



Under-occupation of social housing: Housing Benefit entitlement

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Social landlords have long had an interest in tackling under-occupation in order to achieve the best use of their housing stock. Landlords have developed incentive schemes to encourage tenants to relocate to smaller properties; however, as a general rule, they do not have the power to force social tenants to move against their will.

The Government has used powers contained in the *Welfare Reform Act 2012* to provide that, since 1 April 2013, working-age social tenants in receipt of Housing Benefit will experience a reduction in their benefit entitlement if they live in housing that is deemed to be too large for their needs. Restrictions on entitlement to Housing Benefit based on the size of the accommodation occupied have applied to claimants living in privately rented housing since 1989 (Schedule 3 to the *Rent Officers (Additional Function) Order 1989*).

The policy is highly controversial and has been labelled the "bedroom tax" – it is also referred to as the "spare room subsidy". Amendments to the *Welfare Reform Bill* were secured during its passage through the House of Lords but they did not survive into the final Act. Ed Miliband announced that a Labour Government would abolish the Housing Benefit deduction during his speech to the 2013 Labour Party Conference.

The *Housing Benefit and Universal Credit in the Social Housing Sector (Regular Payments) Bill*, which was introduced by Ian Lavery on 12 February 2014 under the Ten Minute Rule, sought to abolish the under-occupation deduction. The Bill failed to make progress before the end of the 2013-14 Session.

This note provides information on who is affected by the under-occupation deduction in the social rented sector, summarises a selection of legal challenges and discusses potential responses by landlords and tenants. Separate notes (SN/SP/6896 and SN/SP/6899 respectively) consider evidence (to date) on the impact of the under-occupation deduction and the use of Discretionary Housing Payments (DHPs) to mitigate the impact.

The rules on Housing Benefit apply in England, Wales and Scotland. The *Welfare Reform (Northern Ireland) Bill 2012* has not completed its progress through the Assembly so the deduction does not yet apply in Northern Ireland. SN/SP/6899 details the Scottish Government's approach to the use of DHPs.

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- a child of 15 or under is expected to share with another child of the same gender; and
- a child of 9 or under is expected to share with one other child aged 9 or under, regardless of gender.

No exemption or account is taken of children whose main residence is elsewhere.²¹

A bedroom is allowed for a non-resident carer where they provide overnight care for the Housing Benefit claimant or their partner. Since 4 December 2013 a bedroom is also allowed for an overnight carer and/or foster child in the overall size criteria calculation for any other joint tenant (or their partner) in the property. HB Circular A21/2013 explains why the additional bedroom allowance was introduced:

Since the introduction of the Removal of the Spare Room Subsidy (RSRS) for social sector claimants in April 2013, there has been a disparity in the treatment of joint tenants where one of the joint tenants requires an overnight carer or has a foster child. A joint tenant was deemed to be under-occupying even if the spare room was occupied by the other joint tenant's overnight carer or foster child. The legislation only provided for an extra room where the HB claimant or their partner was a person requiring overnight care or who was a qualifying foster carer.

This meant that even when all the bedrooms were occupied, a joint tenant could still be subject to the RSRS as they were not a person requiring overnight care. This situation also applied where a foster child occupied the spare bedroom of a joint tenant.²²

Annex 3 to HB Circular A21/2013 provides examples of how the amendment impacts on joint tenants.

An additional bedroom is also allowed in respect of certain disabled children (see section 3.4 below).

On 12 March 2013 the Secretary of State, Iain Duncan Smith, announced further exemptions for approved foster carers and parents with an adult son or daughter serving in the armed forces (see sections 3.7 and 3.8 for more information).²³

Housing Benefit/Council Tax Benefit Circular A4/2012 advises that the regulations do not define a bedroom:

We will not be defining what we mean by a bedroom in legislation and there is no definition of a minimum bedroom size set out in regulations. It will be up to the landlord to accurately describe the property in line with the actual rent charged.²⁴

The issue of bedroom sizes and suitability for sharing was raised during the Committee stage of the *Welfare Reform Bill* in the House of Lords. There is concern that while some bedrooms will accommodate two children sharing, others will not. The National Housing Federation, commenting on the draft regulations, said:

Some bedrooms will be able to accommodate two 15-year-old boys, for example, but some will not. A three-bedroom house with three large bedrooms might be appropriate for a couple and four children. But a three-bedroom house with one large double room

²¹ Housing Benefit/Council Tax Benefit Circular A4/2012, para 45

²² HB Circular A21/2013, paras 22-23

²³ HC Deb 12 March 2013 WS

²⁴ Housing Benefit/Council Tax Benefit Circular A4/2012, para 12

3.7 Foster carers and adoptive parents

The original regulations did not exempt foster carers and those who keep a spare bedroom in expectation of a foster child placement from the under-occupation restrictions. Instead, the Government made an additional £5m available for Discretionary Housing Payments to assist this group.¹¹⁶ Information on Discretionary Housing Payments can be found in section 4.1 (below).

However, in a Written Ministerial Statement on 12 March 2013, Iain Duncan Smith announced that the regulations would be amended to allow an additional room for approved foster carers:

The Secretary of State for Work and Pensions (Rt. Hon. Iain Duncan Smith MP): I am pleased to announce that we intend to lay amending regulations to clarify the size criteria rules for two specific groups of Housing Benefit recipient, Foster Carers and Armed Forces personnel.

People who are approved foster carers will be allowed an additional room, whether or not a child has been placed with them or they are between placements, so long as they have fostered a child, or become an approved foster carer in the last 12 months.¹¹⁷

The *Housing Benefit (Amendment) Regulations 2013* (SI 2013/665) were laid before Parliament on 21 March 2013 and came into force on 1 April 2013. Housing Benefit Circular A10/2013 provides the following guidance on circumstances in which foster carers in social rented housing will be exempt from an under-occupation deduction:

Where a claimant or partner who is an approved foster carer (or a formal kinship carer in Scotland) one extra bedroom will be allowed under the size criteria rules for use by a foster child or children, in both the private and social rented sectors.

One extra bedroom will apply to:

Approved foster carers (or kinship carers in Scotland) who have a child placed with them.

Approved foster carers who are between placements but only for a period of up to 52 consecutive weeks from the date of the last placement.

Newly approved foster carers but only for a period of up to 52 consecutive weeks from the date of the approval, if no child is placed with them during that period.

For approved foster carers in the social rented sector, a reduction for under-occupation will not be made in respect of the one additional bedroom for the foster child or children.

The claimant must have a bedroom in their home which is in addition to those occupied by their household, for the additional room to be allowed in the size criteria

If the claimant requires more than one additional room for foster children, they can apply for additional support with their housing costs through Discretionary Housing Payments (DHP).

An extra bedroom will not be provided for prospective foster carers until they are approved; however people going through the approval process will need to show that

¹¹⁶ HB/CTB Circular A4/2012

¹¹⁷ HC Deb 12 March 2013 cc9-10WS

they have a spare room available. DHPs can be used to provide support in the interim period.

The claimant or partner will receive a letter confirming their approval from the social worker responsible for their assessment. Local authorities (LAs) must be satisfied that all appropriate evidence is in place before allowing the additional room.

If the claimant or partner ceases to be an approved foster carer or their approval is revoked, the additional room will cease to apply to the size criteria.

Foster children will continue to be excluded from the HB assessment which means that a personal allowance is not awarded in respect of them and fostering allowance will still be fully disregarded as income.

It does not apply to special guardianships, as these children are currently treated as a member of the household and are therefore already included in the size criteria assessment.

In England foster parents are 'approved' under regulation 27 of the *Fostering Services (England) Regulations 2011* and in Wales under regulation 28 of the *Fostering Services (Wales) Regulations 2003*. In Scotland the relevant legislation is regulation 10 (kinship carers) or regulation 22 (foster carers) of the *Looked After Children (Scotland) Regulations 2009*.

Housing/Council Tax Benefit Circular A10/2013 also provides guidance on the treatment of approved or prospective adoptive parents:

People going through the approval process to become adoptive parents will need to show that they have a spare room to be approved. Until the child forms part of the household, the additional room will not apply to the size criteria. DHPs can be used to provide support in the interim period.

Where a child is placed with a claimant prior to an adoption order being made, that child is not treated as a member of the household until the adoption is approved. For the period that the child is not a member of the household, one extra bedroom will be allowed in the same way as it is for foster children.

The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 now allow an additional room for an overnight carer and/or foster child in the overall size criteria calculation for any other joint tenant (or their partner) in the property.

3.8 Temporary absences from home (students, armed forces personnel)

Housing Benefit entitlement is not affected where under-occupation arises as a result of certain temporary absences. Housing Benefit/Council Tax Benefit Circular A4/2012 contains the following guidance:

My child is away at university, can I keep their room for when they are home in the holidays?

The new size limit rules do not allow for this, unless the absence is temporary (less than thirteen weeks or 52 weeks for students) and the young person concerned intends to return home.

The Minister, Steve Webb, was asked about the impact of temporary absences during consideration of the *Draft Housing Benefit (Amendment) Regulations 2012* by the First Delegated Legislation Committee on 16 October 2012 - the Minister said: