

DISCRETIONARY HOUSING PAYMENTS POLICY

1.0 EXECUTIVE SUMMARY

- 1.1 Margaret Burgess, Minister for Housing and Welfare wrote to local authority Chief Executives on 28 March 2014 about the measures that the Scottish Government is taking to mitigate under-occupancy restrictions in the social rented sector in 2014/15. In total, £35m has been committed in addition to the DWP allocation of £15.2m in Scotland. She stated that “this money will be made available to social landlords through Discretionary Housing Payments (DHPs) (which are capped).” The UK government on 2 May 2014 confirmed that it was prepared to offer Scottish Ministers the power to set the cap on DHPs in Scotland through a section 63 order. On 25 June 2014 we received confirmation that this offer has been accepted. There is now a shared commitment from Westminster and the Scottish Parliament to deliver the order and the necessary secondary legislation in the Scottish Parliament in 2014-15. The letter acknowledges the Scottish Government’s stated intention which is to either remove the cap completely or to set it at a high enough level to fully mitigate the under-occupancy restrictions.
- 1.2 Total funding for DHPs aimed at mitigating the under-occupancy restrictions in Scotland is now £44.7m which exceeds the latest estimate from DWP for these deductions of £42.2m. Councils are asked to factor this information into account when planning DHP expenditure. The expectation is that we should pay DHPs on every under-occupancy case regardless of hardship. The Council has sufficient funding available to do this for 2014-15.
- 1.3 The DHP policy says that we must consider the household’s financial circumstances, the tenancy, prevention of homelessness, the household’s medical circumstances and the priority group into which the applicant falls. Using this overall assessment, applicants are assessed as high, medium or low priority within each priority group. Each month there is an assessment of which groups can be supported. The intention is to support all groups A to E high priority cases and as many of the medium priority cases as possible
- 1.4 This paper proposes to amend this policy for 2014-15 to allow DHPs to be paid to all under-occupancy cases irrespective of whether they would otherwise be considered as high, medium or low priority and for this change to be backdated to 1 April 2014. It proposes a simplified application process for these cases. No proposals are made for 2015-16 and beyond as the funding position for those years is uncertain. A further paper will be brought to Committee once that information is known.

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2.0 INTRODUCTION

- 2.1 On 13 February 2014 Council agreed an amendment to the Discretionary Housing Payments (DHP) Policy to allow awards of up to 52 weeks for under-occupancy cases, and for these to be backdated to when the under-occupancy restriction started, and for these to be extended for a further 52 weeks following a review. However Council did not support an amendment “to pay all retrospective and future applications for compensation for Housing Benefit reductions in 2013/14 and 2014/15 resulting from the Bedroom Tax.”
- 2.2 In view of changes since then to the amount of funding being provided by the Scottish Government, and also proposed changes in legislation by both the UK government and the Scottish Parliament to permit increased payments of DHP to fully mitigate under-occupancy restrictions in Scotland, it is now proposed to amend the council’s DHP policy in order to reflect these changes. These are significant changes which were not anticipated when the council made its decision in February 2014.

3.0 RECOMMENDATIONS

- 3.1 The committee is asked to approve the amendment of the DHP policy as set out in Appendix 1. This would allow DHP payments to be made to all housing benefit claimants subject to under-occupancy restrictions in 2014/15 without any further financial assessment being carried out. A simplified application process for such cases is proposed. Approval is also sought to allow such payments to be backdated to 1 April 2014 or such later date when the under-occupancy restriction commenced.
- 3.2 The committee is asked to note that a further paper will be brought in respect of 2015-16 and beyond once the funding position in relation to those years is known.

4.0 DETAIL

- 4.1 DWP announced additional funding on 30 July 2013 for DHP for the 21 least densely populated local authorities. This increased our allocation from £152,601 to £370,656 for 2013/14. These monies were fully spent at the year-end. We spent £397,340 which is £26,684 in excess of the DWP allocation. The excess was covered by additional monies from the Scottish Government and was within the estimate of up to £50,000 approved by Council in February 2014.
- 4.2 Our allocation from DWP for 2014/15 is £409,580 – an increase of just over 10%. The allocation from the Scottish Government for 2014/15 is £375,838. This is based on the agreed distribution of £20m funding for this purpose. Whilst an

additional £15m has been announced and the distribution for these monies is still to be finalised, we do not expect to receive anything from these further funds. Funding for future years has not been announced and is uncertain.

- 4.3 On 13 February 2014 Council agreed an amendment to the Discretionary Housing Policy to allow awards of up to 52 weeks for under-occupancy cases, and for these to be backdated to when the under-occupancy restriction started, and for these to be extended for a further 52 weeks following a review.
- 4.4 However Council did not support an amendment “to pay all retrospective and future applications for compensation for Housing Benefit reductions in 2013/14 and 2014/15 resulting from the Bedroom Tax.” This was based on officer advice that there was concern about the legality to pay DHPs to all such cases without any financial hardship assessment.

Changes since council decision in February 2014

- 4.5 Since then, Margaret Burgess, Minister for Housing and Welfare wrote to Chief Executives on 28 March 2014 (see Appendix 2) about the measures that the Scottish Government is taking to mitigate under-occupancy restrictions in 2014/15. She advised that in total £35m has been committed in addition to the DWP allocation of £15.2m and this will be enough to mitigate all under-occupancy restriction losses in Scotland in 2014/15. Councils were also asked to factor this information into account when planning DHP expenditure. The implication is that we should pay DHPs on every under-occupancy case regardless of hardship. This would require a change in our existing DHP policy.
- 4.6 For some councils, if they were to pay DHPs for all under-occupancy cases, this would mean that they would breach the legal cap on DHPs which is set at 2.5 times the DWP funding for these. The UK government has indicated that it intends to lift the cap on DHPs. On 25 June 2014 Rt Hon David Mundell, Parliamentary Under Secretary of State for Scotland, Nicola Sturgeon, Deputy First Minister, and Lord Freud, Minister for Welfare Reform jointly wrote to the Council Leader (see Appendix 3) advising of the agreement to devolve these powers to the Scottish Parliament via a section 63 order towards the end of the calendar year. They have confirmed that local authorities will be able to incur expenditure beyond the current cap on DHPs prior to the new legislation coming into effect. The Scottish Government’s intention is to either remove the cap entirely or to set it at a high enough level to meet their policy intentions of fully mitigating the bedroom tax.
- 4.7 A paper on principles of distribution will be prepared by CoSLA proposing that the extra £15m being made available by the Scottish Government is distributed based on actual cost of under-occupancy restrictions for 2014-15. It is estimated that the total cost of the under-occupancy restrictions in Scotland is c £41m (based on national DWP SHBE statistics) and that there should be sufficient funding in total between DWP allocation of £9.7m and £35m from Scottish Government to cover this in total. Initial distribution of the remaining £20m is likely to be based on DWP data for the first quarter with a 20% holdback to be determined after the end of the financial year. Based on these estimates, it is unlikely that any council will have a shortfall in 2014/15. Distribution is still to be finally agreed by the Settlement and Distribution Group and Cosla Leaders – probably in August.
- 4.8 This council will not be affected by the removal of the cap on DHPs. For us, the cap for 2014-15 is set at £1,023,950 whereas our total funding is £785,418, which is below the cap. In terms of the adequacy of the funding, our estimate of total bedroom tax losses is £491,000. In 2013-14 we paid out £110,456 in DHP for non-bedroom tax cases. Assuming a similar level of spend in 2014-15 for non-

bedroom tax cases, that would predict a total spend of £601k which is well within the funding available of £785,418. That would leave a balance of £184k to direct to other welfare reform mitigations.

- 4.9 It should be noted that the distribution of funding for 2015-16 is likely to be different, and the total funding available from both DWP and the Scottish Government is uncertain. Hence the changes proposed in this paper are for 2014-15 only and a further paper will be brought back for 2015-16 and beyond once the funding situation is known for those years.

Current DHP Policy and Legislation

- 4.10 The Discretionary Financial Assistance Regulations 2001 state that we should only pay out DHPs to those who appear to a local authority to require additional support for their housing to meet any shortfall between their rent and housing benefit. There is no intention to amend this legislation. Views have been sought on whether the existing legislation supports paying out on all under-occupancy cases without any means test. Most councils are now planning to do this. It is now clear that the policy intention of the Scottish Government is that there should be no means test for such cases, and this is supported by the UK government and there is therefore a high degree of assurance that this is unlikely to be subject to legal challenge.

Proposed policy change

- 4.11 It is proposed that we amend our policy to pay out on all under-occupancy cases irrespective of hardship. For all those on partial benefit, we will make up the shortfall in proportion to the level of benefit they are awarded, i.e. if on 50% of benefit, they will receive 50% of the under-occupancy shortfall. This puts them in the same position as if there were no restriction on their eligible rent as a result of the under-occupancy restrictions. However, if they make a full means tested application and meet the relevant definition of hardship, the full amount of the shortfall could be paid as consistent with other DHP applications.
- 4.12 These changes are proposed for 2014-15 only at this stage due to the uncertainty of funding for 2015-16 and beyond. These changes are proposed to be effective from 1 April 2014. Any backdating prior to that date would be based on an assessment of hardship in line with the current policy.

Application process

- 4.13 Legislation requires that an application is made for DHPs – we cannot simply award these without an application. It is proposed that we have a simplified application process for all under-occupancy cases where there is now no requirement to assess hardship. Applications will be accepted by telephone call to the customer service centre on the Benefits Line (01546-605512) where all calls are recorded and provide a formal record. We will also design a simple form which will be made available both in hardcopy and via the council website. We will proactively contact all those whom we think will be eligible, and work closely with the registered social landlords to make sure we don't miss anyone. For all social sector tenants subject to under-occupancy, we will amend the housing benefit application form to incorporate an application for DHP in order to simplify this for the future.
- 4.14 The changes needed to the DHP policy to put this into effect are set out at Appendix 1 for consideration and approval.

5.0 CONCLUSION

- 5.1 Policy and Resources Committee is asked to approve the changes to DHP policy as set out at Appendix 1 in order to allow DHPs to be paid for all under-occupancy cases without any assessment of hardship and through a simplified process. This change is proposed in response to this now being a clear policy from the Scottish Government and additional funding being made available by them for this purpose. In addition legislative changes are being made to facilitate this in the Westminster and Scottish Parliaments.
- 5.2 If all under-occupancy households make a claim, this is expected to increase the level of expenditure on DHPs by c £200k in 2014/15 to a total of c £601k which is well within the funding available of £785k.

6.0 IMPLICATIONS

- 6.1 Policy: In line with revised Scottish Government policy re under-occupancy.
- 6.2 Financial: Expected to maintain DHP awards within current budgets for 2014-15 of £785k.
- 6.3 Legal: Consensus across local authorities that this is in line with DHP legislation. New legislation being enacted in Westminster and Scottish Parliaments to facilitate this change and local authorities have been given assurance that they need not wait for these changes to be enacted.
- 6.4 HR: None.
- 6.5 Equalities: No changes required to equality impact assessments carried out for these policy areas.
- 6.6 Risk: Removes risk of challenge in relation to under-occupancy cases.
- 6.7 Customer Service: Provides an easier way for those affected by the bedroom tax to make a claim for DHPs.

Douglas Hendry
Executive Director Customer Services
21 July 2014

For further information please contact Judy Orr, Head of Customer and Support Services Tel 01586-555280 or Fergus Walker, Revenues and Benefits Manager Tel 01586-555237

Appendix 1: Proposed changes to DHP policy

Appendix 2: Letter from M Burgess 28 March 2014

Appendix 3: Letter from Lord Freud, David Mundell and Nicola Sturgeon 25 June 2014

Background papers

Proposals to utilise Scottish Government Funding for Welfare Reform and Discretionary Housing Payments: Council 13 February 2014

Welfare Reform: Council 21 March 2013

Appendix 1: Proposed changes to DHP Policy

Section 5.0 CLAIMING DHP

Replace: “A claim must be made in writing and signed by the claimant. ”

With: “For 2014-15 a claim for DHP in respect of an under-occupancy restriction may be made in a simplified form made available for that purpose, or by telephoning the Benefits Line on 01546-605512, and stating that they wish to claim DHP for under-occupancy restrictions. In such cases DHP will be awarded for those on partial benefit so as to put them in the same position as if there were no restriction on their eligible rent as a result of the under-occupancy restrictions. Where such a claimant wishes to receive further DHP, and also in all other cases, a claim must be made in writing and signed by the claimant.

Section 6.0 PERIOD OF AWARD

Replace “For claimants subject to under-occupancy restrictions, an initial award can be made for up to a full 52 weeks if that appears appropriate and the award may also be backdated to 1 April 2013 or such later date when the under-occupancy restriction commenced. The award may be extended following a full review of the claim for a further period of up to 52 weeks.”

With: “For claimants subject to under-occupancy restrictions where there is no assessment of hardship, an award can be made for the relevant period up to 31 March 2015 if that appears appropriate. The award will be backdated to 1 April 2014 or such later date when the under-occupancy restriction commenced. The award may be extended following a full review of the claim for a further period of up to 52 weeks.

For claimants subject to under-occupancy restrictions where there has been an assessment of hardship as set out in section 7.0 Awarding a DHP, additional backdating to 1 April 2013 or such later date when the under-occupancy restriction commenced may be considered as described in section 9.0 Backdating the Award. An award can be made for the relevant period up to 31 March 2015 if that appears appropriate. The award may be further extended following a full review of the claim for a further period of up to 52 weeks.

Section 7.0 AWARDING A DHP

Add at the start of the bullet point list in the first paragraph:

- Any under-occupancy restriction affecting the household

Insert prior to paragraph 7.1 THE HOUSEHOLD’S FINANCIAL CIRCUMSTANCES:

7.1A UNDER-OCCUPANCY RESTRICTIONS

In line with Scottish Government policy, and in recognition of the funding provided for this purpose in 2014-15, all households applying for a DHP who are subject to an under-occupancy restriction will be supported in 2014-15 irrespective of hardship or circumstance. The amount of DHP to be paid is to be calculated so as to put them in the same position as if there were no restriction on their eligible rent as a result of the under-occupancy restrictions. If the household is desirous of further assistance via DHP, that will be subject to consideration of their financial circumstances, tenancy, homelessness, medical circumstances and priority group as described below.

Appendix 2: Letter from M Burgess 28 March 2014 (attached)

Appendix 3: Letter from Lord Freud, David Mundell and Nicola Sturgeon 25 June 2014 (attached)