

Comments on draft size criteria regulations

The Government's draft regulations on the size criteria set out the circumstances in which households will receive a deduction in their Housing Benefit for 'under-occupation'. The process entails a determination of whether a household has more bedrooms than it requires, based on strict criteria.

It is clear that, in order for the size criteria to work smoothly, the claimant and landlord both need to be clear about the number of bedrooms in a home. The National Housing Federation welcomes the Government's decision not to prescribe in regulations what is or is not a bedroom, and to leave such a determination to landlords. This will permit landlords a degree of flexibility, for example to discount a box room, or to re-designate a three-bedroom house to a two-bedroom house where appropriate.

1. Sharing bedrooms

However, there will be other circumstances where it is not the number of bedrooms, but their suitability for sharing by children under the age of 16, that will be called into question. Some bedrooms will be able to accommodate two 15-year-old boys, for example, but some will not. A three-bedroom house with three large bedrooms might be appropriate for a couple and four children. But a three-bedroom house with one large double room and two small bedrooms suitable only for single occupancy might be appropriate only for a couple and two children.

Where a property has two single bedrooms alongside a double, it would not be appropriate for a landlord to re-designate a three-bedroom house as a two-bed, and absorb the consequent reduction in rent. This is because each bedroom would still be in use. There would be no under-occupation and no spare bedroom. In such circumstances, landlords should be able to use their discretion to say whether the property in question is an appropriate size for such a household, and therefore whether a particular household is in fact under-occupying for the purposes of the size criteria. They should be given the flexibility to reflect particular family circumstances. Otherwise we would be concerned about the health and safety implications of children nearing adulthood being expected to share unsuitable bedrooms. It is important to note that Part 10 of the Housing Act 1985 Act holds that forcing two people, including children aged 10 or over, to share a room of less than 110 square feet contravenes the 'space standard'.¹

If the property was in the private sector then the size of the bedrooms would be reflected in the overall rent for the property. This is not the case in the social sector where landlords have to set rents according to a rigid formula. The flexibility that we propose would allow the policy to be applied in a much more appropriate way that reflects the actual physical space that a family has to live in.

The issue of bedroom sizes was raised during Committee stage of the Welfare Reform Bill in the House of Lords, by Baroness Hollis and Lord McAvoy. During the debate, Lord Freud

¹ Part 10, Housing Act 1985 www.legislation.gov.uk/ukpga/1985/68/part/X

reassured the House that ‘the size of rooms is something that we are looking at with stakeholders as part of the implementation planning’.² The Federation would like to see evidence of how this has been looked at with stakeholders and how the concerns raised in the House will be addressed in any guidance to local authorities to accompany the regulations. We would be very concerned if nothing was done to address circumstances in which teenagers are expected to share a single bedroom or see their household lose benefit.

In the explanatory notes to the draft regulations, on a section about the lack of definition of a bedroom, the Department for Work and Pensions explains that: ‘No definition of a bedroom is included in the Regulations but in general we shall rely on the landlord to advise on the number of bedrooms in a property and this is normally stated on the tenancy agreement. We shall consider whether any clarification is required in guidance.’ We would suggest that further clarification, setting out further scope for landlord discretion in applying the size criteria, is essential to ensuring that tenants are not penalised where there is not, in any real sense, under-occupation.

2. Rates of deduction for under-occupation

The draft regulations set out that the deductions for under-occupation will be 14% of the eligible rent for one spare bedroom and 25% for two or more. The Federation would like clarification that these rates will not be increased if the size criteria measure fails to generate the savings expected.

3. Age threshold for size criteria

The size criteria are intended to apply to working age claimants only. For couples claiming Housing Benefit in April 2013, both the claimant and their partner need to be under the Pension Credit qualifying age to be treated as working age and subject to the size criteria. Pensions Minister Steve Webb has said, in response to a Parliamentary Question: ‘It is intended that those already in receipt of Pension Credit at April 2013 will be protected, and continue to receive Pension Credit as long as they continue to meet the other qualifying conditions.’³

From October 2013, when Universal Credit is introduced, if either member in a couple is under the qualifying age for Pension Credit then the couple will be ‘treated as working age’. This means they would be expected to claim the Universal Credit, and would therefore be subject to the size criteria. However, it is not clear what will happen to couples who begin to straddle the Pension Credit age after April 2013 but before the Universal Credit is introduced from October 2013. We would like clarification on this issue, in the regulations if necessary. Further to that, what happens when a household with one partner over the Pension Credit age and another under it, who would be exempt if they claimed Pension Credit prior to October 2013, claims it for the first time after October 2013? Clarification is necessary.

4. Supported and sheltered housing

Supported and sheltered housing provides specialist housing for people with support needs, including some of the most vulnerable people in society. An independent analysis by Frontier Economics found that supported and sheltered housing delivers a net benefit of £639m a year; including £199m a year from specialist housing for adults with learning disabilities and £187m a year from specialist housing for people with mental health problems.⁴ Cutting the

² Lord Freud, Hansard, 18 October 2011: Column GC70

www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111018-gc0001.htm#11101863000093

³ Hansard 29 Feb 2012: Column 393W

⁴ Frontier Economics, Financial Benefits of Investing in Specialist Housing for Vulnerable and Older People (September 2010)

benefit for people deemed to be under-occupying their supported or sheltered housing would mean that schemes would no longer be viable and there is a risk that vulnerable people with support needs would become homeless since there may be no suitable alternative properties with the right support available.

Supported housing can be either short or long term. If it is short term (for example a domestic violence hostel with family sized flats) then the tenant is unlikely to have any choice over the type or size of accommodation offered. There is a high turnover of tenancies and people tend to be housed in response to a crisis. The landlord will have very little flexibility over what accommodation is available to house people. The application of the size criteria in these cases would undermine the viability of the whole scheme and reduce the ability to respond to crisis situations. For longer term schemes, tenants are likely to have a disability and additional bedrooms may be needed for support staff. Behavioural or other issues (such as tenants being subject to Multi Agency Public Protection Arrangements) may make it very difficult for tenants to share accommodation. Again, the application of size criteria in such cases is impractical and risks undermining the viability of schemes.

During debate on the Bill at Committee Stage in the House of Lords, Lord Freud stated, with reference to supported and sheltered housing, that 'we envisage that people in this type of accommodation will not be affected by the size criteria'.⁵ The Federation welcomed this assurance but we are concerned that using the definition of 'exempt accommodation' to define these properties will not produce the result intended by Lord Freud. The DWP's recent consultation on housing costs within supported and sheltered housing set out the need to reform the system, including the definition of exempt accommodation. The current definition does not fit with the practice in the housing association sector over recent years of separating out the contracting of support and care from the landlord. This definition was never intended to be used to cover the whole of the supported and sheltered housing sector and is inappropriate for this use. Some schemes might be deemed to fall outside the definition because the support and care service is provided, under contract with the local authority, by a provider distinct from the landlord.

At present very little social sector supported and sheltered housing is flagged as 'exempt accommodation' by housing benefit staff because the rents are not considered excessive. The recent DWP research report⁶ confirms this. Therefore using the definition of 'exempt accommodation' to define supported and sheltered housing, in relation to the size criteria, will result in extra work for local authorities in assessing claims and potential legal challenges to local decisions. For these reasons we believe the definition is unworkable.

Registered Providers in England with stock over 1,000 units must complete a statistical return giving rent and service charge levels for supported and general needs housing. The Regulatory Statistical Return of March 2011 reports 424,053 units of accommodation for supported housing owned by registered housing associations. The housing sector continues to use the definition of supported and sheltered housing contained in Housing Corporation guidance and records figures on the numbers of units in the annual RSR to the regulator.⁷

5. Extra bedroom for carer and disabled children

The DWP's impact assessment on the size criteria showed that a large number of people affected were disabled people. Because social housing is allocated on the basis of medical as well as housing need there are likely to be proportionally larger numbers of both tenants

⁵ Lord Freud, Hansard, 18 October 2011: Column GC102
www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111018-gc0002.htm

⁶ DWP 2010 Research report 714 Risk Solutions Exempt and supported housing

⁷ Housing Corporation Circular 03/04. The term 'supported housing' applies to purpose designed housing or housing designated for a particular client group.

with disabilities and also children with disabilities, compared with the general population. We believe that children should be treated the same as adults with regard to benefit reflecting the need for an additional bedroom.

In one case, a single parent with a very severely disabled child who had spent the first years of his life in hospital was allocated a three bedroom bungalow to reflect the child's need for additional space to store equipment, but also because the mother sometimes needed additional help overnight. It is inappropriate for this mother to have to rely on a discretionary housing payment to cover her housing costs when the additional room is clearly being used for a carer in a situation where she cannot be expected to cope on her own as the child needs 24-hour care. Further to the Court of Appeal decision on 15 May 2012 (CH/1312/2010) we request the DWP amend the size criteria regulations to allow provision for disabled children who need to either sleep alone or who need overnight care.

6. Foster carers

The Federation has repeatedly raised concerns about the impact of the size criteria on families who foster children, who for benefit purposes do not count as part of the household. We acknowledge the additional £5m per year provided by the DWP in discretionary housing payments to support families who may receive a cut in their Housing Benefit even when all their bedrooms may be fully occupied by foster children. However, the concerns are even greater where families are 'in between' foster placements, and therefore not receiving any Fostering Allowance. We would therefore ask that the DWP considers allowing registered foster carers at least one additional bedroom under the size criteria.

7. Temporary absence from home

The draft regulations make no reference to how the size criteria will be applied when members of the household are absent from the home on a temporary basis. Existing Housing Benefit regulations provide that HB will continue to be paid for absences of 13 weeks for whatever reason, and for absences of up to 52 weeks for prisoners on remand, for hospital treatment or other medical care, for students studying away from home, or for people escaping violence. We would expect these rules to also apply with regard to the size criteria. In other words, households would not be considered 'under-occupying' because one or more members of the household were absent from the home for any of the reasons set out above and in existing regulations. The Government should provide clarification.

8. Uprating of Local Housing Allowance by CPI

Separately from the size criteria, the Federation is concerned that the decision – as set out in the same set of regulations – to uprate Local Housing Allowance in line with the Consumer Prices Index (CPI), rather than with local rents as happens currently, could lead to growing affordability problems among Housing Benefit claimants in the private sector, which would in turn increase pressure on the social sector. Research by Shelter and the Chartered Institute of Housing has shown that linking LHA with CPI would, over time, severely exacerbate shortfalls between benefit payments and the rents people have to pay.

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