exemptions from the benefit cap** for more information.

## 7. What DHPs cannot cover

7.1 The 2018 Act does not set out what cannot be included in “housing costs”. However, in most cases, housing costs usually refers to rental liability only (with the exception of benefit cap cases).

7.2 DHPs cannot be used for the acquisition of furniture or household equipment or the use of such furniture or equipment where that furniture or household equipment will become the property of the individual by virtue of an agreement with the landlord.

7.3 A DHP cannot be used for the mitigation of UC deductions that arise because an individual is in receipt of a benefit that is treated as income. For example, when an individual is in receipt of carer’s allowance, or carer support payment, their UC is reduced because carer’s benefits are treated as income. However, the individual will also be entitled to the carer element of UC and they will not be affected by the benefit cap.

7.4 The 2018 Act also provides some restrictions on the power to make payments:

- financial assistance may not be given by way of a loan
- financial assistance may not be given where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct
  - however, even in these circumstances, financial assistance may be given where the need for the assistance in question arises from some exceptional event or exceptional circumstances and is immediate
    - examples of exceptional events may include, but are not limited to;
      - sudden and severe financial hardship due to a natural disaster
      - an unexpected medical crisis (serious illness or injury) that significantly impacts the individual's, or their dependants', ability to meet basic needs
      - sudden bereavement, family breakdowns, or unexpected caregiving responsibilities
      - victims of crime who require immediate assistance to cope with the aftermath

See **Section 12: What DHPs cannot cover** for more information.

## **8. The level of a DHP award**

8.1 The Social Security (Scotland) Act 2018 (section 88) simply says that LAs can pay a DHP to someone entitled to HB or UC (which includes an amount for rent) in addition to this assistance in order to meet housing costs. 'Housing costs' are not defined in Part 5 of 2018 Act, but in general, 'housing costs' usually refers to rental liability, except where someone has had the benefit cap applied.

8.2 In benefit cap cases a DHP award can be made above the eligible rent up to either the total amount removed by the cap, or total housing costs, whichever is lower. Housing costs are those which can be reasonably incurred in connection with housing.

8.3 Any HB already paid towards 'housing costs' should be deducted when calculating the amount of a DHP, to avoid duplicate provision. See Section 13: Legal considerations, for more information.

## **9. Length of payments**

9.1 The length of time over which a payment is made is at the discretion of the LA.

9.2 The period of the award and, importantly, any specific end date, should be made clear to the individual. LAs may also want to provide information on how to re-apply for a DHP if necessary.

9.3 If the DHP is to meet a one-off housing cost such as a deposit or rent in advance, there is no requirement to specify the period of the award.

9.4 An LA can consider making long term awards, where appropriate, to those who are receiving DHPs to mitigate either removal of the spare room subsidy or the benefit cap. LAs can also, at their discretion, make long term awards where an individual has on-going needs, for example, such as a disabled person living in specially adapted accommodation.

9.5 A time-limited award may be appropriate when an impending change of circumstances will result in an increase in benefit. It may also be appropriate to make a short-term award to give an individual time to organise their financial or housing circumstances, particularly if they are trying to find alternative accommodation or gain employment. It should be remembered that if individuals have specific difficulties moving house without support you may wish to consider signposting them to other support available to assist them in moving.

## **10. Rent deposits and rent in advance**

10.1 A DHP can be awarded for a rent deposit or rent in advance for a property that the individual is yet to move in to if they are already entitled to HB or UC which includes an amount for rent at their present home. Any HB (or UC with

housing element) already paid towards 'housing costs' should be deducted when calculating the amount of a DHP, to avoid duplicate provision.

## **11. Backdating**

11.1 As a guide, a DHP for any purpose can be backdated up to 12 months, longer under exceptional circumstances and if LA budgets allow. When deciding whether to backdate a DHP, each application should be considered on its own merits.

11.2 Usually, DHPs are made in respect of an immediate need rather than a past period, however, you may consider it appropriate to make a backdated DHP award. For example, where an individual is subject to a rent shortfall due to welfare reforms and has accrued rent arrears during the transition period between a reduction in benefit and moving into employment. In this case it may be prudent for you to award a backdated DHP to meet those arrears of the shortfall so as not to undermine the individual's move into employment. In other cases, a DHP could be used to facilitate a move of home (such as through a mutual exchange) where a landlord will not allow a move for someone who is in arrears.

11.3 It should be noted that a DHP can only be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits.

# **Section 3: Funding**

## **12. Scottish Government funding arrangements**

12.1 LAs are informed of their annual funding allocations by letter. At present Scottish Ministers wish to see the removal of the spare room subsidy and benefit cap mitigated as far as possible. Levels of funding for these purposes will be decided in consultation with the Scottish Fiscal Commission and delivered according to methodology developed with the joint COSLA/Scottish Government Settlement and Distribution Group. This will require the return of spending data to the Scottish Government at year-end and may involve a balancing payment after year-end.

12.2 For purposes other than removal of the spare room subsidy and benefit cap, a fixed amount will be allocated, to be spent at LA's discretion within the DHP scheme.

12.3 LAs can use their own funds to top up their government contribution as they see fit.

12.4 Any unspent DHP funding from the government contribution is returned to the Scottish Government at the end of the financial year. This may take the form of a reduced balancing payment after year-end, if that is what is agreed with LA Leaders via the Settlement and Distribution Group. In some circumstances it may



also be agreed between Scottish Ministers and LA Leaders that some DHP funding may be retained or “rolled-over” at the end of the year.

12.5 The Scottish Government will provide funding for the administration of the scheme to help meet LAs costs.

## **Section 4: The application process**

### **13. How applications can be made**

13.1 An LA is not required to wait for a formal application. If an LA is satisfied an individual is entitled to mitigation, and the LA has all necessary data, the LA can take steps to calculate, and make, the appropriate payment. In cases where the LA holds partial data (e.g. requires bank details, evidence of additional housing costs), the LA may choose how to collect those.

13.2 Where a DHP is made to an individual, that individual should receive a notice confirming the amount of payment. In circumstances where no application has been received, it may be prudent to allow the recipient an opt-out.

13.3 Where an LA decides further information is needed from an individual they may decide how to collect that data. With consideration for equality and accessibility, an LA may choose to provide any/all data collection methods of; paper, electronic, telephone, online application methods, or face to face interviews.

### **14. Information an individual must provide**

14.1 In order to apply for a DHP, the individual must provide any information the LA needs to make a decision, for example, proof of HB/UC deductions, details of income, capital and expenditure.

14.2 When deciding how to treat income from disability-related benefits such as Adult Disability Payment (ADP), Child Disability Payment (CDP), Disability Living Allowance (DLA) or Personal Independence Payment (PIP), LAs should consider each DHP application on a case-by-case basis having regard to each component of the benefits in payment, the purpose of those disability related benefits and whether the money from those benefits has been committed to other liabilities associated with disability. See Section 13: Legal considerations, for more information on how Scottish LAs should regard to the decision of the ‘High Court in R v. Sandwell MBC, ex parte Hardy’.

### **15. Claims by another person on behalf of the individual**

15.1 If reasonable in the circumstances, for example, if an individual is vulnerable and requires support, an application can be accepted from someone acting on behalf of the individual.

## **16. Awarding DHPs on two homes**

16.1 A DHP can be awarded in respect of two homes when someone is treated as temporarily absent from their main home. This includes;

- those who have fled their main home because they are a victim of domestic abuse
- a couple, where one is a student having to reside elsewhere
- a family too large for one house so have been housed by a Housing Authority in two separate dwellings

16.2 In such cases of temporary absence, if the individual is treated as liable for rent on both properties and, in both cases, there is a shortfall, it is possible to award a DHP in respect of both properties subject to the weekly or monthly limit of “housing costs” on each property.

16.3 If the two properties are in different LA areas, it may be useful to agree that each LA will provide the DHP support for the property in their own area.

16.4 There may also be cases where there has been an unavoidable overlap in housing cost liability due to an individual moving home. A DHP may be awarded up to the shortfall in total housing costs reasonably incurred where the customer could demonstrate a need to move and:

- the delay in moving is due to the customer awaiting assistance with furnishing so that they could reasonably be expected to occupy the property and the customer can demonstrate that they have taken reasonable steps to achieve this; an award for a period up to 6 weeks may be paid, unless there are exceptional circumstances
- the customer has moved to the new home but the overlap was unavoidable an award for a period up to 4 weeks may be paid, unless there are exceptional circumstances

## **17. Delivering the decision**

17.1 LAs must inform the individual of the DHP decision either in writing or electronically (if the individual has agreed to this). This information should include appropriate explanations and/or any reasons for non-payment.

17.2 This must be done as soon as is reasonably practicable. LAs must be consistent and avoid unnecessary delay, considering that an application for DHPs is often to deal with an immediate need.

## **18. Review process**

18.1 When issuing a decision, LAs should provide information about the process in place for reviewing the decision.

18.2 An LA may decide who in the authority reviews a decision. There is no requirement that the review arrangements take any format as long as the authority is consistent and the original decision maker is not involved.

18.3 A decision on a DHP does not carry a right of appeal to a Social Security Tribunal. The route of judicial review is available and a complaint may be made to the Scottish Public Services Ombudsman (SPSO) if there is an allegation of maladministration.

18.4 The individual should be notified of any review outcome in writing, including reasons, as soon as is reasonably practical. LAs should provide information that a decision on a DHP does not carry a right of appeal to a Social Security Tribunal, but that the route of judicial review is available and a complaint may be made to the Scottish Public Services Ombudsman (SPSO) if there is an allegation of maladministration.

## **Section 5: Payment of DHPs**

### **19. Method of payment**

19.1 DHPs may be delivered through HB payment systems and may also be paid alongside HB payments. However, there must be a clear audit trail that allows LAs to differentiate, in any given case, between HB and DHPs.

19.2 If a DHP is paid with HB, notifications to the individual must clearly show the amount of HB and the amount of DHP.

### **20. Paying another person a DHP on behalf of the individual**

20.1 A DHP may be paid to someone other than the individual if the LA feels this is reasonable. That could be:

- an individual's legal representative
- another person to meet, or contribute towards meeting, any liability the individual has to that person e.g. a landlord

However, consideration should be given to risk of fraud and under 16s cannot be considered.

20.2 DHPs may also be used to make a deduction from any liability the individual has to the authority giving the assistance which is connected to housing costs. In the case of a person who is entitled to rent rebate, DHPs can be credited to the rent account.

20.3 Any combination of the above may also be considered.

# Section 6: After an award has been made

## 21. Change of circumstances

21.1 An individual receiving a DHP must notify the LA of any change of circumstances which may be relevant to their DHP application or award. Similarly, if an individual has been assisted in making a claim or had a claim made on their behalf e.g. by a Housing Officer, that party should also report changes in circumstances as they become aware of them.

21.2 The LA must ensure that the individual is aware of the changes they should report. There is no statutory timescale for notification, however, individuals should be advised to notify of changes as soon as reasonably practicable. It is for each LA to decide how such changes are notified.

## 22. Stopping DHP payments

22.1 There are instances when a DHP can be stopped before the end date already indicated to the individual. These are if:

- the individual is no-longer in receipt of HB or UC with housing cost element
- the LA decides that a DHP is being, and/or has been, made because an individual has misrepresented or failed, fraudulently or otherwise, to disclose a material fact
- the individual has been paid because of an error
- an individual no longer needs further financial assistance towards housing costs

22.2 When stopping DHPs before the end date already indicated to the individual, LAs should notify that individual.

## 23. Recovering overpaid DHPs

23.1 A DHP award can only be recovered if an LA decides that payment has been made because of:

- a misrepresentation or failure to disclose a material fact by the individual (either fraudulently or otherwise)
- an error made when the application was determined
- a processing error

23.2 An LA may wish to recover an overpayment of DHP caused by a retrospective change to the individuals benefit entitlement where this results in an increase of HB or UC housing element. This scenario can be treated as an error made in the

HB or UC benefits determination, which resulted in an error in the DHP determination meaning DHP was overpaid.

23.3 Each LA may follow its own debt recovery guidance. However, a DHP cannot be recovered from ongoing HB, UC, or other prescribed benefits.

23.4 Each LA may follow its own debt recovery guidance, but as a method of recovery may want to consider requesting repayment of the debt from the claimant or the landlord if the DHP is paid directly to them. This may be in the form of an invoice or any other method the LA chooses, for example using debt collection agencies or via the courts. An LA may also consider offsetting overpaid DHPs if further DHPs are granted at a later date.

23.5 When issuing a notice of intention to recover overpaid DHPs, LAs should provide information about the process in place for reviewing that decision.

## **Section 7: Budgeting**

### **24. Management of DHP budget**

24.1 We are committed to fully mitigating the removal of the spare room subsidy. We expect that anyone affected by it who applies for a DHP to cover their shortfall should receive one. LAs will be fully reimbursed for their spend on removal of the spare room subsidy.

24.2 We are committed to mitigating the benefit cap as fully as possible. We expect that anyone affected by the benefit cap who applies for a DHP to cover their shortfall should receive one to the extent permitted by the DHP scheme. LAs will be fully reimbursed for their spend on benefit cap.

24.3 As the DHP scheme has been in place for some years, LAs are likely to have built up expertise and local knowledge enabling the discretionary part of the DHP budget to be profiled to meet demand over the course of the year.

24.4 You may want to explore what other funding is available for providing assistance in your local area where there may be some overlap with DHPs, such as the Scottish Welfare Fund.

24.5 You may also be able to reduce some demand by offering individuals alternative support and advice in advance of considering whether a DHP is appropriate, this may include support through the Money and Pensions Service.

## **Section 8: Scottish Government monitoring**

## **25. Expenditure and data requirements**

25.1 Each LA must submit monitoring returns providing details of DHP expenditure. LAs will continue to follow the current practice and provide mid-year and end-year monitoring returns to the Scottish Government.

25.2 This monitoring information continues to improve the Scottish Government's understanding of how DHPs are being used.

25.3 The Scottish Government requests information on DHPs at specific times during the financial year, including expenditure and number of awards.

25.4 Some of this information, such as the financial forecast and actual expenditure at mid-year and end of year, is mandatory. Other information is voluntary.

## **26. DHP monthly and biannual data reporting**

26.1 The current arrangements for monthly reporting through ScotXed to the Scottish Government on DHPs will remain in place:

- what is the number of DHP applications you have received in the year to date? (If an individual re-applies for DHPs, this should be recorded as a new application)
- what is the number of DHP determinations you have made in the year to date? (This is the number of DHP applications where a decision has been made)
- what is the number of DHP awards you have made in the year to date? (This is the number of DHP applications where a decision to make an award has been made)
- what is the total value of DHP awards (in GBP) spent or committed in the year to date? (You should add up the total amount paid to each individual. For example, if the award is £10.00 per week for 20 weeks, the total award value for the individual should be recorded as £200.00. If the payment is a one-off payment, then the award amount for the individual is simply the amount paid)

26.2 At mid-year (six months to end September) and end-year (end March) LAs will be required to provide a report of actual spend against each category of DHP payment. This should reflect the intended outcomes of the payments issued. For any spend not detailed on the spreadsheet, a narrative will be required. This allows for continuous monitoring of the spend and any issues which have not been previously identified as a possible need for DHPs to be considered.

26.3 This method of reporting will be outlined in the form of a spreadsheet thereby negating the need for any LAs to update their current IT systems.

26.4 An end of year spreadsheet will be required to be sent to Scottish Government by 30 April of each year when the end of year monitoring return is completed. This will allow prompt financial reconciliation to be undertaken and the

issuing of any balancing payments, if that is the method that has been agreed with the Settlement and Distribution Group.

26.5 The Scottish Government does not require details of individual applications. Only the total amounts spent under each category are requested.

## **Section 9: Publicising DHPs**

### **27. Raising awareness of DHP support**

27.1 It is important to publicise the existence of DHPs. They are a key element of the government's support for housing costs and are the main method of supporting people affected by the removal of the spare room subsidy and benefit cap.

27.2 We recommend that LAs point to the availability of DHPs when contacting individuals who are due to be potentially affected by a particular deduction or shortfall.

27.3 To raise awareness of DHPs, within available resources, an LA may wish to consider:

- including information on all HB decision notices where there is a shortfall
- leaflets and posters
- giving advice on DHPs when people contact your LA to discuss a claim
- proactively assisting vulnerable individuals to make applications by, for example, visiting them in their own homes
- ensuring that domestic abuse victims who are trying to move to a place of safety through contact with external welfare organisations and refuges are supported
- informing external and internal bodies that give advice (money advice, welfare rights, homelessness, housing, etc.) of the existence of DHPs
- establishing and maintaining links to ensure awareness of the scheme among staff working in housing options, homelessness and adult and children's services
- including DHP advice as part of general welfare advice services
- for applicants to the Scottish Welfare Fund, consider if the reason for the application is housing cost-related and refer as appropriate
- making landlords aware of the scheme (private landlords, housing associations and registered providers)
- establishing links with social housing tenants and resident's organisations to ask them to help raise awareness of the scheme
- raising awareness by having information of the scheme available at tenants and residents' forums
- including clear DHP eligibility requirements, application and appeal information on your LA website, ensuring it is visible and easily accessible to both HB and UC claimants

- information on Choice Based Lettings scheme websites
- information within literature or communications relevant to housing allocations policies or placements
- raise awareness through interviews with local radio, including stations targeting different ethnic groups
- targeted communications aimed at those likely to be affected by telephone, text message or social media

## Section 10: Priority groups

### 28. Groups to consider prioritising

28.1 After applying bedroom tax and benefit cap mitigation, LAs will need to consider how best to target funding within priority groups, whilst remembering that each case must be considered on its own individual merits.

28.2 You may also wish to assist certain other groups to stay in their home, for example:

- people who have had to flee domestic abuse or have moved because of the threat of violence in another area (taking into account wider forms of violence against women and girls, as set out in Scotland's Equally Safe strategy)
- people affected by domestic abuse who remain in a property which has been adapted under a sanctuary scheme
- young people leaving LA care until they reach the age of 35 (after which they will no longer be affected by the shared accommodation rate)
- families with kinship care arrangements. Children who go into the care of family and friends are often extremely vulnerable. They will usually benefit from the stability of remaining in a familiar area and continuing to attend their local school. If the current housing is not an appropriate size for kinship care families, you may want to assist in ensuring they are able to move to appropriate housing in their local area
- families with a disabled child not in receipt of upper or middle rate of Child Disability Payment but whose condition makes sharing a bedroom difficult
- couples who are unable to share a bedroom due to disabilities but are not in receipt of a qualifying benefit
- families who are providing long term care to a disabled child or non-dependant
- people with shared care arrangements; the person who does not receive the Child Benefit will not receive calculations for the children in their housing entitlement
- people who are providing a room for an adult placement
- people who are victims of human trafficking and wider forms of Commercial Sexual exploitation
- where a child in the household is due to reach a significant birthday which means an additional bedroom will be allowed under the size criteria



- people who have experienced homelessness being supported to settle in the community
- people with health or medical problems, either physical or mental, who need access to local medical services or support that might not be available elsewhere
- disabled people who need, or have had, significant adaptations made to their property, or where they are living in a property particularly suited to their needs. This includes properties which have been adapted for other members of the household, such as disabled children or non-dependants
- where the individual or someone in their household has an impairment, which requires them to have a larger property than would usually be the case for the size of their household. This may be due to, for example, where a bedroom is used for storage of medical equipment or used to support their disability for example, sensory room
- disabled people who receive informal care and support in their current neighbourhood from family and friends, which would not be available in a new area. In this respect, you may also consider families who have a child with an impairment who rely heavily on local support networks
- the elderly or frail who have lived in the area for a long time and would find it difficult to establish support networks in a new area
- people who need to live near their jobs because they work unsocial hours or split shifts; or where moving home may mean living in an area where public transport would be inadequate to enable them to sustain their current job
- people who are refugees who need to maintain stability in their financial and housing circumstances
- single under 35-year-olds who may find it difficult to live in shared accommodation, for example, due to a traumatic event

28.3 Consideration should be given to how DHPs may support wider efforts to tackle and reduce child poverty, which is one of three shared priority areas set out in the Verity House Agreement. In doing so you may wish to consider how support may be directed to support the six priority family types at greatest risk of poverty. This includes:

- lone parent families, the large majority of which are headed by women
- families which include a disabled adult or child
- families with three or more children
- minority ethnic families
- families with a child under one year old
- families where the mother is under 25 years of age

28.4 In considering targeting to tackle and reduce child poverty, you may wish to give consideration to specific critical points where families may face increased financial pressure. For example:

- parents who are transitioning into work and require support to ensure stability and security during this period

- where someone in the household is expecting a baby (including those currently in shared accommodation)
- families with a child temporarily in care but who is expected to return home. What constitutes temporary will be at the discretion of your LA
- families with a social services intervention, for example highly dependent adults, children at risk or involvement in a family intervention project

## Section 11: Exemptions from the benefit cap

### 29. Exemptions from the benefit cap

29.1 Whilst LAs are expected to mitigate the benefit cap as fully as possible for anyone who is affected by it, the Scottish Government expect consideration to be taken as to whether a recipient can be made exempt from the cap in the first instance. If suitable, LAs should connect recipients to employment services and assess if they are eligible for any of the exemptions below. Exemption from the benefit cap is preferable to mitigation. However, for clarity, payment of a DHP for benefit cap mitigation is not dependant on assessments or job-seeking behaviour.

29.2 Individuals are not affected by the cap if they are over State Pension age. If they are part of a couple and one of them is under State Pension age, the cap may apply.

29.3 Individuals are not affected by the cap if they or their partner:

- get Working Tax Credit (even if the amount is £0)
- get Universal Credit because of a disability or health condition that stops them from working (this is called 'limited capability for work and work-related activity')
- get Universal Credit because they care for someone with a disability

29.4 An individual is also not affected by the cap if they, their partner or any children under 18 living with them gets:

- Adult Disability Payment (ADP) (\* see below)
- Armed Forces Compensation Scheme
- Armed Forces Independence Payment
- Attendance Allowance (\* see below)
- Carer's Allowance
- Child Disability Payment (CDP) (\* see below)
- Disability Living Allowance (DLA) (\* see below)
- Employment and Support Allowance (if you get the support component)
- Guardian's Allowance
- Industrial Injuries Benefits (and equivalent payments as part of a War Disablement Pension or the Armed Forces Compensation Scheme)

- Personal Independence Payment (PIP) (\* see below)
- War pensions (\* see below)
- War Widow's or War Widower's Pension

\*Where a person is not receiving ADP, CDP, DLA, PIP, Attendance Allowance or a War Disablement Pension because they are in hospital or a care home, the exemption will continue to apply.

29.5 If an individual is affected, the benefit cap might not start for 9 months depending on the individual's earnings.

29.6 There is a grace period of 39 weeks in HB, or nine months in UC, for those individuals who have been in work for the previous 12 months and have earned the same as, or more than, the DWP earnings threshold. LAs should ensure the individual is not within this grace period.

29.7 HB paid to UC households living in specified or temporary accommodation is exempt from the benefit cap. These households are not exempt from the benefit cap in UC, rather their HB is not included in the UC calculation. The benefit cap applies in the normal way to HB claimants in specified or temporary accommodation who are not also entitled to UC.

29.8 Where an individual is not exempt from the benefit cap, an award should be made. A financial assessment will not be required and hardship will not need to be proved.

## **Section 12: What DHPs cannot cover**

### **30. Ineligible charges**

30.1 Housing costs are deliberately not defined in the 2018 Act, but there are some charges which are ineligible to be met by a DHP. Ineligible charges are those in respect of:

- the acquisition of furniture or household equipment
- the use of such furniture or equipment where that furniture or household equipment will become the property of the individual by virtue of an agreement with the landlord
- charges for water or sewerage, where an individual is already in receipt of full water charge reduction assistance
- council tax

### **31. Increases in rent due to outstanding rent arrears**

31.1 Consideration should be given in these cases as to whether the individual was eligible to apply for a DHP at the time the arrears were incurred. This is particularly pertinent if the arrears were incurred while the individual was affected

by the removal of the spare room subsidy or the benefit cap. Consideration should be made as to whether a backdated DHP payment should be made to cover some or all of the rent arrears.

31.2 If the individual was not eligible for a DHP at the time the arrears were accrued then a DHP cannot be paid for the ineligible period.

31.3 If an individual was in receipt of DHPs at the time the arrears were accrued then consideration should be given to whether the individual was in receipt of the correct amount. However, DHP payments should not be duplicated to cover the same costs.

## **32. Sanctions, suspensions and reductions in benefit**

32.1 Section 89(2) in Part 5 of the Social Security (Scotland) Act 2018 states financial assistance may not be given where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).

32.2 However, an exception to this can be allowed where the need for the assistance in question also arises from some exceptional event or exceptional circumstances and is immediate

Examples of exceptional event may include, but are not limited to;

- sudden and severe financial hardship due to a natural disaster
- an unexpected medical crisis (serious illness or injury) that significantly impacts the individual's, or their dependants', ability to meet basic needs
- sudden bereavement, family breakdowns, or unexpected caregiving responsibilities
- victims of crime may require immediate assistance to cope with the aftermath

32.3 Sanctions may include:

- reduction in Income Support (IS) or income-based Jobseeker's Allowance (JSA(IB)) due to a Reduced Benefit Direction (RBD) for failure to comply with the Child Support Agency in arranging maintenance. The RBD is a reduction in benefit of 40% of the personal allowance and only applies to IS or JSA(IB)
- reduction in benefit as a result of non-attendance at a work-focused interview. This applies both where the person's HB is reduced and when any other benefit that the person is receiving (such as IS) is subject to a sanction
- reduction or loss of benefit due to a JSA employment sanction. JSA is not payable for the period of sanction if they have contributed towards their unemployment status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme. In such cases it may be

possible for a reduced rate of JSA to be paid under the JSA hardship provisions

- reduction in benefit due to a JSA sanction for 16/17-year-olds – for certain young people who receive JSA under a Severe Hardship Direction. JSA is not payable for the period of the sanction if they have contributed towards their unemployed status, for example, by leaving employment voluntarily or failing to attend a prescribed training scheme
- restriction in benefit due to a breach of a community payback order, or
- reduction in UC due to a sanction as specified under regulations 100 to 114 of the UC Regulations 2013

## Section 13: Legal considerations

33. The cases mentioned below (*R v LB Lambeth, ex parte Gargett* and *R v. Sandwell MBC, ex parte Hardy*) both concern the application of the previous DWP DHP legislation and guidance. This means that Scottish LAs who are operating under the new devolved Scottish DHP legislation and guidance are not legally bound by those judgments. However, the rules which are discussed in the *Lambeth* and *Sandwell* judgments are substantively very similar to the new rules in the Scottish DHP scheme. Therefore, LAs should consider those judgments to be highly persuasive aids when applying the new Scottish rules. It is likely that the Scottish Courts would reach similar conclusions if the same issues were raised before them.

### 34. **R v. LB Lambeth, ex parte Gargett**

34.1 The Court of Appeal's decision in '*R v. LB Lambeth, ex parte Gargett*' sets out that any HB already paid towards 'housing costs' must be deducted when calculating the amount of a DHP to avoid duplicate provision.

34.2 This case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards rent arrears (the Court of Appeal found that a DHP could be used for this purpose). However, the case also discusses the issue of duplication of DHPs and HB. In relation to preventing duplication of provision, part of the decision states 'housing benefits already paid for past housing costs must also be deducted. This is implicit in the purpose for which DHPs may be made. Otherwise, the applicant would be receiving DHPs for housing costs that have already been met by past payment of housing benefits.'

34.3 The case does not prevent the use of a DHP for rent in advance but indicates that when making such a decision on whether a DHP can be used, you may consider whether there is likely to be a duplication of payments for the initial part of the tenancy if the DHP is made and if so, is there any means to avoid this.

34.4 If an LA decided that there is no way to avoid a duplication of the payment and the individual is entitled to a DHP in respect of housing costs (specifically a rent in advance payment), then the LA may still award a DHP.

34.5 The DFA regulations that were applicable at the time required that a DHP can only be considered for a period where the linked HB or relevant award of UC is payable. This is of particular relevance to requests for a period of backdated DHP, since backdating cannot cover arrears accrued while not in receipt of these benefits. The case relates to rent arrears and specifically whether a DHP could be used to pay a lump sum towards past rent arrears.

34.6 The Court of Appeal found that there was no restriction within the DFA regulations to prevent an LA from exercising its discretion to make DHP payments for past housing costs (including arrears of rent) on the basis that the individual was in receipt of full HB at the time.

### **35. R v. Sandwell MBC, ex parte Hardy**

35.1 When deciding how to treat income from disability-related benefits such as Disability Living Allowance or the Personal Independence Payment, LAs must have regard to the decision of the 'High Court in R v. Sandwell MBC, ex parte Hardy'.

35.2 This decision places an obligation on LAs to consider each DHP application on a case-by-case basis having regard to each component of the benefit, the purpose of those disability related benefits and whether the money from those benefits has been committed to other liabilities associated with disability, even where they might not be obviously associated with disability e.g. higher heating or food bills.



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