



## What is a non-metropolitan county council in England?

### Basic info

Non-metropolitan county councils are one of the two “tiers” of local government that exist in parts of England: some services (mainly education and social care) are provided throughout the whole county by the county council while other services (including Housing Benefit) are provided by two or more district councils, each of which covers part of the county’s area. A non-metropolitan county council in England is the only local authority in Great Britain that is not also responsible for administering Housing Benefit.

### Why does this matter?

As a general rule, there is no restriction on the amount of Housing Benefit that a local authority may pay to its own tenants or licensees (but see “Welfare Reform” below for the exceptions to this general rule). In most cases where the Housing Benefit claimant pays rent to a local authority that same authority deals with his/her benefit claim and the rent can be covered in full. Housing Benefit in such a case is referred to as a “rent rebate”.

But where rent is paid to an English non-metropolitan county council, the claimant does not receive a rent rebate from that same council. Instead, the Housing Benefit claim is dealt with by the district council and the award takes the form of a “rent allowance”. By default a rent allowance is subject to the Housing Benefit rules for private tenants (see What are the benefit limits from which exempt accommodation is exempt?). By including an English county council as an eligible landlord for exempt accommodation the regulations ensure that people who live in supported accommodation provided by such a council do not have their benefit restricted to private tenant rates.

### Definition of non-metropolitan county

The definition of exempt accommodation refers to “a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972”. Section 1 of the 1972 Act says:

1) For the administration of local government on and after 1st April 1974 England (exclusive of Greater London and the Isles of Scilly) shall be divided into local government areas to be known as counties and in those counties there shall be local government areas to be known as districts.2) The counties shall be the metropolitan counties named in Part I and the non-metropolitan counties named in Part II of Schedule 1 to this Act and shall comprise the areas respectively described (by reference to administrative areas existing immediately before the passing of this Act) in column 2 of each Part of that Schedule.

Part II of the Schedule lists the following non-metropolitan counties:

Avon, Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Cheshire,



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Cleveland, Cornwall, Cumbria, Derbyshire, Devon, Dorset, Durham, East Sussex, Essex, Gloucestershire, Hampshire, Hereford & Worcester, Hertfordshire, Humberside, Isle of Wight, Kent, Lancashire, Leicestershire, Lincolnshire, Norfolk, North Yorkshire, Northamptonshire, Northumberland, Nottinghamshire, Oxfordshire, Salop, Somerset, Staffordshire, Suffolk, Surrey, Warwickshire, West Sussex and Wiltshire.

Some of these councils no longer exist (a matter discussed under Local Government Reform below), but where they remain the following example demonstrates the conventional non-metropolitan county exempt accommodation model:

- The claimant occupies accommodation in the town of Chorley provided by Lancashire County Council: his rent liability is to the County Council
- He is provided with support commissioned by Lancashire County Council from a specialist support provider. This support is therefore being provided on behalf of Lancashire
- Housing Benefit is in the form of a rent allowance awarded by Chorley Council
- Because the non-metropolitan county council is both the landlord and the commissioning authority for the support, this is exempt accommodation

## Welfare reform

Since April 2013 it is possible for Housing Benefit in the form of a rent rebate to be restricted in two ways:

- If the claimant occupies accommodation larger than s/he requires by reference to prescribed criteria the rent eligible for Housing Benefit is reduced by 14% or 25%
  - The proper name for this rule is the Maximum Rent (Social Sector) but it is more commonly known as the “bedroom tax”
- If the claimant’s total income from most state benefits exceeds or would exceed a certain amount (normally £500 a week) Housing Benefit is capped

If the claimant occupies exempt accommodation, however, the “bedroom tax” does not apply and the Housing Benefit award itself does not count towards the £500 a week cap which makes it very unlikely that the claimant will be subject to the cap.

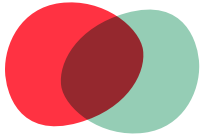
In addition, Housing Benefit for general needs tenants is gradually being phased out and replaced by the housing element of Universal Credit. But if the claimant occupies exempt accommodation Universal Credit does not include any housing element and the claimant remains entitled to Housing Benefit.

The 2013 reforms have prompted the development of innovative arguments that some claimants in England receiving Housing Benefit in the form of a rent rebate from their landlord local authority are in fact occupying exempt accommodation and therefore protected from the “bedroom tax” and benefit cap. These arguments are explored under the heading Local Government Reform below.

## Local government reform

### Legal framework

Under the Local Government Act 1992 and, more recently, the Local Government



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and Public Involvement in Health Act 2007, local government in two-tier areas may undergo the following changes:

- One or more district councils covering all or part of a non-metropolitan county council's area may take on the functions of the county council and become single-tier "unitary" councils
- A county council may take over the functions of the district councils in its area and become a unitary council

Each time this happens the Secretary of State with responsibility for local government makes a "structural change order": for example the Shropshire (Structural Change) Order 2008 abolishes five district councils and makes Shropshire the sole local authority throughout the county.

If a local authority affected by a structural change order is referred to in other legislation predating the structural change, it is not necessary for every such reference to be traced and amended to reflect the new structure. This is because transitional regulations made under the 1992 and 2007 Acts provide for existing legal references to continue to have effect wherever necessary as if they referred to the new local authority structure:

- Structural changes under the 1992 Act are covered by the Local Government (Changes for England) Regulations 1994
- Structural changes under the 2007 Act are covered by the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008

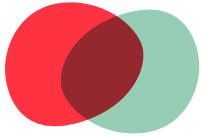
Both sets of Regulations include the following provisions:

- From Reg 3 of the 2008 Regulations:
  - (1) In relation to an area for which ... there is a district council but no county council, any reference in an enactment to a county council or a county shall, so far as is required for giving effect to the enactment, be construed as including a reference to a district council or, as the case may be, a district
- From Reg 5 of the 1994 Regulations:
  - (6) Any reference in a provision to a county council shall, so far as is required for continuing the effect of the provision, be construed as including a district council to which county functions have been transferred pursuant to a structural change.

The list of non-metropolitan county councils found in Schedule 1 to the 1972 Act has never been amended since it came into force even though some of the councils on that list have been abolished and the area and/or functions of others have changed. But it is not necessary for the 1972 Act to be amended because the Regulations quoted above allow it to be read as if it were constantly updated to reflect the ongoing gradual structural reform of local government in England.

### **Structural changes that have taken place**

Since the 1990s most of the 39 non-metropolitan councils listed in Schedule 1 to the 1972 Act have changed in some way. Only Cumbria, Gloucestershire, Hertfordshire, Lincolnshire, Norfolk, North Yorkshire, Northamptonshire, Oxfordshire, Somerset, Suffolk, Surrey, Warwickshire and West Sussex remain as two-tier counties covering the same area specified in the 1972 Act. The other 26 counties have undergone the following structural changes:



- Avon, Bedfordshire, Berkshire, Cheshire, Cleveland, Hereford & Worcester and Humberside councils no longer exist: all of their functions have been transferred to two or more single-tier “unitary” authorities (except for Worcestershire which is now a county council for a two-tier area covering part of the former county of Hereford & Worcester).
  - For example the former Bedfordshire council’s services are now delivered by the three unitary councils of Bedford, Luton and Central Bedfordshire. These three councils also administer Housing Benefit so any former Bedfordshire Council tenants or licensees now receive a rent rebate from one of the three unitary councils.
- Cambridgeshire, Buckinghamshire, Derbyshire, Devon, Dorset, East Sussex, Essex, Hampshire, Kent, Lancashire, Leicestershire, Nottinghamshire, and Staffordshire remain as two-tier counties but now covering a smaller area than the one specified in the 1972 Act because major towns and cities have been split off as separate unitary councils
  - For example Lancashire has lost the areas of Blackburn with Darwen and Blackpool unitary councils; Kent has lost the area of Medway unitary council etc
- In Cornwall, Durham, the Isle of Wight, Northumberland, Salop and Wiltshire the district councils have been abolished and these counties have become single tier unitary authorities covering the whole of their respective areas. But note:
  - Salop, Durham and Wiltshire cover smaller areas than those specified in the 1972 Act following the creation of Telford & Wrekin, Darlington and Swindon unitary authorities
  - Salop has changed its name to Shropshire
  - Cornwall, the Isle of White and Northumberland have the same name and cover the same area as specified in the 1972 Act

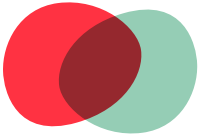
These reforms raise some interesting questions about exempt accommodation status and unitary authorities. Before the welfare reform programme that began in 2013 the question whether an English unitary authority was an exempt accommodation landlord was academic: Housing Benefit in the form of a rent rebate was not restricted at all. But there is now a debate as to whether a tenant paying rent to an English unitary authority enjoys the protection from some welfare reforms that exempt accommodation status affords. The following notes explore this debate.

### **Unitary councils and exempt accommodation**

1. The six unitary councils that were formerly non-metropolitan county councils

These six councils still exist as the councils named in the 1972 Act: the structural change orders that introduced single tier local government to these counties abolished the district councils and transferred their functions to the already-existing county councils. It therefore appears that these six unitary councils are still “non-metropolitan county councils within the meaning of section 1 of the Local Government Act 1972”.

Five of the six councils hold some housing stock because at least one of the districts whose functions they took over retained its own housing stock at the point when it was abolished. The exception is the Isle of Wight whose housing stock has all been transferred to housing associations. So, if a tenant of



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Cornwall, Durham, Northumberland, Shropshire or Wiltshire Council receives care, support or supervision which is provided or commissioned by that same Council it appears that s/he occupies exempt accommodation.

## 2. Existing district councils that have taken over county functions

Whenever a district council takes over county functions in its area, the structural change order does two things:

- It redefines the existing county as no longer including that area
- It creates a new county whose area is coterminous with that of the district

For example, the following extract is from the Derbyshire (City of Derby) (Structural Change) Order 1995:

- Constitution of new county of Derby
  - (1) Derby shall cease to form part of Derbyshire.
  - (2) A new county shall be constituted comprising the area of Derby and shall be named the county of Derby.
  - (3) Section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply in relation to the county of Derby.

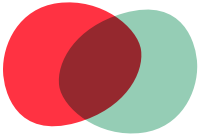
There is an argument that Derby is now a non-metropolitan county council within the meaning of s1 of the 1972 Act, and therefore the right kind of landlord to satisfy the definition of exempt accommodation, if Article 8 of the structural change order is read in conjunction with Regulation 5(6) of the Local Government (Changes for England) Regulations 1994: "Any reference in a provision to a county council shall, so far as is required for continuing the effect of the provision, be construed as including a district council to which county functions have been transferred pursuant to a structural change".

The counter-argument is that the words in bold are not engaged when it comes to exempt accommodation. There is, runs this counter-argument, nothing in the policy behind the inclusion of non-metropolitan counties in the definition of exempt accommodation that "requires" it to extend to rent rebate cases in Derby (or any other unitary council like Derby): to do so would place Derby and other English unitary councils in an unfairly advantageous position compared with London boroughs, metropolitan boroughs and every council in Scotland and Wales because any tenant of Derby Council, including those who would have been Derby Council tenants in the absence of any structural change, potentially occupies exempt accommodation if the Council provides or commissions care, support or supervision for him or her.

On the other hand, if the 1994 Regulations are not engaged here and Derby is not to be regarded as a non-metropolitan county council under the 1972 Act, tenants of accommodation that would have been provided by the County Council prior to structural change are at a disadvantage because they could lose their exempt accommodation status.

## 1. Abolished county councils

Whenever a former non-metropolitan county council is abolished it is normally the case that some or all of the district councils in its area are too small to



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stand alone as unitary authorities. Therefore completely new councils are established to carry out both district and county functions in areas that were previously covered by more than one district. Thus, for example, when Cheshire County Council was abolished by the Cheshire (Structural Change) Order 2008, two completely new council areas were created. The Order describes these new areas as being both non-metropolitan counties and non-metropolitan districts; each area is served by one council, described by the Order as a “district council”:

- Cheshire East comprises the areas formerly covered by Congleton, Macclesfield and Crewe & Nantwich Councils
- Cheshire West and Chester comprises the areas formerly served by Vale Royal, Ellesmere Port & Neston and City of Chester Councils

Regulation 3 of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 says: “In relation to an area for which ... there is a district council but no county council, any reference in an enactment to a county council or a county shall, so far as is required for giving effect to the enactment, be construed as including a reference to a district council or, as the case may be, a district”. The arguments and counter-arguments about whether these new authorities are non-metropolitan counties within the meaning of the 1972 Act are essentially the same as those discussed in relation to Derby above: is it “required” that former district council tenants in Cheshire are to be regarded as non-metropolitan county council tenants in order to “give effect” to the policy intention behind the definition of “exempt accommodation”?

None of these arguments has so far been tested in any Upper Tribunal appeal so different councils will have their own views as to the correct approach.