

Housing Benefit Circular

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

HB A21/2013

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) staff
ACTION	For information
SUBJECT	The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 and The Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2013

Guidance Manual

The information in this circular affects the content of the HB Guidance Manual. Please annotate this circular number against Part A, Chapter 4.1070, 4.1370 and 4.1840; it also makes amendments to the Discretionary Housing Payment good practice guide dated April 2013.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at: <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>
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The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 and the Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2013

Introduction

1. This circular provides details of the provisions contained in The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 that were laid before Parliament on 7 November 2013. A description of the regulations can be seen at Annex 1.
2. The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 make amendments to the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 and The Universal Credit Regulations 2013 to:
 - allow for an extra bedroom for a severely disabled child who would normally be expected to share a bedroom under size criteria rules but is unable to do so due to their disability
 - ensure that a bedroom is not treated as spare when it is occupied by another joint tenant's overnight carer or child of a qualifying parent or carer
 - allow for an approved foster carer to be exempt from the definition of a young individual
3. These regulations (with the exception of changes regarding joint tenants) apply to both claimants in the private and social rented sectors.
4. The Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2013 amends the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 requires the rent officer to allow an additional bedroom for a child who would normally be expected to share a room under the size criteria rules but is unable to do so due to his or her disability.
5. The changes will come into force on 4 December 2013.

Changes to the size criteria rules for disabled children

Background

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 and unlawfully discriminated against children who could not be expected to share a room due to their severe disabilities. *Gorry v. Wiltshire Council and Secretary of State for Work and Pensions* (2012) EWCA Civ 629; (2013) P.T.S.R. 11.
7. In response to the Court of Appeal's ruling we issued guidance in the form of HB/CTB Circular A6/2012 which advised local authority (LA) staff that those whose children are unable to share a bedroom because of severe disabilities would be able to claim Housing Benefit (HB) for an extra room from the date of the Gorry judgment and advised them to apply the judgment when determining applications for HB under the LHA size criteria.
8. The Government has now amended legislation to allow for an extra bedroom for a severely disabled child eligible for the middle or highest rates of Disability Living Allowance (DLA) care who would normally be expected to share a room under the size criteria rules but who is not reasonably able to do so due to severe disability.

Definition of a disabled child who requires their own bedroom

9. To be considered under this legislation the child in question must have been assessed and be entitled to the DLA care component at the highest or middle rates.
10. If the claimant meets the above criteria an assessment must be made as to whether or not the child's disability makes it unreasonable for them to share a bedroom. This will be a judgement on the basis of the facts, but you should consider:
 - is the child currently sharing a bedroom with another child with whom they would normally be expected to share were it not for disability? Generally it will be the case that if a child is currently sharing a bedroom without difficulty this would suggest it is not unreasonable for them to continue doing so
 - does the child require overnight care? If so what is the frequency and nature of the care provided. The policy intent is that for overnight carer intervention to be classed as sufficient to disrupt the sleep of another child it should be regularly required and be of a prolonged and/or repeated nature. DLA case

law suggests that the attention should be required several times a week and for a single period of at least 20 minutes, or if of shorter duration, then 2 or more interventions each night

- would the nature of the overnight care cause disturbance to someone sharing a bedroom with the disabled child? What would this disturbance be?
- does the nature of the disability increase the likelihood that the disabled child may behave disruptively during the night? Would this disruption be sufficient to disturb the sleep of another child with whom they were sharing a bedroom?
- in the absence of disruption, would sharing a bedroom with the disabled child pose a risk of physical harm to either child? Consider whether the claimant is advising that the nature of the disability increases the likelihood that the child may act aggressively towards another child, consider also whether the disabled child could be harmed by a sibling's normal behaviour. Take into account any reported safety elements of disability equipment which it is **necessary** to keep in the bedroom. This is especially important if the child sharing is very young as the child may be unsupervised with the equipment
- how long is this situation likely to last? It would be expected that in order to qualify the inability to share would be expected to be long term and not subject to regular changes. In any case ensure that the claimant is aware that any award will only be valid for as long as the situation persists

11. When considering the facts of the case keep in mind the policy intention which 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.

12. In cases where the child is not entitled to the DLA care component at the middle or highest rate but the claimant advises that their child is unable to share a bedroom due to disability consider whether a Discretionary Housing Payment (DHP) award is appropriate. Consider especially those cases where a claim has been made to DLA but this has not yet been assessed or cases where the child's disability may be particularly disruptive.

Administration

13. Once it has been established that the claim to HB includes a qualifying disabled child check whether the child is required to share under the size criteria rules. A child is required to share where there is no combination of sharing consistent with

the size criteria which allows them their own bedroom (see examples at Annex 2). Where the child is not required to share, no further action need be taken.

14. If this is a social rented sector case check whether a reduction is being applied for a spare bedroom. No reduction for under-occupation will be made in respect of a bedroom used by a qualifying disabled child.
15. If this is a private rented sector case check whether the amount of HB allowed is less than the full rent. The applicable LHA rate or Local Reference Rent (LRR) should be determined by including an additional bedroom for a qualifying disabled child.
16. In the private sector, 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 (subject to a maximum of four bedrooms for LHA claims).
17. One additional bedroom will be allowed for each disabled child to whom this applies, and entitlement is to be established independently of entitlement to additional rooms for foster carers and non-resident overnight carers.
18. If there ceases to be a qualifying disabled child (ren) resident in the household the entitlement to an additional bedroom will cease.

Reassessment of cases awarded under previous guidance

19. LAs will now need to review all cases awarded under previous guidance to ascertain whether or not reassessment is required in light of the amended regulations. These use entitlement to the DLA care component at the middle or highest rates to determine whether a child is severely disabled and so potentially eligible for an additional bedroom.
20. Upon reassessment it may be found that HB has been awarded for an additional bedroom, but that the child is not severely disabled within the definition provided in the amended legislation. LAs will need to identify these cases and in these cases the LA can consider whether an award of a DHP is appropriate. We would therefore recommend that LAs identify these cases and invite a claim for DHP where this appears appropriate.
21. Any HB paid out by an LA from the date of the Gorry judgement to cover the cost of an additional bedroom for a disabled child in accordance with previous guidance will be treated as correctly paid for subsidy purposes.

Changes to the treatment of joint tenants affected by the Removal of the Spare Room Subsidy

Background

22. 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.
23. 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.

Summary of Changes

24. Regulations have now been amended to include 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, so the disparity in treatment is removed.
25. Claimants living in the private sector are unaffected by this amendment because the calculation is based on each tenant's individual household size, not on the overall number of occupants in the property.
26. For Universal Credit claimants, an under-occupancy deduction will not be made if there is a social rental sector joint tenancy where the joint tenants are not listed persons.
27. See Annex 3 for example cases of joint tenants.

Changes to the definition of a young individual

28. The definition of a young individual has been amended to include an exemption for a qualifying parent or carer (person who is an approved foster parent or in Scotland an approved foster carer or kinship carer).
29. This is to prevent the shared accommodation rate or single room rate (for LRR cases) for private sector cases, applying where a claimant is a single person under 35 and is a qualifying parent or carer.

Description of the Regulations

Housing Benefit Regulations 2006 (SI 2006/213)

Regulation 2(2)

We have inserted a definition of “child who requires their own bedroom” into regulation 2(1) of the HB regulations. This applies to a child who is entitled to the care component of DLA at the higher or middle rate, who by reason of their disability is unable to share a bedroom with another child and for whom there is a bedroom additional to those a claimant would be entitled to if the child was able to share a bedroom.

We have also amended the definition of “young individual” so that a person who is a qualifying parent or carer (person who is an approved foster parent or in Scotland an approved foster carer or kinship carer) will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by HB in the private sector.

Regulation 2(3)

This amends regulation B13 which makes provision for the determination of the amount of rent eligible to be met by way of HB for claimants renting in the social sector.

We have also amended regulations to include an additional room for an overnight carer and/or foster child in the overall size criteria calculation for a joint tenant in the property. This is intended to ensure that when determining whether a dwelling is under-occupied for the purposes of applying a reduction a room is included where a joint tenant or their partner require overnight care or are a qualifying parent or carer. The amendment also ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules.

Regulation 2(4)

This amends regulation 13D which makes provision for the determination of the amount of rent eligible to be met by way of HB for claimants renting in the private sector to whom the LHA applies.

The amendment ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules subject to a maximum of four bedrooms.

Regulation 2(5) and 2(6)

These amend regulation 14 of the HB regulations, which applies to private sector claimants not covered by the LHA and to some social sector claimants where the relevant local authority considers the rent to be unreasonably high. This amendment ensures that a referral to a rent officer will be made if a child becomes or ceases to be a child who requires their own bedroom.

Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)

We have made equivalent amendments to Regulations 2, 13D and 14 of Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) (Size Criteria) Regulations 2006 in respect of a child who requires their own bedroom. These Regulations have no equivalent to Regulation B13 of the Housing Benefit Regulations 2006 as B13 refers to the social sector size criteria which only apply to claimants of working age.

Rent Officers (Housing Benefit Functions) Order 1997 (SI 1997/1984) and The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 (SI 1997/1995)

These amendments are to the Rent Officers (Housing Benefit Functions) Order 1997 and also to the Rent Officers (Housing Benefit Functions) (Scotland Order 1997). We propose to make amendments to Schedule 2 requiring the rent officer to allow an additional bedroom for a child who would normally be expected to share a room under the size criteria rules but is unable to do so due to his or her disability.

Example cases for disabled children

Example 1:

A three bedroom housing association property is occupied by a couple with one qualifying disabled child.

Allow:

- one bedroom for the couple; and
- one bedroom for the disabled child

Applying the size criteria means that the claimant is deemed to be under-occupying by one bedroom.

A 14% reduction is applied to the eligible rent.

Example 2:

A three bedroom council property is occupied by a couple and two qualifying disabled daughters who are aged 11 and 13.

Allow:

- one bedroom for the couple; and
- one bedroom for each of the daughters

Applying the size criteria means that the claimant is deemed not to be under-occupying because the daughters are deemed as unable to share due to disability.

No reduction is applied to their eligible rent.

Example 3:

A four bedroom housing association property is occupied by a couple with 2 non-disabled sons aged 7 and 15 and a qualifying disabled son aged 9.

Allow:

- one bedroom for the couple; and
- one bedroom for the disabled son; and
- one bedroom for the 2 non-disabled sons

Applying the size criteria means that the claimant is deemed to be under-occupying by one bedroom because the 2 non-disabled sons are able to share.

A 14% reduction is applied to the eligible rent.

Example 4:

A two bedroom privately rented property is occupied by a couple with 1 non-disabled son aged 7 and a qualifying disabled son aged 9.

Allow:

- one bedroom for the couple; and
- one bedroom for the non-disabled son; and
- one bedroom for the disabled son

Applying the LHA size criteria means that the claimant is entitled to a two bedroom LHA rate; this is because they are only entitled to claim for bedrooms which actually exist in the dwelling.

Example 5:

A five bedroom privately rented property is occupied by a couple with one non-disabled son aged 12, one non-disabled daughter aged 9 and 2 qualifying disabled daughters aged 3 and 4. The claim is subject to the LHA rules.

Allow:

- one bedroom for the couple; and
- one bedroom for the non-disabled son; and
- one bedroom for the non-disabled daughter;
- one bedroom for each of the disabled daughters.

Applying the size criteria means that the claimant will be entitled to five bedrooms, but the four bedroom LHA rate; this is because there is a four bedroom limit.

Example 6:

A four bedroom privately rented property is occupied by a couple with one non-disabled son aged 12 and one qualifying disabled son aged 10.

Allow:

- one bedroom for the couple; and
- one bedroom for the disabled son; and
- one bedroom for the non-disabled son.

Applying the LHA size criteria means that the claimant will be entitled to a three bedroom LHA rate.

Example cases of joint tenants

Example 7:

A three bedroom housing association property is occupied by Tenant A and Tenant B. Tenant A requires an overnight carer. The rent is £100 per week which they split 50/50. They both claim HB.

Allow:

- one bedroom for Tenant A; and
- one bedroom for Tenant B; and
- one bedroom for Tenant A's overnight carer

Applying the size criteria means that all the rooms in the property are occupied; neither tenant will face a reduction for under-occupancy.

Example 8:

A four bedroom council property is occupied by Tenant A and Tenant B. Tenant B is an approved foster carer. The rent is £120 per week which they split £40 for Tenant A and £80 for Tenant B. They both claim HB.

Allow:

- one bedroom for Tenant A; and
- one bedroom for Tenant B; and
- one bedroom for Tenant B's foster child

Applying the size criteria means that both tenants are deemed to be under-occupying by one bedroom because only three bedrooms in the property are occupied.

A 14% reduction is applied to the eligible rent (£103.20) and then 1/3rd is apportioned to Tenant A (£34.40) and 2/3rds is apportioned to Tenant B (£68.80). Tenant A will have a shortfall of £5.60 and Tenant B will have a shortfall of £11.20.

Example 9:

A five bedroom housing association property is occupied by Tenant A and Tenant B. Tenant A has one child. Tenant B is an approved foster carer. The rent is £200 per week which they split 50/50. Only Tenant A claims HB.

Allow:

- one bedroom for Tenant A; and
- one bedroom for Tenant B; and
- one bedroom for Tenant A's child; and
- one bedroom for Tenant B's foster child

Applying the size criteria means that Tenant A is deemed to be under-occupying by one bedroom because only four bedrooms in the property are occupied.

A 14% reduction is applied to the eligible rent (£172.00) and then 1/2 is apportioned to Tenant A (£86.00). Tenant A will have a shortfall of £14.00.

Example 10:

A four bedroom housing association property is occupied by Tenant A and Tenant B. Tenant A is an approved foster carer. The partner of Tenant B has an overnight carer. The rent is £200 per week which they split 50/50. Both tenants claim HB.

Allow:

- one bedroom for Tenant A; and
- one bedroom for Tenant B; and
- one bedroom for Tenant A's foster child; and
- one bedroom for the overnight carer of the partner of Tenant B

Applying the size criteria means that all the rooms in the property are occupied; neither tenant will face a reduction for under-occupancy.