

## Getting the Benefit

The new Local Housing Allowance  
**A Guide for  
Private landlords  
in West Lothian**

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## The new Local Housing Allowance

- A guide for...

# Private Landlords in West Lothian

### Introduction

On Monday 7 April 2008 the new Local Housing Allowance was introduced throughout Britain.

Local Housing Allowance is a new way of working out, and paying, Housing Benefit for tenants of private landlords.

Local Housing Allowance only affects tenants of private landlords from 7 April 2008

- and only if they take on a new tenancy on or after 7 April 2008
- or if they make a new claim for Housing Benefit on or after 7 April 2008
- or if they have a break in their existing claim

Local Housing Allowance does not affect council tenants or tenants of social landlords, such as Bield Housing Association, Almond Housing Association or Weslo Housing Management, or tenants of charities like the Abbeyfield Society.



## What are the changes?

There are two main changes to the Housing Benefit scheme under the new Local Housing Allowance.

### **Firstly – the way the maximum rent is calculated changes.**

The Rent Officer, an official who is independent of the council, will still set the maximum amount of rent we can pay benefit on.

The Rent Officer will no longer look at every individual property and the actual rent that is charged by the landlord in each case.

Instead the Rent Officer will set a Local Housing Allowance rate for each size of property in our area (one bedroom; two-bedroom, three-bedroom etc.) and these will be published every month on our website and in our local offices.

### **Secondly – the way Housing Benefit is paid changes.**

In almost all cases payment of Housing Benefit will be made to the tenant directly into their bank accounts.

The tenant will then have the responsibility to pay their rent to the landlord.

The rest of this booklet gives more details about the Local Housing Allowance and seeks to answer the most commonly asked questions which landlords have raised about this new scheme.



## Why is Local Housing Allowance being introduced?

Local Housing Allowance is part of the Government's welfare reform agenda.

It represents a major change to the Housing Benefit scheme for tenants of private landlords.

The Government's stated aims in introducing this change are grouped around six main objectives:

**Encouraging Personal Responsibility** – The Government believes that, wherever possible, Local Housing Allowance should be paid to tenants. Empowering people to budget for and pay their rent themselves, rather than councils paying it over their heads direct to the landlord, will help unemployed tenants to develop the skills they will need as they move into work.

**Financial inclusion** – By encouraging and assisting tenants to open bank accounts, receive payments of Local Housing Allowance into those accounts (as most salaries are paid), and set up standing orders to pay their rent, Local Housing Allowance claimants will be more like tenants who don't claim Housing Benefit.

**Fairness** – The maximum rent will be based on the size and composition of the household, not the amount of rent charged. Therefore households in similar circumstances in the same broad area will be entitled to similar amounts of benefit.

**Choice** – The idea here is that, because Local Housing Allowance is not strictly related to the actual rent, tenants can choose how to spend this income. Like other tenants, they will be able to choose whether to rent a larger, higher quality property or to spend less on their housing and increase their available income (though there are limits to this).

**Transparency** – Under the existing Housing Benefit scheme for tenants in the private sector, it is sometimes difficult for claimants to know the extent to which Housing Benefit will meet the costs of the property they are considering renting. There is a system of Pre-tenancy Determinations that can help, but these have to be completed in advance for each individual property. Under Local Housing Allowance the amounts that the Rent Officer has set as the maximum rent for each category of property in the area will be published each month. Thus tenants will know in advance of taking on a tenancy how much support is available towards their housing costs in different areas and for different property sizes.

**Improved administration and reduced barriers to work** – The fact that local authorities will no longer be required to refer individual cases to the rent officer will, the Government believes, assist in speeding up the assessment of these claims. For working age claimants, Local Housing Allowance should provide greater certainty about what help is available in and out of work. A more transparent system may also improve the ability of individuals to move between areas and to take advantage of employment opportunities.



### **Will Local Housing Allowance affect my tenants?**

Local Housing Allowance will affect your tenants if you entered into a private tenancy agreement after 2 January 1989, unless the tenancy falls into one of the exceptions listed below.

**Local Housing Allowance does not affect:**

- council tenancies
- tenancies with registered social landlords (e.g. Housing Associations)
- some protected cases, such as supported housing provided by social landlords, charities, and certain voluntary organisations
- private tenancies which started before 2 January 1989
- tenancies in caravans, houseboats or hostels
- tenancies where a substantial part of the rent is for board and attendance

However, your existing tenants will not be affected unless, on or after 7 April 2008, they:

- make a new claim for Housing Benefit
- change address
- have a break in their claim, and then claim Housing Benefit again



### **How will the Local Housing Allowance operate?**

Under the Local Housing Allowance, the maximum amount of benefit someone is entitled to is not based on the individual property in which the tenant lives. It is based on:

- which area the property is in (the “Broad Rental Market Area”) and
- who lives in the property with the tenant (the “Size Criteria”)

The Rent Officer will decide what the Local Housing Allowance Rate will be for different sizes of properties within each Broad Rental Market Area.

The council will then use the appropriate Local Housing Allowance Rate as the starting point for the Housing Benefit calculation.

In some cases, other things will affect the actual amount of benefit someone receives. These can include:

- how much the rent is
- whether anyone living with the tenant is expected to contribute to the rent

There is no change to the other entitlement rules for Housing Benefit – these will still be based on a person's income, savings and proof of rent etc.



## How do I find out what the Local Housing Allowance Rate for my property will be?

Each month the Rent Officer will supply us with the Local Housing Allowance rates for various sizes of property in each of the Broad Rental Market Areas.

We will publish the Local Housing Allowance rates every month.

From April 2008 you can check the rates for your area on our website at [www.westlothian.gov.uk](http://www.westlothian.gov.uk) or telephone our customer service advisors on 01506 776 800.

There are three Broad Rental Market areas in West Lothian, split by postcode.

- EH postcodes (this covers the majority of West Lothian properties)
- ML postcodes
- FK postcodes

For each of these Broad Rental Market Areas, the Rent Officer will supply the council with a Local Housing Allowance rate for each of the following size of properties:

- Single room – with shared facilities
- 1 bedroom property
- 2 bedroom property
- 3 bedroom property
- 4 bedroom property
- 5 bedroom property

The Rent Officer will supply a Local Housing Allowance rate for larger properties on an individual basis.

The Local Housing Allowance rate used for the calculation of housing benefit will be determined by the number of bedrooms required by the tenant's household (the size criteria).

Under the Local Housing Allowance a tenant is entitled to the following number of bedrooms:

- 1 bedroom for a single claimant or adult couple
- 1 bedroom for any other adult aged 16 or over
- 1 bedroom for any two children of the same sex aged 15 or under
- 1 bedroom for any two children under 10 regardless of sex
- 1 bedroom for any other child

For example: – Mrs Smith is a widow living in a house with her two daughters aged 17 and 14. The three-bedroom rate will be used to work out her housing benefit entitlement. This will be the case even if she lives in a two-bedroom property.

– Mr and Mrs Jones live in a flat with their 4 year old twins (a boy and a girl). The two- bedroom rate will be used to work out their housing benefit entitlement. This will be the case even if they rent a three-bedroom property.

The maximum rent for most people aged under 25 who live alone will be the single room with shared facilities rate (e.g lodgers or flatmates who rent a room within a property and share bathroom/ kitchen facilities.)



### **What if the tenant's Local Housing Allowance is higher than their rent?**

The tenant can keep up to £15 per week where the Local Housing Allowance is higher than the rent charged. This excess will not normally be taken into account as income when working out other benefits.



### **What if the tenant's Local Housing Allowance is lower than their rent?**

As in the current situation, the tenant will have to make up any shortfall out of their other income.



### **How does Local Housing Allowance affect landlords?**

The only change for most landlords is that payment of benefit worked out using the Local Housing Allowance rates will normally be made direct to the tenant.

The tenant will be responsible for paying their rent to the landlord.

The council offers money advice to tenants including assistance in opening basic bank accounts.



### **Why are you stopping direct payment to landlords?**

One of main aims of the Government's welfare reforms is to encourage personal responsibility and to promote financial inclusion.

In introducing the new Local Housing Allowance the Government believes that tenants who get benefit calculated and paid under these new arrangements should be able to take greater responsibility for managing their financial affairs and paying their rent to their landlords, in the same way as other tenants do. This is why any benefit will usually be paid to the tenant and not to the landlord.

In the past, there has never been a right for a landlord to receive Housing Benefit payments direct. However, the tenant did have the right to ask for payments of their benefit to be paid direct to their landlord. It is this right that is changing.



**I already receive direct payment for some of my tenants.  
Will these payments stop?**

No. Any tenant who is already getting Housing Benefit on 7 April 2008 will continue to be paid the old way. If you are receiving Housing Benefit payments direct on behalf of your tenant(s), these will continue to be paid to you.

The Local Housing Allowance rules will only affect any tenants who make a new claim, move address to new private rented accommodation or have a break in their claim, on or after 7 April 2008.

If you are a landlord who owns or manages a number of properties, you may find that you have tenants who claim Housing Benefit under the two different schemes. This will mean that you may have tenants getting Housing Benefit that the council pays to you under the old arrangements, and other tenants getting Housing Benefit calculated using the new Local Housing Allowance rates who will pay you themselves.



**Can I make direct payment a condition of the tenancy?**

A local authority is not party to the tenancy agreement between a landlord and tenant, and is not bound by any conditions in a tenancy agreement.

The council can no longer pay benefit to a landlord directly at the tenant's request. You cannot change this by making direct payment a condition of the tenancy.



## What protection exists for landlords?

There is a range of safeguards to protect the interests of landlords and tenants.

Although, in the large majority of cases, Local Housing Allowance will be paid direct to the tenant, it is recognised in the legislation that some tenants may have difficulties with this responsibility. In a minority of cases it will be appropriate to make payments direct to the landlord, provided the landlord is a “fit and proper” person (see page 11 of our booklet “Getting the Benefit - A Guide to Housing Benefit for Private Landlords in West Lothian”).

Safeguards have been put in place to ensure that this happens.

The three main sets of circumstances covered by the Safeguard policy are:

- Where a tenant is 8 weeks in arrears with their rent
- Where a tenant is unlikely to pay their rent
- Where a tenant is likely to have difficulty in managing their affairs

### **Where a tenant is 8 weeks in arrears:**

Regulations provide for the council to pay the landlord direct where the tenant is eight weeks or more in arrears with their rent.

This provision already existed before the Local Housing Allowance and it continues to exist.

We will need to see proof of these arrears.

The council cannot meet the arrears that have built up, as the tenant will already have been paid this money. Recovery of those arrears is a matter between the landlord and the tenant.

## **Where a tenant is unlikely to pay their rent:**

The council can make the decision to pay the landlord direct where, after evaluating all of the evidence, it considers that the tenant is unlikely to pay their rent and that it is in the interests of the tenant to pay the landlord.

We recommend that, if a tenant is starting to build up rent arrears, you should get in touch with us before it gets to eight weeks. This will allow us to investigate whether there is a problem that needs addressing.

The three key points, which the council will have to consider, are:

### 1. Is the customer unlikely to pay their rent?

We will need evidence to back this up. Such evidence might include where the customer has previous history of rent arrears, or has severe debt problems, or is unable to obtain a bank account.

### 2. Is it in the interests of the customer to make direct payments to the landlord?

In most cases it is in the long term interests of the customer to manage their own affairs and make their own payments of rent, so the council will have to be examine this question carefully.

### 3. Would the customer be likely to pay their rent themselves with appropriate help and support?

Many customers, who might otherwise be unlikely to pay, may be able to do so if given some help and support. In such cases we will consider referring the customer to the council's Advice Shop or the Money Advice team or to other agencies such as the Citizen's Advice Bureau.

**Where a tenant is likely to have difficulty in managing their affairs:**

Where we are advised that a customer is likely to have difficulty managing his or her own affairs, we need to know the reason for this and to seek evidence, usually in writing, to support this claim.

Depending on the reasons given, this evidence may be sought primarily from professional support workers or health care professionals, but others can, with the customer's consent, make representations to the council.

Reasons might include: learning difficulties, medical conditions, mental health problems, illiteracy or addictions.

We will consider evidence from care workers, GPs, other qualified medical practitioners, Social Workers, Supporting People teams and other support workers, as well as family members and landlords.

Each case will be looked at on its own merits. The council will not adopt a blanket approach to any group or category of customers.



### **Who decides if a tenant is likely to have difficulty in paying their rent?**

The council will decide whether a tenant is likely to have difficulty in paying their rent. Evidence will be required to support a request, which can be made by the tenant or other interested party.

You, as a landlord, can approach us if you think it likely that your tenant will have difficulty in paying or you feel they cannot deal with their financial affairs. We will contact your tenant for further information regarding this.

It is up to us to decide whether a tenant is unlikely to pay their rent. We can only do this if we have evidence of past, or likely, failure to pay rent. We will take into account all knowledge and evidence available to us at the time, including any known past history when making our decision.

It will also be important for the landlord to keep proper and adequate records of rent payments received and details of any contact made with the tenant.



### **Can the tenant ask for their benefit to be paid to their landlord?**

As part of the Housing Benefit reforms, tenants will no longer be able to simply ask for their benefit to be paid direct to their landlords. If a tenant feels that they may have difficulty in managing their financial affairs and may be entitled to direct payment to their landlord, we will consider any request they make.



### **Where direct payments are made to the landlord, how long will they go on for?**

Where a tenant is considered likely to have difficulty in paying their rent and there is little or no prospect of their situation changing, payment of benefit to the landlord is likely to be long-term.

In cases where the situation is likely to be temporary, or where rent arrears of more than eight weeks have been repaid, the situation will be reviewed. If the tenant is in a better position to have their benefit paid to themselves, and to pay their rent in full and on time, direct payments to the landlord will stop.



### **Won't tenants spend their Local Housing Allowance on other things?**

Many tenants in the private rented sector get their Housing Benefit paid to them and regularly pay their rent on time. When a tenant starts receiving their Housing Benefit directly, we will make it clear to them what their responsibilities are and the consequences of not paying their rent.

There will be some customers who can't manage their own rent payments, so the comprehensive package of safeguards will stop these customers falling into unmanageable difficulties.



## **Won't this discourage landlords from letting their properties to claimants?**

The Government believes that the Local Housing Allowance scheme has positives for both landlords and tenants.

The reforms are intended to help landlords, as well as tenants, by creating a more transparent system that is simpler to understand and administer. Overall, it aims to support and clarify the relationships between the local authority, tenants and landlords.

Landlords will still be able to approach councils for help with rent arrears for tenants getting benefit calculated using the Local Housing Allowance rules. They cannot do this where they have a tenant in rent arrears who is not getting benefit.

Because payments are going to tenants in most cases, this removes the possibility of landlords being asked to repay large amounts in overpaid benefit.



## **What appeal rights do I have against a payment decision?**

Appeal rights are not changing as a result of the new scheme. You will still have the right to appeal against a decision by the authority not to make direct payments.

If you want to know more about the changes and how they affect you:

- Phone us on 01506 776 800
- Visit our website at [www.westlothian.gov.uk](http://www.westlothian.gov.uk)
- Email us at [benefits@westlothian.gov.uk](mailto:benefits@westlothian.gov.uk)

Remember that this booklet is a guide only. It gives general information and examples. It is not a complete statement of the law.