

Housing Benefit Circular

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

HB A3/2017 (REVISED)

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	For information
SUBJECT	The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 in relation to the Supreme Court decision of 9 November 2016

Revision

We apologise for any inconvenience caused but this circular is re-issued with revised guidance regarding ‘couple unable to share a bedroom’ at paras 16 to 18 and redrafted the corresponding leaflets. In addition we have provided clarity to the description of the Regulations in Annex 1 and also two of the examples in Annex 6.

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual and Local Housing Allowance Guidance Manual. Please annotate this circular number against the relevant sections.

Queries

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 - **technical content of this circular**, contact DWP Housing Benefit Enquiries housing.benefitenquiries@dwp.gsi.gov.uk
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The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017

Introduction

1. Bulletin [HB U3/2016](#) notified local authorities (LAs) of the Supreme Court judgment handed down on 9 November 2016 in relation to the judicial review challenges brought against the Removal of the Spare Room Subsidy (RSRS) policy.
2. This circular provides details of the provisions in the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 which make changes to the size criteria rules in order to comply with the judgment.
3. In summary, the regulations allow an extra bedroom for Housing Benefit (HB) claimants:
 - when a disabled child or disabled non-dependant adult reasonably requires, and has, overnight care from a non-resident carer (or group of carers) and is in receipt of a specified disability benefit; and
 - in respect of a disabled couple, when a LA is satisfied that a couple cannot reasonably share a bedroom as a result of a member of the couple's disability and that member is in receipt of a specified disability benefit.
4. These regulations apply in both the private rented sector (PRS) and social rented sector (SRS).
5. These changes come into force on 1 April 2017.

The judgment

6. The Supreme Court held that the RSRS size criteria unlawfully discriminates against disabled adults who are unable to share a bedroom because of their disabilities and disabled children who require a non-resident overnight carer.
7. An extra bedroom is already permitted under the size criteria where a disabled adult (a claimant or their partner) has a non-resident overnight carer and where a child is unable to share a bedroom due to their disabilities. The Court held that this difference in treatment between adults and children in the same circumstances could not be justified. The legislation is therefore being amended to replicate these rules to allow an extra bedroom when either a disabled child or disabled non-dependant adult reasonably requires overnight care from a non-resident carer, and to allow disabled adult couples an extra bedroom if their LA determines that they cannot reasonably share as a result of a member of the couple's disability.

8. For other types of cases, the Supreme Court found that Discretionary Housing Payments (DHPs) continue to be an appropriate mitigation against the effects of the size criteria for individuals whose needs require individual evaluation and which may change over time, for example, those with certain mental health conditions or individuals who require storage space for medical equipment.

The changes

9. This circular outlines the provisions contained in the amending regulations known as the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 which were laid before Parliament on 2 March 2017 and come into force on 1 April 2017. A description of the provisions contained within these regulations can be found at Annex 1.
10. These regulations make amendments to the size criteria rules in the following Regulations:
- The Housing Benefit Regulations 2006
 - The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
 - The Universal Credit Regulations 2013
 - The Rent Officers (Housing Benefit Functions) Order 1997; and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997

Qualifying conditions for an extra bedroom

Disabled child or disabled non-dependant adult reasonably requires and has overnight care from a non-resident carer (or group of carers)

11. The qualifying conditions for a Housing Benefit (HB) claimant are that, **firstly**, the disabled child or adult non-dependant reasonably requires, and has, overnight care on a regular basis from a non-resident carer (or team of carers).
12. To meet this qualifying condition, the claimant needs to be able to demonstrate that:
- care has been arranged
 - a spare bedroom is available for the carer (or team of carers); and
 - an extra bedroom has not already been provided for a non-resident overnight carer (or team of carers) in the same household.
13. **Secondly**, the disabled child or non-dependant adult must be in receipt of:
- middle or higher rate care component of Disability Living Allowance (DLA)

- Attendance Allowance (AA);
- the daily living component of Personal Independence Payment (PIP); or
- the Armed Forces Independence Payment (AFIP).

14. There may be a small number of claims where the disabled child or non-dependant adult is not in receipt of one of these benefits but has overnight care. In these cases, LAs have discretion to decide that the person requires overnight care and may ask for sufficient evidence and information to be provided in order to make this decision. This could be, for example, a letter provided by the claimant from a GP or other medical professional.

15. In the rare event that more than one person in the household requires a non-resident overnight carer, for example, a claimant and a disabled non-dependant adult, only one additional bedroom for a carer will be allowed regardless of the property size. In these circumstances DHPs are available if they continue to be impacted by the under-occupancy charge (SRS) or have a shortfall in their rent (PRS).

Couple unable to share because of disability

16. To meet the qualifying conditions, LAs will **first** need to make an assessment as to whether an individual cannot reasonably share a bedroom with the other member of the couple because of his or her disability. This will be a judgement on the basis of the facts, but you should consider the following:

- are the couple reasonably able to share a bedroom in spite of their disabilities (one or both of them)? This may involve having two single beds in one bedroom
- does one member of the couple have a disability that prevents them from sharing a bedroom with the other member?
- is there insufficient space in the couple's bedroom for two single beds where required (for example, due to the use of medical equipment such as a hospital bed or hoists)?

17. If the answer to either of the questions in the last two indents is yes, an additional bedroom should be considered, but see the further condition below:

- **the further qualifying condition** is that one member of the couple is in receipt of:
 - the middle or higher rate care component of DLA
 - higher rate AA
 - the daily living component of PIP; or

- AFIP.

18. If the LA is not satisfied that the couple are unable to share a bedroom because of their disabilities, an extra bedroom should not be allowed for this reason. They should not be advised to claim a qualifying disability benefit (such as PIP) purely to qualify for an extra bedroom if their circumstances do not dictate that they would satisfy the qualifying condition referred to in paragraph 16.
19. In cases where the qualifying disability benefit is not in payment but the couple are unable to share a bedroom due to disability, you should consider whether a DHP award is appropriate. Consider especially those cases where a claim for a disability benefit has already been made but this has not yet been assessed.

Administration

20. LAs will need to consider cases awarded under previous guidance to ascertain whether a claimant qualifies for an additional bedroom in light of the amended regulations, and whether or not reassessment is therefore required. However, we accept there may be difficulties in identifying them. We have therefore included two model leaflets at Annexes 2 and 3 for you to use or amend as appropriate.
21. We have provided some examples of how the new rules might be applied to different cases at Annex 6, but have clarified a number of points below.

SRS

22. For SRS cases that are not subject to a reduction for under-occupancy, no further action is required.
23. For SRS cases currently subject to a reduction for under-occupancy, where there is a disabled child or disabled non-dependant adult who requires overnight care or a couple unable to share because of disability, then these cases may need to be reassessed taking into account the qualifying conditions outlined above.

PRS

24. For Local Housing Allowance (LHA) cases whose current entitlement is below the four bedroom limit, and who now meet the qualifying conditions for an extra bedroom as outlined above, their cases should be reassessed. You should note that the judgment does not mean that the four bedroom limit under the LHA scheme can be exceeded, even if the LA decides that a claimant satisfies the conditions for an additional bedroom.
25. For other PRS cases outside of the LHA scheme, there is no restriction on the number of rooms/bedrooms that can be allowed. For these cases, where the LA decides that an additional bedroom is allowed under the new size criteria rules, a new referral should be sent to the rent officer requesting a decision based on the changes from 1 April 2017.

Joint tenants

26. The impact of the new rules upon joint tenants is as follows:

- For SRS cases, there is no maximum bedroom limit and each joint tenant is entitled to an additional bedroom if they or a member of their household unit satisfies the qualifying conditions. For example, if two HB joint tenants each have a disabled child or disabled non-dependant adult living with them who is in need of a non-resident overnight carer, each would be entitled to an additional bedroom for the carer. This is of course subject to the bedrooms being available.
- For PRS cases, LHA entitlement is limited to the maximum 4 bedroom rate and in the case of joint tenants this is apportioned between them. For example, if two HB joint tenants each have a disabled child who satisfies the conditions for a non-resident overnight carer, they wouldn't receive an additional bedroom as the limit will already have been reached.

The date of changes

27. The changes will apply from 1 April 2017 to all HB claimants and Universal Credit claimants who rent their property in the PRS or SRS.

Existing claimants

28. Where existing claimants are not identified immediately for reassessment, there is no time limit on the period for which arrears can be awarded to them provided they satisfy the qualifying conditions for an extra bedroom. However the arrears can only be backdated to 1 April 2017 when the regulations come into force as the changes are not retrospective. For example, the LA may discover in September 2017 that an existing claimant should have had an additional bedroom. In this event, arrears may be backdated to 1 April 2017.

DHPs

29. The regulations will come into force at the same time as DHP awards are normally decided for the new financial year.

30. In many cases, DHPs have already been awarded to claimants in similar circumstances as the amending regulations. In cases where the full shortfall will now be covered by these regulations, the DHP award should cease. However, in cases where the claimant continues to have a shortfall because of other circumstances, the LA should still consider whether the claimant requires additional financial support.

Description of the amending regulations

Housing Benefit Regulations 2006 (S.I. 2006/213)

Regulation 4(2)

We have inserted a definition of a 'member of a couple who cannot share a bedroom' into Regulation 2(1). This applies to a member of a couple who is in receipt of the middle or higher rate care component of Disability Living Allowance (DLA), the daily living component of Personal Independent Payment (PIP), higher rate Attendance Allowance (AA) or the Armed Forces Independence Payment (AFIP).

We have amended the definition of a 'person who requires overnight care' in Regulation 2(1) to reflect the fact that a bedroom may now be allowed for a disabled child or an adult non-dependant who requires overnight care. The definition applies to a child or adult non-dependant who is in receipt of the middle or higher rate component of DLA, or in receipt of AA, the daily living component of PIP or the AFIP.

Regulation 4(3)

This amends Regulation B13 which makes provision for the determination of the amount of rent eligible to be met by Housing Benefit (HB) for claimants renting in the social sector.

The amendment makes provision to allow an additional bedroom for an overnight non-resident carer (or team of carers) for a disabled child or adult non-dependant where the qualifying conditions have been met; and to also allow an additional bedroom for a member of a couple who cannot share a bedroom due to disability, provided the qualifying conditions have been met.

Regulation 4(4)

This amends Regulation 13D which makes provision for the determination of the amount of eligible rent to be met by HB for claimants renting in the private sector under the Local Housing Allowance (LHA) rules.

The amendment makes provision for an additional bedroom for an overnight carer (or team of carers) for a disabled child or adult non-dependant, and for a member of a couple who cannot share, provided the qualifying conditions have been met.

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

Regulation 4(5) and (6)

Paragraph (5) amends Regulation 114A which applies in particular to private sector claimants not covered by the LHA scheme and some social sector claimants where the LA considers the rent to be unreasonably high. This amendment ensures that information must be provided to the rent officer regarding a person's need for overnight care.

Paragraph (6) amends Schedule 2 to ensure a referral will be made to the rent officer where a person becomes or ceases to be a person requiring overnight care, or becomes or ceases to be a child or member of a couple who cannot share a bedroom.

Housing Benefit (Persons who have attained the qualifying age of State Pension Credit) Regulations 2006 (S.I. 2006/214)

We have made equivalent amendments to Regulation 2, 13D, 95A and Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age of State Pension Credit) (Size Criteria) Regulations 2006 in respect of a child or non-dependant adult who require a non-resident overnight carer (or team of carers) and a member of a couple who cannot share a bedroom because of disability.

Rent Officers (Housing Benefit Functions) Order 1997 (S.I. 1997/1984) and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 (S.I. 1997/1995).**Regulations 2 and 3**

These amendments are to Schedule 2 of the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997. The amendments require the rent officer to allow an additional bedroom for a non-resident overnight carer (or team of carers) for a child or non-dependant adult who require overnight care and an additional bedroom for a member of a couple where one or both of them are unable to share due to disability.

Leaflet

- **Do you or your partner have a carer who regularly stays overnight in your home to help care for a disabled child or another adult who lives with you who is disabled?**
- **Is the overnight care provided by a carer who doesn't live in your home?**
- **Do you actually have a spare bedroom that your carer uses overnight?**

If the answer to all these questions is yes, then from **1 April 2017** the help you get with your rent may be able to take account of this.

From April 2017, a bedroom that is used by a carer (or team of carers) who doesn't actually live in your home but who provides overnight care for either a disabled child or a disabled adult who lives with you, may be allowed when working out how much Housing Benefit to pay you.

All of your circumstances would need to be considered to decide whether you can get more money. This will include whether the disabled child or adult who lives with you, is entitled to certain disability benefits.

Even if your Housing Benefit doesn't increase as a result, it is still in your interest to tell your local authority if you have care arrangements in place for the child or the non-dependant adult who lives with you. If you think that you might be entitled to help with the cost of an additional bedroom that is used by the carer (or team of carers), please speak to an adviser or contact the benefits department at:

[space for LA contact details]

Leaflet

- **Are you and your partner not able to share a bedroom because of your or your partner's disability?**
- **Do you and your partner sleep in separate bedrooms because of this?**

If the answer to these questions is yes, then from **1 April 2017** the help you get with your rent may be able to take account of this.

From April 2017, an extra bedroom may be allowed when working out how much Housing Benefit to pay you if you are a member of a couple and your local authority is satisfied that you and your partner cannot share a bedroom because of your or your partner's disability (for example, if you or your partner have medical equipment, such as a hospital bed or hoist, that prevents you from sharing a bed and there is insufficient space in the bedroom for two separate beds).

All of your circumstances would need to be considered to decide whether you can get more money. This will include whether you or your partner are entitled to certain disability benefits.

If you think you might be entitled to help with the cost of an additional bedroom, please speak to an adviser or contact the benefits department at:

[space for LA contact details]

Leaflet

- **Oes gennych chi neu'ch partner ofalwr sy'n aros dros nos yn eich cartref i helpu i ofalu am blentyn anabl neu oedolyn arall sy'n byw gyda chi sy'n anabl?**
- **A ddarperir y gofal dros nos gan ofalwr nad yw'n byw yn eich cartref?**
- **Oes gennych mewn gwirionedd ystafell wely sbâr y mae eich gofalwr yn ei defnyddio dros nos?**

Os ydy'r ateb i'r holl gwestiynau hyn yn gadarnhaol, yna o **1 Ebrill 2017** efallai y bydd y cymorth a gewch gyda'ch rhent yn gallu ystyried hyn.

O fis Ebrill 2017, mae ystafell wely a ddefnyddir gan ofalwr (neu dîm o ofalwyr) nad yw'n byw mewn gwirionedd yn eich cartref ond yn darparu gofal dros nos ar gyfer naill ai blentyn anabl neu oedolyn anabl sy'n byw gyda chi, efallai yn cael ei chaniatáu wrth gyfrifo faint o Fudd-dal Tai i'w dalu i chi.

Byddai angen ystyried eich holl amgylchiadau i benderfynu a allwch gael mwy o arian. Bydd hyn yn cynnwys p'un ag oes gan y plentyn neu oedolyn sy'n byw gyda chi'r hawl i rai budd-daliadau anabledd.

Hyd yn oed os nad yw eich Budd-dal Tai yn cynyddu o ganlyniad, mae'n dal yn eich diddordeb i ddweud wrth eich awdurdod lleol os oes gennych trefniadau gofal ar gyfer eich plentyn neu oedolyn nad yw'n ddibynnol sy'n byw gyda chi. Os credwch y gallech fod yn gymwys i gael cymorth gyda chost ystafell wely ychwanegol a ddefnyddir gan ofalwr (neu dîm o ofalwyr), siaradwch ag ymgynghorydd, neu cysylltwch â'r adran fudd-daliadau yn:

[space for LA contact details]

Leaflet

- Ydych chi a'ch partner yn methu â rhannu ystafell wely oherwydd eich anabledd corfforol?
- Ydych chi a'ch partner yn cysgu mewn ystafelloedd gwely ar wahân oherwydd hyn?

Os ydy'r ateb i'r holl gwestiynau hyn yn gadarnhaol, yna o **1 Ebrill 2017** efallai y bydd y cymorth a gewch gyda'ch rhent yn gallu ystyried hyn.

O fis Ebrill 2017, gellir ystyried ystafell wely ychwanegol wrth gyfrifo faint o Fudd-dal Tai i'w dalu i chi os ydych yn rhan o gwpl ac mae eich awdurdod lleol yn fodlon na allwch chi a'ch partner rannu ystafell wely oherwydd eich anabledd chi neu anabledd eich partner (er enghraifft, os ydych chi neu eich partner yn cael offer meddygol, fel gwely ysbyty neu declyn codi, sy'n eich atal rhag rhannu gwely ac nid oes digon o le yn yr ystafell wely ar gyfer dau wely ar wahân).

Byddai angen ystyried eich holl amgylchiadau i benderfynu a allwch gael mwy o arian. Bydd hyn yn cynnwys p'un ag oes gennych chi neu'ch partner yr hawl i rai budd-daliadau anabledd.

O credwch y gallech fod yn gymwys i gael cymorth gyda chost ystafell wely ychwanegol, siaradwch ag ymgynghorydd, neu cysylltwch â'r adran fudd-daliadau yn:

[space for LA contact details]

Example cases

Example cases of a couple who cannot share a bedroom due to disability

Example 1

A three bedroom housing association property is occupied by a couple who cannot share due to disability and their son. An under-occupancy reduction of 14% currently applies to their Housing Benefit.

Allow:

- One bedroom for each of the couple; and
- One bedroom for the son

Applying the changes to the size criteria rules means that the claimant is now entitled to three bedrooms and therefore is no longer classed as under-occupying under the Removal of Spare Room Subsidy (RSRS) policy. No reduction is now applied to the eligible rent.

Example 2

A five bedroom privately rented property is currently occupied by a couple who cannot share a bedroom due to disability, their two sons aged 14 and 18 and foster child aged 4 of the same sex.

Allow:

- one bedroom for each of the couple; and
- one bedroom for the 18 year old son; and
- one bedroom for the 14 year old son; and
- one bedroom for the foster child.

Applying the new size criteria rules means that although the claimant is entitled to 5 bedrooms, the 4 bedroom Local Housing Allowance (LHA) limit will still apply because in the Private Rented Sector (PRS) the LHA is capped at 4 bedrooms.

Example 3

A one bedroom PRS property is occupied by a couple who cannot share a bedroom due to disability.

Allow:

- one bedroom for the couple

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

Example 4

A two bedroom privately rented property is occupied by a couple who cannot share a bedroom due to disability. They have been claiming Housing Benefit continuously in the same property since 2006 and are therefore not subject to the LHA rules as they are classed as a pre-2008 case.

Allow:

- one bedroom for the each member of the couple

The case will need to be referred to the rent officer who will apply the Local Reference Rent size criteria, so the claimant will be entitled to two bedrooms (three rooms in total including the living room) - one for each member of the couple.

Example cases of disabled children or disabled non-dependant adults requiring overnight care from a non-resident overnight carer

Example 5

A three bedroom PRS property is occupied by a single adult and his disabled son who is in receipt of Disability Living Allowance at the higher rate and requires overnight care from a non-resident carer.

Allow:

- one bedroom for the adult
- one bedroom for the son
- one bedroom for the overnight carer

Applying the new size criteria rules means that the claimant will be entitled to a three bedroom LHA rate; this is because an additional bedroom is allowed for the overnight carer and a bedroom is available for this purpose.

Example 6

A four bedroom housing association property is occupied by a couple, their daughter aged 4 and their disabled daughter aged 8 who is unable to share a bedroom with her sister and requires overnight care.

Allow:

- one bedroom for the couple
- one bedroom for the daughter aged 4 one bedroom for the disabled daughter
- one bedroom for the overnight carer

Applying the size criteria means that claimant is deemed not to be under-occupying because the disabled daughter is unable to share a bedroom due to disability and is allowed an additional bedroom for an overnight carer.

Example 7

A three bedroom privately rented property is occupied by a single adult, two sons aged 2 and 8, and disabled daughter aged 10 who requires overnight care.

Allow:

- one bedroom for the adult
- one bedroom for the two sons
- one bedroom for the disabled daughter
- one bedroom for the overnight carer

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

Example 8

A four bedroom council property is occupied by a couple and their son aged 6 who is disabled and requires an overnight carer.

Allow:

- one bedroom for the couple
- one bedroom for the son
- one bedroom for the 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.

Example 9

A five bedroom housing association property is occupied by a couple who cannot share due to disability, one of whom requires overnight care and their disabled daughter who also requires overnight care.

Allow:

- one bedroom for each member of the couple
- one bedroom for the disabled daughter
- one bedroom for an overnight carer

Applying the size criteria means the claimant is still deemed to be under-occupying by one bedroom; this is because only one bedroom is allowed for an overnight carer so the claimant was already entitled to an additional bedroom.

A 14% reduction is applied to the eligible rent.

Example case for joint tenants**Example 10**

A four bedroom privately rented property is occupied by Tenant A and Tenant B. Tenant A is an approved foster carer. Tenant B requires overnight care and has a daughter.

Allow:

- One bedroom for Tenant A
- One bedroom for Tenant A's foster child
- One bedroom for Tenant B
- One bedroom for tenant B's overnight carer
- One bedroom for tenant B's daughter

Applying the size criteria means Tenant A will be entitled to a two bedroom LHA rate and Tenant B a two bedroom LHA rate; because there is no additional bedroom available for the overnight carer.