Briefing

Size Criteria (‘Bedroom Tax’)

Contact: Emily Bird

Team: Neighbourhoods

Email: welfare@housing.org.uk

Date: May 2013

Ref: NS.WR.2013.BR.07
Introduction

The Welfare Reform Act gave the Government the power to introduce new size criteria (also known as the ‘Bedroom Tax’, ‘under-occupation penalty’ or ‘removal of the spare room subsidy’) for housing benefit claims in the social rented sector. Under the criteria, which came into force on 1 April 2013, working-age households deemed to be under-occupying their council or housing association homes lose part of their housing benefit. More details of the measure were set out subsequently in regulations and other documents.

What do the size criteria mean?

The new rules allow one bedroom for:
- every adult couple (married or unmarried)
- any other adult aged 16 or over
- any two children of the same sex aged under 16
- any two children aged under 10
- any other child (other than a foster child or child whose main home is elsewhere)
- a carer (or team of carers) who do not live with in the home but provide the claimant or their partner with overnight care
- an approved foster carer (where either the claimant or their partner is caring for a foster child or has been accepted as a foster carer but has no child living with them as long as the period without a child does not exceed 52 weeks).
- disabled children may be allowed a separate room to their siblings if necessary
- parents of armed forces personnel who continue to live at home but who are deployed will be allowed to retain that adult child’s bedroom

Any household deemed to have more bedrooms than they require, as defined by the criteria, will see a reduction in their housing benefit.

Examples of households affected by the measure include:
- Separated parents who share the care of their children and who may have been allocated an extra bedroom to reflect this. Benefit rules mean that there must be a designated ‘main carer’ for children, who receives the extra benefit
- Couples who use their ‘spare’ bedroom when recovering from an illness or operation
- Parents whose children visit but are not part of the household
- Disabled people including people living in adapted or specially designed properties.

Do the rules define a bedroom?

No. The Government’s view is that it is for landlords to specify the size of the property and this ought to match what is on any tenancy agreement and reflect the level of rent charged. The size criteria will not take account of whether a room is a single or a double bedroom. A room either is a bedroom or is not a bedroom.

Speculation circulating on social media that any room under 70 sq ft does not count as a bedroom was based on a misreading of the Housing Act regarding overcrowding. Read our explanation for further detail.

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.’

How is ‘working age’ defined?

The measure affects only working-age tenants – those below the state pension credit age. As of April 2013 the pension credit age was 61 years and six months. This is due to rise in line with the women’s state pension age until equalisation with men is achieved in 2018. The Government has introduced proposals to
increase the state pension age for everyone to 66 by 2020. It is likely that the pension credit age will follow this, leaving more people subject to the size criteria.

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.’

A DWP document states: ‘If one member of a couple receiving Housing Benefit is over state pension credit age then the size limit will not apply to them.’

When claimants move on to Universal Credit, 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. This rule will not affect existing claimants of pension credit; they will be able to continue to receive pension credit and therefore will not be affected by the size criteria.

However, it is not clear what will happen to couples who begin to straddle the pension credit age after the national roll-out of Universal Credit from October 2013. The Federation continues to seek clarification on this issue.

**Extra bedroom for non-resident 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 with disabilities and also children with disabilities, compared with the general population.

An extra bedroom is allowed for a carer (or team of carers) who do not live with in the home but provide the claimant or their partner with overnight care. This does not protect those whose carer is their partner. A person is deemed to require overnight care if he/she is getting attendance allowance, the middle or highest rate of DLA care component, either rate of the daily living component of Personal Independence Payment or armed forces independence payment, OR (for Housing Benefit not Universal Credit) he/she has provided the local authority with sufficient certificates, documents, information or evidence to satisfy it that overnight care is required, OR it has been arranged for one or more people who do not live with him/her to provide overnight care and to stay overnight regularly in their home for this purpose. (Under HB, they must satisfy the local authority that they reasonably require this care).

After choosing not to appeal a legal case, the DWP also announced that an extra room can be allowed where the local authority is satisfied that a child is unable to share a bedroom because of a disability or medical condition. Urgent Bulletin U2/2013 was issued in March 2013 and provides further advice on this.

**Foster families**

The Federation repeatedly raised concerns with DWP about the impact of the size criteria on families who foster children, who for benefit purposes do not count as part of the household. The Government recently

---

1. Hansard 29 Feb 2012: Column 393W
decided to allow foster carers one additional bedroom under the size criteria so long as they have fostered a child or become an approved foster carer within the last 52 weeks. The DWP has suggested that foster carers having difficulties meeting the costs of housing a second or subsequent foster child can apply to their local authority for a Discretionary Housing Payment (DHP). However, shortly after announcing its decision to permit one additional bedroom for foster carers the Government reduced the funding for Discretionary Housing Payments by £5m.

**Armed Forces personnel**

The Government recently announced that parents with adult children in the armed forces (or reservists) who normally live with them will be able to retain the bedroom for that adult child whilst they are deployed on operations.

**Temporary accommodation**

Claimants placed in temporary accommodation by a local authority because they are homeless or to prevent homelessness – and who are receiving Local Housing Allowance – will be exempt from the size criteria, except where they are placed in local authority owned properties and receive Housing Benefit.

**Transitional protection for death or loss of job**

The DWP states: ‘In the circumstances of a bereavement the claimant would not have the size limit rules applied to their Housing Benefit until a period of 12 months had passed or they moved home or there was another change of circumstances (whichever comes first).’ Under Universal Credit the benefits run-on period will last just three months.

For people who lose their job and have to claim Housing Benefit as a result, ‘if they have not made a claim to Housing Benefit within the last 52 weeks and have been able to afford their rent, the size limit rules will not be applied for the first 13 weeks. If they move home or have another change of circumstances within that 13 week period the size limit rules will apply from when that happens.’

**Joint tenants (not couples)**

A DWP document states: ‘If the accommodation is shared jointly with someone else the size limit rules will take into account everyone living in the property when deciding whether the claimant is under-occupying for Housing Benefit purposes. If it is decided that they are under-occupying, a percentage reduction will be taken off the whole eligible rent and any eligible service charges and the Housing Benefit will then be based on the proportion of the rent that claimant is liable to pay.’ For more information about how joint tenants are treated under the size criteria see the DWP document Removal of the spare room subsidy in the social-rented sector - Frequently asked questions (March 2013).

**Students**

Households where there is a room kept for a student studying away from home will not be deemed to be under-occupying if the student is away for less than 52 weeks (under housing benefit) or 6 months (under Universal Credit) - and the local authority accepts that the household is still the student's main home and the young person intends to return home.

---

6 [www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf](www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf)  
7 [www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf](www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf)
Shared ownership tenancies

DWP has stated: ‘Those with a shared ownership lease with a social sector landlord will not be subject to the reduction for working age social sector tenants who are under occupying their home through HB regulation A13(2)(b) because social security legislation tends to treat these claimants as owners rather than tenants.’

How much Housing Benefit do people lose?

The cut is a fixed percentage of the Housing Benefit-eligible rent (and any eligible service charges). This has been set initially at 14% for one extra bedroom and 25% for two or more extra bedrooms. Therefore the higher the rent the higher the amount of money deducted from Housing Benefit each week. The same percentage cut is applied to the new ‘affordable’ rents, set at up-to-80% of the market rate.

The Government has said those with one ‘spare’ bedroom lose on average £12 per week (£624 per year) and those with two or more ‘spare’ bedrooms will lose on average £22 per week (£1,144 per year). Overall, those affected will lose on average just over £14 per week, or £738 per year.

The Federation is seeking assurances that the Government has no plans to increase the percentage cuts to Housing Benefit in subsequent years.

How many people will see their benefit cut?

As of April 2013, the proposal was expected to immediately affect an estimated 660,000 working-age social tenants – 31% of existing working-age Housing Benefit claimants in the social sector. The majority of these people have only one extra bedroom. Of the 660,000 estimated to be affected, 420,000 (63%) are disabled (as defined by the Disability Discrimination Act).

<table>
<thead>
<tr>
<th>Under occupation of accommodation by</th>
<th>Estimated Number of affected Claimants</th>
<th>Percentage of affected Claimants</th>
<th>Average Weekly Housing Benefit loss per affected Claimant (2013/14)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 bedroom</td>
<td>540,000</td>
<td>81%</td>
<td>£12</td>
</tr>
<tr>
<td>2 or more bedrooms</td>
<td>120,000</td>
<td>19%</td>
<td>£22</td>
</tr>
<tr>
<td>All bedrooms</td>
<td>660,000</td>
<td>100%</td>
<td>£14</td>
</tr>
</tbody>
</table>

The number of people affected was forecast to increase to 760,000 by 2020, as the qualifying age for Pension Credit increases.

What about regional variations?

There is a regional variation in the percentage of social housing tenants affected – a much higher percentage of tenants are affected in the North East and North West of England than in London and the South East. The amounts that people lose per week will be greater in the South East and London than in the North of England because the cut is a percentage of the rent.

---

8 [www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf](http://www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf)
**Government Office Region** | **Estimated number of claimants affected** | **Affected claimants as % of working age social rented sector Housing Benefit claimants in each region** | **Average weekly housing benefit loss per affected claimant (2013/14)**
--- | --- | --- | ---
North East | 50,000 | 37% | £13
North West | 110,000 | 43% | £14
Yorkshire & Humberside | 80,000 | 43% | £13
East Midlands | 40,000 | 27% | £12
West Midlands | 60,000 | 31% | £13
Eastern | 50,000 | 30% | £15
London | 80,000 | 22% | £21
South East | 40,000 | 22% | £15
South West | 30,000 | 20% | £15
Wales | 40,000 | 46% | £12
Scotland | 80,000 | 33% | £12
**Great Britain** | **660,000** | **31%** | **£14**

## Will people in work be subject to the size criteria?

Yes – of the 660,000 households affected nationally some 140,000 (21%) are in work. Working people will lose the same amount as workless households. This is because any deduction will be calculated as a percentage of Housing Benefit-eligible rent – not the actual amount of Housing Benefit received. This means, for example, that a worker who may be receiving £14 per week in Housing Benefit could stand to lose their entire support.

## What about supported and sheltered housing?

During debate on the Welfare Reform Bill at Committee Stage in the House of Lords, Welfare Reform Minister 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’.

The DWP subsequently announced that the criteria would not apply to those in supported ‘exempt’ accommodation, a particular type of supported accommodation defined for Housing Benefit purposes as accommodation provided by a non-metropolitan county council in England, a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision as set out in paragraph 4 of Schedule 3 to the Consequential Provisions Regulations 2006.

However, this chosen definition is failing to protect a significant number of schemes because it 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. Some schemes are therefore being 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. In April 2013, following representations from the Federation, Lord Freud

---

10 Parliamentary written answer from Pensions Minister Steve Webb: [www.theyworkforyou.com/wrans/?id=2013-02-01b.141106.h&s=size+criteria+work+department%3AWorkandPensions#g141106.r0](www.theyworkforyou.com/wrans/?id=2013-02-01b.141106.h&s=size+criteria+work+department%3AWorkandPensions#g141106.r0)

published a letter to stakeholders in the sector confirming that the DWP were considering a change to the definition of exempt accommodation to ensure that projects where support was provided by a managing agent could be included. Most people living in sheltered housing are not affected by the size criteria because they are above the qualifying age for Pension Credit.

For more details of how supported housing is affected by the size criteria see the DWP document Removal of the spare room subsidy in the social-rented sector - Frequently asked questions (March 2013).

**Will people have the option to move to a smaller home?**

Many landlords support people to downsize from their property to free up badly needed family size homes, and the size criteria for Housing Benefit will bring a greater financial imperative to downsizing. However, the DWP’s impact assessment admits there is a ‘mismatch’ between household size and the availability of suitable homes in the social sector for under-occupying claimants to downsize into. It says: ‘In many areas this mismatch could mean that there are insufficient properties to enable tenants to move to accommodation of an appropriate size even if tenants wished to move and landlords were able to facilitate this movement.’

Housing associations will know from their own stock profile the situation within their local area. A number of associations are already including the impact of the new size criteria in discussions with other local landlords and local authorities operating Choice Based Letting schemes.

**Can people rent out a room?**

The DWP has suggested that people could respond to the new size criteria by taking in a lodger to fill a ‘spare’ bedroom. Current benefit regulations allow claimants to keep the first £20 of any weekly income from renting out a room. The lodger would be entitled to claim Housing Benefit in their own right. A secure tenant may take in a lodger; the landlord’s permission is not required. While there is no statutory provision about whether an assured tenant can take a lodger, common law allows a tenant to do so unless the tenancy agreement prohibits it or states that the landlord’s permission must be obtained. The decision to rent out a room is a personal one for the tenant: families with young children may be concerned about sharing their home with another adult who is not part of their household; some people may feel that there is not enough living space for another adult or there may be no market for the room.

The DWP has stated: ‘Under the current Housing Benefit rules a lodger or boarder will be taken into account as part of the household and they would be entitled to a bedroom under the size criteria rules. Any rental income would be treated as per current Housing Benefit rules. This will change once Universal Credit is introduced. Under Universal Credit a lodger or boarder will not be counted as part of the household and they will not be entitled to a room under the size criteria rules. However, any rental income from a lodger or boarder will be disregarded entirely.’

**What about local lettings policies?**

In some parts of the country, families have been purposefully allocated properties that under the new size criteria would be considered too large for them. This may have been in order to prevent a concentration of children on an estate, or in high rise flats, or because there is a severe shortage of suitable smaller accommodation, for example in rural areas. The new size criteria do not take into account these local circumstances.

---

12 [www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf](http://www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf)
How is the system being administered?

Initially, local authorities are administering the size criteria. The Government has said it intends to transfer the new size criteria into the Universal Credit so that the calculation of the element of the Credit for housing costs will be based on the actual rent of the property minus any deduction for the additional bedroom(s). As people move onto Universal Credit, local authorities will gradually lose their responsibility for administering support for housing costs. It is not clear as yet what tenants will be expected to do, who will verify claims and how local authorities will deal with adjusting a huge number of claims at the same time. Housing associations should start discussing these issues with their local authority housing benefit officials at an early opportunity.

Is the Government providing any help for vulnerable groups?

The Department for Work and Pensions has announced that an additional £25m per year will be made available in the form of discretionary payments for local councils to support those disabled claimants living in properties that have been significantly adapted. DWP has confirmed it will be up to local authorities to decide whether help should be given in any circumstance where a person faces a shortfall in their ability to meet their rent.

Can Discretionary Housing Payments (DHP) help?

The Discretionary Housing Payment budget for local authorities has been increased but this support is dwarfed by the amount the Government expects to cut from housing assistance each year and there will be a huge increase in the demands made on this budget. By 2014/15 Government estimates that it will have cut about £2.2bn per year from support for housing costs.

The process for determining a DHP may vary across local authorities, which have been given flexibility over how they distribute their allocation. While guidance suggests that DHPs may be an appropriate form of long term support, some local authorities may be reluctant to offer support indefinitely allowing people to remain in their home for the long term. New claimants will make demands on the cash-limited local pot and therefore any claim is likely to be time limited.

The Federation will be seeking to ensure there is a level playing field, across tenures, for access to Discretionary Housing Payments.

Temporary absences

The regulations make no direct 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 understand that these rules 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. Temporary absence rules will change under Universal Credit.

Data sharing

For guidance on what data may be shared between local authorities and housing associations see the DWP document Removal of the spare room subsidy in the social-rented sector - Frequently asked questions (March 2013).
Differences between size criteria under Housing Benefit and under Universal Credit

**From April 2013**

1. Those over State Pension Credit age will not be affected, including where one member of a couple is over.

2. Non-dependant deductions (NDD): six separate rates varying by income and under 25s on benefit are exempt.

3. Non-dependants: couples get one room between them. They pay the NDD unless both are exempt.

4. Lodgers get a room but income is taken into account and deducted pound for pound from benefit apart from first £20.

5. In joint tenancy cases the bedroom tax can still apply.

6. Protection on death for up to 52 weeks.

7. A 13-week protection where the tenant could previously afford the rent and Housing Benefit has not been claimed in the last 52 weeks.

**Under Universal Credit**

1. Mixed age couples - both will need to be over pension age to not be affected by the bedroom tax. Those where one is already in receipt of Pension Credit will however be protected.

2. One, flat-rate Housing Cost Contribution (HCC). All under 21s are exempt from HCC.

3. Each adult non-dependent gets a room. Each pays the HCC unless exempt.

4. No room allowance but any income from lodgers is disregarded.

5. Bedroom tax not applied in non-couple joint-tenancy cases.

6. Benefits run-on for 3 months.

7. Size criteria applies immediately.

Further Information