

# **CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000**

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## **EXPLANATORY NOTES**

### **PART III: SOCIAL SECURITY ADMINISTRATION**

#### ***Housing Benefit and Council Tax Benefit***

#### ***Recovery of Housing Benefit***

#### ***Current position***

833. For tenants in the private rented sector, Housing Benefit may be paid direct to the landlord or his managing agent in prescribed circumstances. Currently approximately 56% of private sector tenants and 86% of registered social landlord tenants have their benefit paid direct to their landlord or agent.
834. Tenants in receipt of Housing Benefit are required to notify the local authority of any change in their circumstances that could affect their entitlement, for example, a change of address or change in income. Landlords and agents receiving benefit direct are also required to notify the local authority of any change in their tenants' circumstances that they might reasonably be expected to know could affect the tenants' entitlement to Housing Benefit.
835. Local authorities often face problems recovering Housing Benefit debts if tenants simply disappear. Housing Benefit legislation, therefore, allows local authorities, where benefit is paid direct, the discretion to recover an overpayment from either the tenant or the landlord or agent (as the person to whom benefit was paid). The result of this is that, in cases of tenant fraud, local authorities may, and often do, recover the debt from the landlord or his agent. Although such a recovery re-opens the tenant's rental liability to the landlord, creating rent arrears, in practice it means that the fraudulent tenant often suffers no consequence for their action. This can act as a disincentive to landlords and their agents to report suspected fraud, when they know that they could find themselves repaying any subsequent overpayment.

#### ***The measure in the Act***

836. [Section 71](#) makes provision to amend section 75(3) of the Social Security Administration Act 1992\* (the "Administration Act"). Section 75(3) currently provides for recovery to be made in all cases from the person to whom it was paid or such other person as may be prescribed. Landlords and agents fall under the first category as the person to whom benefit is paid. The measure will allow for exceptions to be made in regulations to the provision that overpayments are recoverable from the person to whom benefit was paid. Regulations will prescribe that where the landlord or agent has reported suspected tenant fraud, the local authority cannot recover from the landlord/agent to whom it was paid but can recover from the tenant. However, in cases where the landlord is shown to have acted maliciously or is in collusion with the tenant, local authorities will retain their discretion to recover the overpayment from either party.

**Section 71: Recovery of housing benefit**

837. This section replaces subsection (3) of section 75 of the Administration Act, which provides the powers which specify from whom an overpayment of Housing Benefit may be recovered.

*New subsection (3)(a)* provides that an overpayment is recoverable from the person to whom the benefit was paid, but allows for exceptions to this to be prescribed in regulations. This will allow for regulations to provide for an exception in the case where a landlord or agent has reported suspected tenant fraud, and subsequent investigations have found no evidence to indicate the landlord had acted maliciously or had been in collusion with the fraudulent tenant.

*New subsection (3)(b)* provides that in addition to the overpayment being recovered from the person to whom the benefit was paid, it may also be recovered from such other person as prescribed in regulations. This replicates the existing power in the current subsection (3). Regulations currently prescribe that, in addition to the person to whom benefit was paid, recovery can also be sought from the claimant, or such other person who misrepresented or failed to disclose a material fact that resulted in the overpayment of benefit. The intention is to continue with these provisions in the new regulations.