

Housing Benefit Circular

Department for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

HB A8/2014

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	For information
SUBJECT	The Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014

Guidance Manual

The information in this circular does not affect the content of the HB Guidance Manual.

Queries

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Contents para

**The Housing Benefit and Universal Credit (Supported Accommodation)
(Amendment) Regulations 2014**

Introduction 1

Supported “exempt accommodation”

 Background.....4

 Outline of the changes..... 10

 Housing Benefit and the benefit cap.....13

 Universal Credit and the benefit cap.....32

 Identifying those in supported housing.....36

 Timing.....45

 Longer term for supported housing.....47

Description of the Regulations.....Annexe A

Examples.....Annexe B

The Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014

Introduction

1. This circular gives details of the provisions contained in Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014 (SI 2014 No. 771) that were laid before Parliament on 20 March 2014. A description of the regulations can be seen at Annexe A.
2. These regulations make amendments to the Housing Benefit Regulations 2006 and the Universal Credit Regulations 2013 to ensure that more tenants of supported housing are protected from the unintended consequences of welfare reform.
3. The changes to the Housing Benefit Regulations will come into force on 10 April 2014. The changes to the Universal Credit Regulations will come into on 3 November 2014.

Supported “exempt accommodation”

Background

4. Ministers announced in 2012 that, as a short term measure, help with housing costs for those living in “exempt accommodation” would be provided outside their Universal Credit award through Housing Benefit (HB) and that HB in respect of that accommodation would be excluded when applying the benefit cap. Regulations to provide for help with housing costs through HB came into effect from 28 October 2013¹.
5. In April 2013, Lord Freud, Minister for Welfare Reform wrote to the sector undertaking to extend this protection to other supported housing that, although not materially different to that which falls within the current definition, is subject to the welfare reforms.
6. Since October 2013, Universal Credit claimants have been able to claim help with their housing costs through HB where they live in “exempt accommodation”. Local authorities (LAs) continue to determine whether a person’s home is “exempt accommodation”, consider which costs are eligible for help and assess the level to which costs should be met. They also retain the discretion to make managed payment of rent direct to landlords. Additionally, these payments of HB are excluded from the benefit cap calculation.
7. Supported housing that is not materially different to those in the current definition includes supported housing where care, support or supervision is not provided by the landlord, or on their behalf, and LA provision. We have since been working

¹ The Universal Credit (Transitional Provisions) and Housing Benefit (Amendment) Regulations 2013, SI 2013/2070

with those close to the sector to fill in the gaps in our knowledge of its makeup and the extent of its dependency on benefit provision.

8. These regulations extend that short term protection to a new class of supported accommodation, termed “specified accommodation”.
9. We had also been asked to exempt supported housing from the Removal of the Spare Room Subsidy (RSRS) provisions. Those subject to RSRS will not be affected by these changes.

Outline of the changes

10. It is important to be clear that no change has been made to the definition of “exempt accommodation” in the Housing Benefit Consequential Provisions where it is used to determine that the eligible rent is calculated using the pre 1996 rules.
11. The amendments are intended primarily to protect those in supported housing who are not already covered by the definition of “exempt accommodation” (and therefore do not benefit from the current exemptions) and are most likely to be affected by the welfare reforms.
12. The amendments simply provide a gateway, for the housing costs of supported housing that satisfy the definition of “specified accommodation”, from being assessed as the housing cost element within Universal Credit to HB. There are no changes to the way that the eligible rent is calculated for individual cases within HB; please see the examples at Annexe B.

Housing Benefit and the benefit cap

13. There are now four categories of supported housing that are included in the new definition of “specified accommodation” being introduced.

Exempt accommodation

14. The existing exclusion in HB of “exempt accommodation” from the benefit cap is retained as one of the categories in the new definition. This relies on the definition of “exempt accommodation” found in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.
15. “Exempt accommodation” is defined as being either: a resettlement place; or accommodation which is provided by a county council, housing association, registered charity or voluntary organisation where that body, or person acting on their behalf, provides the claimant with care, support or supervision.

Managed properties

16. The **second category** in the draft regulations is designed to cover those cases which fall out of the current “exempt accommodation” definition solely because the care isn't provided by the landlord or on their behalf. This is often due to the nature of the funding/care structures put in place.

17. This category relies, as now, on the property being provided by one of the specified social and third sector organisations and on the claimant being admitted to the dwelling to receive the care, support or supervision being provided. This looks to retain the conditionality of receiving support with occupying the home.
18. It would be expected that the admission process should include the need for care, support or supervision being identified by someone that the LA is satisfied is in a position to undertake it. Linking the person's admission to supported housing with there being an identifiable need, requires that their occupying the home has been made knowledgeably either by a professional or someone with experience in the care/support sector, which could well be the landlord.
19. Receiving public funding for the care, support or supervision would be a reasonable indicator that it is both needed and being provided. However, support can still be provided even without public funding. Expert advice should be sought where necessary, such as from statutory authorities or recognised bodies, to confirm whether support should be accepted as provided or not and whether the dwelling is "specified accommodation".
20. Much supported housing could be identified by it being commissioned by, or either designed or designated as such by local government or other statutory bodies. However, these can only be factors among others in the LA deciding whether the property is "specified accommodation". As ever the LA must make a decision on the facts.
21. The underlying assumption is that places in supported housing are in such short supply that someone with no need of their services would not be admitted. Certainly where it comes to light that a person with no need of care, support or supervision is living in supported housing they cannot be treated as being in "specified accommodation".
22. We have also added this conditionality to ensure that the legislation doesn't cover cases of floating support where the property is standard social or third sector housing where the care, support or supervision being provided is not connected with living in the home.
23. In such cases, where the property has not been specially designed, acquired, adapted or designated to be supported housing, and whether or not the landlord is involved in providing care, support or supervision, we would not expect the rent being charged to be higher than ordinary social or third sector housing and therefore not in need of protection.

Refuges

24. The **third category** looks to protect the rents of both third and social sector refuges. This is again achieved through identifying the provider type as well as the reason why the person is living in the property (i.e. that they are fleeing domestic violence) and that this is a temporary arrangement.
25. The definition for domestic violence we are using is the same as the cross-government definition, with the exception that we do not include the reference to

age because Universal Credit is available only to those aged 16 or over. The exclusion of the reference to partnership or familial relationships broadens the definition to include other types of violence that may occur in a domestic setting (for example, violence by a neighbour or landlord). This will ensure that the new definition provides protection for as wide a range of provision as possible.

26. The legislation refers to having “left the home as a result of domestic violence”. As a clarification, in this context the meaning is the home where the claimant usually lives and from where they initially fled, rather than any intermediate accommodation, which may well have been another refuge in some cases. All that is required is that there is a causal connection between the claimant being in the refuge and their having left their home as a result of domestic violence.
27. It has been estimated by stakeholders that around half of refuges currently available are protected because they are “exempt accommodation”. The rest are said to be outside the definition because the refuges only manage the properties they use, often for social sector landlords.
28. Many refuges are likely to already be covered by the first and second categories as this category includes the same types of providers already covered through the first two. However, it also includes LA refuges.

Hostels

29. The **fourth category** covers LA hostels that provide care, support or supervision. This relies on the existing definition of “hostel” in Housing Benefit Regulation 2(1) which is currently only used for rent allowance cases. This relies on the property not being self contained. The existing definition of "hostel" identifies properties specialising in the higher need individuals most likely to need the care, support or supervision often available in "hostels".
30. While other hostels providing care, support or supervision will be covered by the first or second categories, this provision extends coverage to include LA hostels, but only where care support or supervision is provided. This is intended to cover the most intensive of provision where claimants are most likely to need protection from the benefit cap and certain aspects of Universal Credit.

Benefit Cap

31. Housing costs paid for those in “specified accommodation” will be excluded from the benefit cap within HB.

Universal Credit and the benefit cap

32. The same four categories are used in Universal Credit as in HB. At present, where a Universal Credit claimant lives in “exempt accommodation”, existing legislation allows for their housing costs to be met through HB rather than through the housing costs element within Universal Credit.
33. As with HB, these amendments expand the exclusion through the new paragraph 3A, by again adding in the same supported housing that satisfy **categories two**

to **four** above, that have been added in the new definition of “specified accommodation” within the Housing Benefit Regulations.

34. The proposed amendments to the Universal Credit Regulations mean that the housing costs of those in “specified accommodation” would not be treated as “rent payments” for Universal Credit purposes, meaning that these claimants would be treated as having no “housing costs element for renters” in the calculation of their Universal Credit. This leaves them free to claim help with their housing costs from HB.

Benefit cap

35. Help with housing costs for those in “exempt accommodation” is provided through HB and not included in the application of the benefit cap within Universal Credit. In the same way the housing costs for those in “specified accommodation” will not be included in the benefit cap in Universal Credit.

Identifying those in “specified accommodation”

36. There will be a need to identify these cases consistently by LAs and Universal Credit to avoid overpayments. As Universal Credit staff will have a limited knowledge of the local housing stock, LAs would be better placed to identify the supported housing in their area that meets the definition.
37. It will therefore be essential that properties falling into the new definition are identified accurately from the outset so that housing costs are attributed correctly to either Universal Credit or HB.
38. We jointly with LA representatives will be developing ways to collate and exchange this information in time for implementation from November 2014 and further guidance will be issued in time for that.
39. The default position for all those in supported housing will be that their housing costs will be met through Universal Credit or subject to the benefit cap unless they are identified as “specified accommodation” and informed of the availability of HB. The prospect of help with their rents being restricted, subject to the benefit cap, assessed/paid on a monthly basis or routinely paid direct should provide an incentive for providers to seek to identify their properties to the LA where they satisfy the definition of “specified accommodation”.
40. Information held by the LA will be used by Universal Credit to identify those who will not have help with their housing costs included in the assessment of their Universal Credit. This will mean that those not on the list will receive help with their housing costs through Universal Credit, ensuring the accuracy of Universal Credit assessments as well as preventing duplicate payments. Those not on the list should not receive HB because the list should accurately reflect the LA’s view that the home is “specified accommodation”.
41. It will therefore be essential that the information is accurate and kept up to date as HB paid to a claimant whose dwelling is not on the list will have been overpaid. It will also be essential for the LA to set the marker on the case so that

it can be picked up by the Single Housing Benefit Extract (SHBE) returns, which will provide a source of data to inform our long-term strategy for supported housing.

42. This will also be important later as the SHBE identifier will be used to identify the case for the migration of existing HB cases on to Universal Credit.
43. The LA would be required to share such records (in a way to be agreed) with Universal Credit staff. It will be in the landlord's interest, and that of the LA to ensure that these records are regularly updated so that Universal Credit is advised early and accurately of the status of the accommodation.
44. When the time comes it will be essential that both claimants and providers are clear on whether the property meets the new definition or not.

Timing

45. So that we can have an agreed approach with the LA Associations, the Universal Credit (Transitional Provisions) Regulations are expected to be amended by 3 November 2014 to extend current provision for "exempt accommodation" to "specified accommodation". We will be having discussions on how this approach will work in practice.
46. There will continue to be a small risk of Universal Credit cases arising where the claimant lives in "exempt accommodation" before November 2014. These should continue to be treated on a case by case basis. There is also a small risk of Universal Credit claimants living in supported housing satisfying the definition of "specified accommodation". Discretionary Housing Payments should be considered to meet any shortfall in the housing costs in the usual way until the regulations come into force.

Longer term for supported housing

47. For the longer term we are exploring the feasibility of a localised funding system, as announced by ministers in September 2012. The aim is to develop a system that is flexible enough to meet the needs of individual providers and their tenants. We believe that this will ease concerns over funding and payment regimes.
48. We are convinced that local knowledge is essential to help identify this often diverse group, build effective relationships with providers and ensure that resources are targeted effectively at those who need it, while ensuring that any financial scrutiny is well directed.

Description of the Regulations

Universal Credit Regulations 2013

Regulation 2(2)

The definition of “exempt accommodation” within the Universal Credit Regulations is replaced by a reference to the definition as it exists in the Consequential Provisions within Housing Benefit. The definition of an “Upper Tier County Council” is consequently dropped.

The existing reference to payments in respect of “exempt accommodation”, as being excluded from being rent payments for Universal Credit, has been removed by replacing paragraph 3(e) in schedule 1 with paragraph 3(g), replacing it with a reference to a new paragraph 3A, which sets out the four categories of what are now termed “specified accommodation”:

- Sub-paragraph 3A(2), “exempt accommodation”, this category continues to refer to the supported housing that falls within the definition in the Consequential Provisions in HB where, essentially, the accommodation and care, support or supervision is the responsibility of the specified landlord type
- Sub-paragraph 3A(3), this category includes supported housing that would be “exempt accommodation” but for the care, support or supervision not being the responsibility of the specified landlord type. The connection between occupying the home and receiving care, support or supervision is retained through the person’s admission to the dwelling relying on their having an identifiable need for the care, support or supervision being provided
- Sub-paragraph 3A(4), this category includes those properties used to house those who have fled their usual home due to domestic violence. This provision is limited to the same specified providers as above while also including LA provision
- Sub-paragraph 3A(5), this category includes LA properties that meet the definition of “hostel” but only where the claimant receives care, support or supervision.

Housing Benefit Regulations 2006

Regulation 3(2)

The reference to “exempt accommodation” within Housing Benefit Regulation 75C, is replaced by a reference to a new Housing Benefit Regulation 75H.

Regulation 3(3)

The new Housing Benefit Regulation 75H sets out the four categories of what are now termed “specified accommodation” as above.

Examples

1. While a wider range of supported housing will now come within the Universal Credit definition of “specified accommodation”, this will not affect the method used in calculating the eligible rent in HB for those in supported housing within the new definition.
2. This will mean that while a person living in supported housing, for example, with care, support and supervision provided by a voluntary organisation on behalf of the housing association landlord, would be “specified accommodation”. As they are also “exempt accommodation” their eligible rent will be calculated using the pre 1996 rules.
3. However, while a person living in supported housing with care, support or supervision provided by a voluntary organisation, but not on behalf of their housing association landlord, would be “specified accommodation”. As they are not “exempt accommodation” their eligible rent will be calculated using Housing Benefit Regulation 12D (Local Housing Allowance) as now, rather than the pre-1996 rules (unless Regulation 12C applies because they claimed HB before April 2008).
4. Similarly, a person living in supported housing with care, support or supervision provided by a registered charity, but not on behalf of the registered housing association landlord, would be “specified accommodation”. Their eligible rent will be calculated using Housing Benefit Regulation 12B, as now, unless the rent is referable to the rent officer, in which case Housing Benefit Regulation 12C will apply.
5. A person living in supported housing with care, support and supervision provided by a voluntary organisation on behalf of the LA landlord would not be “specified accommodation”. They would receive help with their rent through their Universal Credit.
6. A person fleeing from domestic violence and living in a registered housing association refuge would be living in “specified accommodation”. They would receive help with their housing costs through Housing Benefit, with their eligible rent calculated using Housing Benefit Regulation 12B, as now, unless the rent is referable to the rent officer, in which case Housing Benefit Regulation 12C will apply.
7. Lastly, a person in an LA hostel provided with care, support or supervision, would be living in “specified accommodation”. They would receive help with their housing costs through HB, with their eligible rent calculated using Housing Benefit Regulation 12B, as now.