

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions
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ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) staff
ACTION	For information
SUBJECT	Changes to the size criteria for approved foster carers and parents of armed forces personnel

Guidance Manual

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

Queries

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Changes to the size criteria for approved foster carers and parents of armed forces personnel

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Changes to the size criteria for approved foster carers and parents of armed forces personnel

Introduction

1. This circular provides details of the provisions contained in The Housing Benefit (Amendment) Regulations 2013 that were laid before Parliament on 21 March 2013.
2. The Housing Benefit (Amendment) Regulations 2013 make amendments to the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 to allow for an extra bedroom for a foster child or children of an approved foster carer (or kinship carer in Scotland) and to ensure that the parents of armed forces personnel who are away from home on operations will continue to have them included when applying the size criteria.
3. These regulations apply to both claimants in the private and social rented sectors.
4. The Rent Officers (Housing Benefit Functions) Amendment Order 2013 amends the Rent Officers (Housing Benefit Functions) Order 1997 and the Officers (Housing Benefit Functions) (Scotland) Order 1997 to allow an extra bedroom for a foster child or children of an approved foster carer to be included in the size criteria applied by rent officers when making determinations for some cases within the private rented sector.
5. These regulations will come into force on 1 April 2013.
6. These regulations apply to Great Britain.
7. A copy of these regulations can be accessed through the following links:

<http://www.legislation.gov.uk/ukxi/2013/665/regulation/2/made>

<http://www.legislation.gov.uk/ukxi/2013/666/contents/made>

Background

8. The Secretary of State announced on 12 March 2013 that the Government intended to lay amending regulations to clarify the size criteria rules for two specific groups of Housing Benefit (HB) claimants, approved foster carers and parents of armed forces personnel.

Summary of the changes

9. In the private rented sector, size criteria rules already determine the maximum property size which HB can meet based on household composition. To ensure parity of treatment for working age claimants, the HB Amendment Regulations 2012 extended the size criteria rules to those of working age living in the social rented sector. If the HB claimant in the social sector has more rooms than they

are entitled to they will be classed as under-occupying the dwelling and the amount of rent eligible to be met by HB will be reduced by:

- 14% where under-occupying by one bedroom
- 25% where under-occupying by two or more bedrooms

10. This means that one bedroom will be allowed using size criteria rules for each of the following:

- A couple
- A person who is not a child (age 16 and over)
- Two children of the same sex
- Two children who are under 10 years of age
- Any other child
- A non-resident overnight carer

11. In response to concerns raised by both Members of Parliament and the general public about the potential impact that this measure will have on different groups within the social sector, the Government has announced that two changes will be introduced across both the private and social rented sectors. These relate to two specific groups:

- An additional room will be allowed for a foster child or children living with an approved foster carer (or kinship carer in Scotland)
- Parents of armed forces personnel who are away from home on operations will continue to have them included when applying the size criteria.

Foster Carers

12. 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.

13. 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.

14. This change comes into effect from 1 April 2013.

15. 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.
16. For approved foster carers in the private rented sector, this means that the applicable Local Housing Allowance (LHA) rate or Local Reference Rent (LRR) will be determined by including one additional bedroom for the foster child or children.
17. 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 4 bedrooms for LHA claims).
18. 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).
19. 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 they have a spare room available. DHPs can be used to provide support in the interim period.
20. 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.
21. 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.
22. 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.
23. As the foster child is not a member of the household, LAs should ensure that any referrals to the Rent Officer include details of when a foster child moves in or out of the property, as this will be needed to make determinations under the LRR rules.
24. 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.

Approved or prospective adoptive parents

25. 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.

26. 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.

Parents of Armed Forces Personnel

27. Adult children who are in the armed forces but who continue to live with parents, will be treated as continuing to live at home (for the purposes of applying the size criteria), when deployed on operations. In addition, the non-dependant deduction should be removed and only reinstated when they return home.
28. Member of the Armed Services means a member of the Naval Service, British Army or Royal Air Force of the Crown or members of the Reserve Forces.
29. An adult child means sons, daughters, step-sons or step-daughters of the claimant or partner.
30. For claimants in the private rented sector, this means that the applicable LHA rate or LRR will remain the same. This change comes into effect from 1 April 2013.
31. For claimants in the social rented sector, a reduction for under-occupation will not be made in respect of the bedroom of the relevant non dependants but may apply if the claimant has other spare rooms.
32. The adult son or daughter must have been a non-dependant before deployment on operations (although a deduction may not have been applied, for example where the claimant is blind) and there must be an intention to return to live with their parents.
33. On 'operations' does not necessarily mean away from the United Kingdom, just away from the home they normally occupy. It will also cover pre-deployment training and post operation leave (which is described as "normalisation"). For example, Royal Air Force personnel with immediate response duties who are based away from home for four months or where members of the armed forces were deployed to assist with the Olympics.
34. The LA should be satisfied that the adult son or daughter has been deployed on operations. If the adult son or daughter is already away on deployment when a new claim for HB is made, the claimant will be able to obtain a letter from the son or daughter's chain of command in the armed forces, confirming the deployment.

Changes to IT systems

35. We are discussing these changes with software suppliers and will confirm funding arrangements in due course.

ANNEX A**Description of the Regulations****HB (Amendment) Regulations 2013**

36. Regulation 2(2) inserts a definition of “member of the armed forces away on operations” into regulation 2(1) of the HB Regulations (interpretation). This applies to members of the regular forces or reserve forces who are absent, while on operations, from the dwelling they usually occupy as their home.
37. It also inserts a definition of “qualifying parent or carer”. This applies to a person who is an approved foster parent (or in Scotland an approved foster carer or kinship carer) who has a bedroom in the dwelling they occupy as their home that is additional to those used by other occupiers of the dwelling (a foster child is not treated as occupying the dwelling for HB purposes). It also applies where a foster child has not been placed with the person, but for a period of no more than 52 consecutive weeks. The definition also applies to a person who has a child placed with them prior to an adoption order being made.
38. Regulation 2(3) amends regulation B13 of the HB Regulations, 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. The amendment ensures that an additional bedroom will be included in the determination where the claimant or their partner is a qualifying parent or carer. It also amends regulation B13 to ensure that a member of the armed forces away on operations will continue to be included as an occupier when assessing the number of rooms for which HB may be paid.
39. Regulation 2(4) makes similar amendments to regulation 13D of the HB Regulations, 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. However under regulation 13D there is a maximum of four bedrooms.
40. Regulation 2(5) amends 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 LA considers the rent to be unreasonably high. Taken in conjunction with the amendment to Schedule 2 made by regulation 2(7), this amendment ensures that a referral to a rent officer will be made if a claimant or their partner becomes, or ceases to be, a qualifying parent or carer.
41. Regulation 2(6) amends regulation 74 of the HB Regulations (non-dependant deductions) so that a non-dependant deduction will not be made in respect of a member of the armed forces away on operations.
42. Regulation 2(7) also amends Schedule 2 to ensure that a case is not referred to a rent officer for a new determination where the only change has been that the claimant’s non-dependant has become, or ceased to be, a member of the armed forces away on operations.

43. Regulation 3 makes equivalent amendments to regulations 2, 13D, 14 and 55 of and Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. (These Regulations have no equivalent to regulation B13 of the HB Regulations.)

The Rent Officers (Housing Benefit Functions) Amendment Order 2013

44. The amendments require a rent officer to include an additional bedroom where the LA making an application for a determination states that the tenant or the tenant's partner is a qualifying parent or carer within the meaning of the Housing Benefit Regulations 2006 (S.I. 2006/213). This will apply to a person who has a child or qualifying young person placed with them who would not be taken into account as an occupier because they are in the care of the LA. It will also apply to a person who is approved as a foster parent (or in Scotland approved as a foster carer or kinship carer) but who does not currently have a child or qualifying young person placed with them (but only for a period of 52 weeks).

ANNEX B

Example cases of Foster Carers**Example 1:**

A three bedroom housing association property is occupied by a couple with one foster child

Allow for :

- one bedroom for the couple; and
- one bedroom for the foster 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 four bedroom council house is occupied by a couple, a non dependant son and two foster children of opposite sex who are aged 11 and 13.

Allow for:

- one bedroom for the couple; and
- one bedroom for the non dependant son; and
- one bedroom for one of the foster children

Applying the size criteria means that the claimant is deemed to be under-occupying by one bedroom because the size criteria rules only apply to **one** additional room, in respect of a foster child or children.

A 14% reduction is applied to their eligible rent.

Example 3:

A three bedroom housing association property is occupied by a couple with a foster child. The partner requires frequent overnight care from a non resident carer.

Allow for:

- one bedroom for the couple; and
- one bedroom for the non resident overnight carer; and
- one bedroom for the foster child

Applying the size criteria means that the claimant is not under-occupying.

Example 4:

A three bedroom privately rented property is occupied by a couple with one dependant aged 2 and a foster child aged 4 of the same sex. They have made a new claim for HB.

Allow for:

- one bedroom for the couple; and
- one bedroom for the dependant child; and
- one bedroom for the foster child

Applying the LHA size criteria means that the claimant will be entitled to a three bedroom LHA rate; this is because one additional room is allowed for a foster child, regardless if they could share with the dependant.

Example 5:

A three bedroom privately rented property is occupied by a couple with one dependant, one non dependant and a foster child. They have made a new claim for HB.

Allow for:

- one bedroom for the couple; and
- one bedroom for the dependant; and
- one bedroom for the non dependant

Applying the LHA size criteria means that the claimant will be entitled to a three bedroom LHA rate; this is because they do not have an additional room in the property for a foster child.

Example 6:

A three bedroom privately rented property is occupied by a single adult with two foster children of the opposite sex who are aged 11 and 13. She has been claiming HB continuously since 2006.

Allow for:

- one bedroom for the single adult; and
- one bedroom for one of the foster children

Applying the LRR size criteria means that the claimant will be entitled to two bedrooms; this is because only **one** additional room is allowed for a foster child or children.

Example 7:

A two bedroom housing association property is occupied by a couple. They make a claim for HB on 1 April 2013. The partner has applied to be a foster carer but does not receive approval to be a foster carer until 1 July 2013.

Applying the size criteria means that the claimant is deemed to be under-occupying by one bedroom until the Monday following the date the foster carer is approved.

If a foster child is placed with the couple until 31 August 2013 and then no further children are placed with the couple for the next 52 consecutive weeks, the additional room will continue to be allowed until 31 August 2014.

Example 8:

A three bedroom private rented property is occupied by a single adult who makes a claim for HB on 1 May 2013. The claimant was approved as a foster carer on 1 January 2013 but has not yet had a child placed with them.

Applying the LHA size criteria means the claimant is entitled to a two bedroom LHA rate from the start of the claim. If a child is not placed with them within 52 consecutive weeks from the date of their approval, the additional room will not apply to the LHA size criteria from the 5 January 2014.

ANNEX C

Example cases of adult children in the armed forces**Example 9:**

A two bedroom housing association property is occupied by a couple with an adult son in the armed forces

Allow for :

- one bedroom for the couple; and
- one bedroom for the adult son

Applying the size criteria means that the claimant will not be under-occupying.

The adult son is then deployed on operations on 1 May 2013 to 31 October 2013. The claimant will still be entitled to the bedroom for the adult son and will not be under-occupying whilst he is on deployment. The non dependant deduction will cease to apply from 6 May 2013, the Monday following the date of deployment and will re-apply from 4 November 2013, the Monday following his return to property.

Example 10:

A four bedroom council property is occupied by a single adult with an adult daughter in the armed forces. The single adult also requires frequent overnight care from a non resident carer.

Allow for:

- one bedroom for the single adult; and
- one bedroom for the adult daughter; and
- one bedroom for the non resident overnight carer

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.

The adult daughter is then deployed on operations on 1 June 2013 to 30 November 2013. The claimant will still be entitled to the bedroom for the adult daughter and will continue to be under-occupying by one bedroom whilst she is on deployment. The non dependant deduction will cease to apply from 3 June 2013, the Monday following the date of deployment on and will re-apply from 2 December 2013, the Monday following her return to property.

Example 11:

A two bedroom private rented property is occupied by a couple and an adult son who is in the armed forces. They make a claim for HB on 1 April 2013.

The adult son was deployed on operations on 1 March 2013 and will not return to property until 31 August 2013.

From the start of the new claim, the claimant will be entitled to the two bedroom LHA rate and the non-dependant deduction will not apply until the Monday following the date of the adult son's return from deployment.