

# Equality Analysis for The Size Criteria and children with disabilities

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Completed by: Lisa Sutherland

## Policy Intent

1. The policy intent is to safeguard the wellbeing of children and prevent them being put at risk of physical harm or having their sleep frequently and significantly disrupted by virtue of sharing a bedroom when it is inappropriate to do so because of severe disability.

## Background

2. Both housing benefit and the housing costs element of Universal Credit are awarded to people in and out of work who require financial support in order to pay their rent.
3. The amount of housing benefit (or the amount of the housing costs element in Universal Credit) to which a person is entitled is in part dependant on the size and make up of their household.
4. The size criteria applies to claimants living in both the private and social rented sectors and prescribes the number of bedrooms a claimant would be entitled to based on their household size and makeup. For private rented sector cases this is subject to a 4 bedroom maximum LHA amount, however larger properties may be affordable.
5. The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home —
  - (a) a couple
  - (b) a person who is not a child (16 years of age and over)
  - (c) two children between the ages of 10 and 15 of the same sex;
  - (d) two children who are less than 10 years old;
  - (e) a child.
  - (f) The claimant or their partner is a person who requires overnight care
  - (g) The claimant or their partner is a qualifying parent or carer
6. In May 2012 the Court of Appeal ruled that the Local Housing Allowance (LHA) size criteria were in breach of Article 14 of the European Convention on Human Rights (ECHR) and unlawfully discriminated against children who could not be expected to share a room due to disability if the nature of their disability made it inappropriate for them to do so (case of Gorry). The government has decided not to appeal the court's decision and so will legislate to reflect this.
7. The Court judgment requires differential treatment under the size criteria where:
  - a. a child or children expected to share a room are severely disabled; and
  - b. that disability makes sharing a room inappropriate.

8. In the Gorry case both of the children expected to share a room were disabled and the combination of disabilities made sharing particularly difficult. However, the guidance we subsequently issued required local authorities to consider situations where only one child (under 16 years of age) was disabled, and we propose to carry that forward into legislation.
9. In developing our policy response we have considered the position of all people with disabilities affected by the size criteria, we did not restrict the scope of our consideration to children. The proposed amendments to regulations were formed as a result of this analysis and are intended to comply with the terms of the court order.

## **Brief outline of policy**

10. The regulations we are bringing forward grant entitlement to an additional bedroom for families with disabled children subject to the following conditions;
  - (a) The disabled child(ren) would be expected to share a bedroom under the size criteria rules were it not for their disability. For housing benefit cases there would have to be a room in the dwelling which would be surplus to that determined under size criteria rules were the disabled child(ren) able to share;
  - (b) The disabled child(ren) is entitled to the care component of Disability Living Allowance (DLA) at the middle or higher rate; and
  - (c) The relevant authority is satisfied that if the disabled child(ren) was to share a bedroom with another child this would pose;
    - i). A threat of physical harm to either child; and/or
    - ii). Frequent and significant disruption to the sleep of the non-disabled child.
11. Condition C will be judged on the merits of each individual case. Guidance will be issued to Local Authorities and Universal Credit decision makers to support them in making this judgement.

## **Impact of the policy**

12. This measure allows the relevant authority to allow for an extra bedroom where a disabled child is unable to share due to their disabilities when calculating the maximum amount of help with housing costs.
13. We are unable to provide reliable estimates for conditions A and B above due to small sample sizes. The data we have access to, does however indicate that there are in the region of 10,000 households claiming Housing Benefit who meet both conditions A and B who would stand to gain. With the average cost of under occupation in the social rented sector and private rented sector at £14 and £33 per week respectively, this equates to an increase in AME costs of approximately £10 million per annum. This is likely to be an upper

estimate as we are not able to assess how many of these households might qualify under condition C above.

## **Consultation**

14. DWP has consulted formally with the Local Authority Advisory Steering Group which represents Local Authorities across Great Britain and will further consult on the guidance produced for their comment prior to issue.
15. DWP also plans to engage with housing stakeholder and disability groups in order to obtain their input in creating the guidance for decision makers to follow. This will also enable us to gain more insight into the diversity of issues faced by disabled tenants both in the social and the private rented sectors.

## **Impact with regard to protected groups**

16. In the main we have looked at equality on the basis of the Housing Benefit claimant not the disabled child as the policy is designed to impact equally on disabled children regardless of other characteristics.
17. Although we hold information on the characteristics of children with disabilities the Department does not hold information on age, gender or other protected characteristics of disabled children broken down to identify those whose families are Housing Benefit claimants affected by the size criteria.

## **Impact with regard to disability of child**

18. The policy is designed to prevent severely disabled children and their families from being disproportionately disadvantaged by the size criteria in both the private rented sector and the social rented sector.
19. The policy intent is that children ought not to be expected to share a bedroom if there would be a risk of physical harm to either child or where there are frequent and significant care needs in the night that would disturb the other child significantly.
20. The policy bases entitlement on the presence of a child in the benefit unit being in receipt of the care component of DLA, at the middle or higher rate followed by a further assessment of whether the disability makes sharing inappropriate.
21. We have included a DLA gateway as a clear and consistent test of severe disability ensuring equal treatment across the group. Also it would seem to be unreasonable for Local Authority or Universal Credit decision makers (who are not medical experts) to make this assessment.
22. DLA has been chosen as the relevant disability benefit as unlike its counterparts PIP and AA it currently applies to under 16s. It provides assurance of the degree and regularity of additional care needs experienced by the child through an independent medical assessment, and gives an

indication of the extent of their additional vulnerability and the potential disruption that their condition may cause.

23. The care component of DLA is a benefit split into 3 levels of entitlement (Higher, Middle and Lower rates) and is available to children from birth to 16 years (subject to a 3 month qualifying period). Higher rate applies in those cases where the disabled individual has both day and night needs whilst middle rate applies to those with **either** day or night needs. We discounted using lower rate care as those in receipt of this level have been identified as not having significant night needs. The mobility element of DLA has also been discounted as it is not directly connected with carer intervention.

24. The criteria for the care component of DLA provide an assessment of whether this is likely to be the case, with the criteria being;

- lowest rate - requires help for a significant portion of the day, whether during a single period or a number of periods
- middle rate - frequent help or supervision either during the day or at night.
- highest rate - Help or supervision throughout both day and night, or terminal illness

25. Children who need care at night are those most likely to disturb another child with whom they share a bedroom by reason of their disability.

26. We have also considered the position of children who may have severe disabilities but are not currently in receipt of DLA. These will mainly consist of those who have either not applied for DLA or those who are in the qualifying period.

27. There will also be a small number of children who are only entitled to the lower rate of DLA care, or not entitled at all but may still disrupt the sleep of someone sharing a bedroom. An example of this would be teenagers with airway problems or hypoventilation which require the use of noisy equipment at night such as a ventilator. In many circumstances they would manage this themselves and thus be unlikely to have night care needs. In these cases claimants will have recourse to DHPs which will be reflected in guidance to Local Authorities.

28. Given the need to balance the policy aims with financial constraints and operational practicalities, we propose that using the middle and higher rate care component as a Gateway provides a identifiable group for whom sharing is most likely to be inappropriate.

29. However, in reaching this decision, we have borne in mind the substantial support £190 million (including £10 million transitional payment) in 2013/14 made available through Discretionary Housing Payments (DHPs) for cases where the claimant has a greater need for further housing support over and above that provided by housing benefit. Local authorities have broad discretion over the use of DHPs, but are supported with DWP guidance.

<http://www.dwp.gov.uk/docs/discretionary-housing-payments-guide>

30. We have also considered the entitlement of disabled children to the middle and higher rate care components by their qualifying condition. Evidence from this shows that the majority of sufferers are entitled to the middle or higher rate.

***DLA cases by entitlement (under 16s) February 2013***

<b>Condition giving Entitlement</b>	<b>Caseload (thousands)</b>	<b>Higher Rate (% of sufferers)</b>	<b>Middle Rate (% of sufferers)</b>	<b>Lower Rate (% of sufferers)</b>	<b>Nil Rate care – in receipt of mobility (% of sufferers)</b>
<b>Learning Difficulties</b>	151.92	37.84	59.02	2.65	0.49
<b>Behavioural Disorders (including hyperkinetic syndrome)</b>	63.10	37.21	57.62	4.29	0.86
<b>Neurological Diseases and Disorders</b>	37.00	46.49	46.95	5.65	0.92
<b>Metabolic Diseases (including diabetes)</b>	18.82	19.45	74.02	6.38	0.11
<b>Disease or trauma of the Muscles, Bones or Joints</b>	13.94	38.38	43.04	14.71	3.95
<b>Deafness</b>	11.35	7.14	85.90	5.11	1.76
<b>Organ Disorders</b>	7.10	55.49	31.27	12.96	0.14
<b>Skin disease</b>	6.88	36.05	28.20	35.61	0.15
<b>Blindness</b>	5.78	15.57	68.86	7.61	7.96
<b>Severely mentally impaired (including dementia)</b>	5.14	99.61	0.39	–	–
<b>Chest Disease (including respiratory disorders)</b>	4.86	56.17	26.13	16.87	0.62

<b>Heart Disease</b>	3.71	59.84	31.27	5.66	2.96
<b>Cystic Fibrosis</b>	3.49	40.11	44.99	14.90	–
<b>Malignant Disease</b>	3.04	75.66	19.08	3.95	1.32
<b>Psychoneurosis and personality disorders</b>	2.04	38.24	44.12	9.80	7.84
<b>Blood Disorders</b>	1.71	42.69	46.20	10.53	1.17
<b>Major Trauma or chronic pain</b>	1.35	48.15	37.78	11.85	3.70
<b>Vascular Diseases</b>	0.97	42.27	45.36	10.31	1.03
<b>Psychosis</b>	0.58	50.00	43.10	5.17	1.72
<b>Infectious diseases</b>	0.16	56.25	31.25	6.25	–
<b>All Conditions</b>		<b>38.60</b>	<b>54.93</b>	<b>5.53</b>	<b>0.94</b>

Source: Work and Pensions Longitudinal Study (WPLS)

Note: Caseload figures are rounded to the nearest ten

- Totals may not sum due to rounding

[http://83.244.183.180/100pc/dla\\_ent/tabtool\\_dla\\_ent.html](http://83.244.183.180/100pc/dla_ent/tabtool_dla_ent.html)

31. Families with disabled children are disproportionately represented amongst Housing Benefit claimants. The majority of families who are in receipt of DLA in respect of a child are entitled to the DLA care component at the middle or higher rate.

	<b>Total Population</b>	<b>Working Age HB Claimants in the SRS</b>	<b>Working Age HB Claimants in the PRS</b>	<b>All Working Age HB Claimants</b>
<b>Disabled Care Component Higher or Middle</b>	0.4%	1.7%	0.9%	1.4%
<b>Disabled Child Premium</b>	0.6%	2.7%	1.4%	2.2%
<b>Not Disabled Child</b>	99.4%	97.3%	98.6%	97.8%

Source: Policy Simulation Model 2011/2012 using 2009/10 reference data from the Family Resources Survey

Notes: Sample sizes underlying these percentages are very small so all numbers should be treated with caution.

*-The Disabled Child Premium is an add-on premium and is received if the child is registered blind or is in receipt of any component of DLA.*

### **Impact with regard to Gender of claimant**

32. The policy is designed to impact equally on disabled children whether boys or girls and will also apply in the same way to single men single women and couples with a disabled child, all are potentially able to benefit should they meet the conditions. However, because single females are disproportionately represented in the Housing Benefit caseload and among claimants with a disabled child(ren) who are affected by the removal of the spare room subsidy, this change is expected to have greater impact on this group. This is illustrated in the table below. Compared with the distribution of the Housing Benefit caseload the measure does not have a significantly different impact on claimants of either gender.

	<b>Working age HB caseload by tenure</b>		<b>Proportion of Working Age SRS claimants affected by RSRS</b>
	<b>SRS</b>	<b>PRS</b>	
<b>Singe Males</b>	27%	28%	24%
<b>Single Females</b>	50%	40%	51%
<b>Couples</b>	23%	33%	24%

*Source: Policy Simulation Model using 2009/10 reference data from the Family Resources Survey.*

### **Impact with regard to Age of claimant**

33. In accordance with size criteria rules both adult couples and children are normally expected to share a bedroom. This policy applies only to children who cannot share due to disability. However, we have received representations regarding adult couples where it is asserted that they cannot share a room. Whilst we recognise the difficulties facing some claimants, we believe that there are important differences between adults and children in this context.

34. Couples are expected to share a bedroom. Further adults are able to exercise choice in all aspects of their lives. They are able to enter living arrangements knowing that they may have to compromise to accommodate their needs. As well as making applications for disability related benefits and Discretionary Housing Payments, they are also able to negotiate with landlords and Local Authorities, take proactive steps to find more suitable accommodation of the right size, take in a lodger, find work or increase hours of work. Children do not have this level of independence or control over decision-making. Also, as



regards disruption to sleep it is widely recognised that sleep is important for development and educational attainment in children. As a result we are recognising that children require a level of additional protection.

## Impact with regard to Ethnicity

35. Figures on the ethnicity of the household reference person in affected households indicate that black and minority ethnic claimants are less likely to be affected by the measure than white claimants. This is associated with a higher than average family size meaning that under the size criteria larger properties are likely to be already appropriate for the claimant.

	<b>Breakdown of working age SRS HB claimants affected by RSRS</b>	<b>Breakdown of all working age SRS HB claimants</b>	<b>Breakdown of all working age PRS HB claimants</b>
<b>White</b>	90%	85%	80%
<b>Black and minority ethnic</b>	10%	15%	20%

*Source: Policy Simulation Model using 2009/10 reference data from the Family Resources Survey.*

## Impact with regard to Rural communities

36. There is no change to the way in which Housing Benefit is administered to those who live in rural communities as a result of this policy. We do not envisage an adverse impact on these grounds.

## Impact with regard to Gender reassignment

37. The Department does not collect information on its administrative systems of transgender people and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

## Impact with regard to Sexual orientation

38. The Department does not collect information on its administrative systems of sexual orientation and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

## Impact with regard to Religion or belief

39. The Department does not hold information specifically on the religion or beliefs of claimants and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

## **Impact with regard to Marriage or Civil partnership**

40. The information held by the Department on its administrative systems does not distinguish between different types of partnership. We do not envisage an adverse impact on these grounds.

## **Impact with regard to Pregnancy and maternity of claimant**

41. The Department only holds information on pregnancy and maternity on its administrative systems in very specific circumstances, for example where it is the primary reason for incapacity. It cannot be used therefore, to accurately assess the equality impacts; however, we do not envisage an adverse impact on these grounds.

## **Monitoring and Evaluation**

42. The material in this Equality Impact Assessment covers the equality groups currently covered by the equality legislation, i.e. age, disability, gender (transgender), ethnicity, religion, sexual orientation, pregnancy/maternity and civil partnerships. DWP is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.
43. We will use administrative datasets, including the Single Housing Benefit Extract (SHBE), to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. We start collecting administrative information on the households that benefit from this policy next year. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.
44. We will use survey data, such as the Family Resources Survey (FRS), to assess trends in the incomes of the protected groups. The FRS will collect information on age, disability, gender, ethnicity and civil partnerships.
45. We will use qualitative research and feedback from stakeholder groups to assess how the policy is impacting on the protected groups, particularly in the context of the removal of the spare room subsidy.
46. We will draw on broader DWP research where appropriate, including the independent monitoring and evaluation of the removal of the Spare Room Subsidy, which is being taken forward by a consortium led by Ipsos-Mori

## **Next Steps**

47. We propose to make the regulations and issue guidance to clarify the policy detail. This will be kept as simple as possible to reduce added complexity and avoid lack of transparency in Departmental and local authority processes for both claimants and staff.

## **Contact details**

Lisa Sutherland

Housing Policy Division

[HOUSING.BENEFITENQUIRIES@DWP.GSI.GOV.UK](mailto:HOUSING.BENEFITENQUIRIES@DWP.GSI.GOV.UK)