

Briefing:

Specified Accommodation Definition

10 August 2018

This briefing was originally published in April 2014 but was updated in August 2018. It was produced in partnership with Sitra, who have now joined with Homeless Link, the membership body for the homelessness sector.¹

This briefing covers changes introduced by the Housing Benefit and Universal Credit (Supported Housing) (Amendment) Regulations 2014 and the definition of specified accommodation.

¹ <https://www.homeless.org.uk/connect/news/2015/dec/17/homeless-link-and-sitra-join-forces>

1. Introduction

In 2014 the Government introduced the Housing Benefit and Universal Credit (Supported Housing) (Amendment) Regulations 2014 which created a new category of “specified accommodation” where help with the rent is excluded from both the overall benefit cap and Universal Credit. The regulations can be found on the legislation website (<http://www.legislation.gov.uk/id/uk/si/2014/771>).

2. Four categories of specified accommodation

Specified accommodation consists of four categories and it is quite possible for a project to fall into more than one category.

Exempt accommodation

Accommodation which meets the ‘exempt accommodation’ definition has considerable protection from having Housing Benefit calculated on less than the full rent (minus ineligible service charges) but it is also excluded from:

- Household benefit cap
- Social housing size criteria (bedroom tax)
- Universal Credit housing costs arrangements – calculated and paid monthly in arrears.

The ‘exempt accommodation’ definition is still as written in 1995 and only covers claimants in accommodation where the landlord also provides the claimant with care, support or supervision – even if through a sub-contractor.

Supported housing where the landlord does not provide the care, support or supervision

The second category of specified accommodation deals with two developments that have reduced the proportion of supported housing covered by the exempt accommodation definition:

- Separate commissioning of the care, support or supervision by local authority and other commissioners from organisations other than the landlord
- Cancellation of block contracts and their replacement by personal budgets where tenants now purchase care, support or supervision from an organisation other than the landlord.

The second category is similar to the definition of exempt accommodation except:

- It does not matter who provides the claimant with care, support or provision.
- The claimant must have been ‘admitted’ to the accommodation ‘in order to meet a need for care, support or supervision’ – so it only applies to people who have moved into supported accommodation, not people in general needs accommodation who are later given a package of care or support.

This second category only covers claimants with the same landlords as ‘exempt accommodation’ so it does not help claimants whose landlord is either a:

- Housing authority – but see the next two categories for possible help

- Private for profit individual or organisation.

Domestic violence refuges

The third category of 'specified accommodation' covers accommodation provided not only by the same landlords as the first and second categories but also by a local housing authority.

The accommodation must consist of a building or part of a building that is used wholly or mainly for non-permanent accommodation of people who have left their homes as a result of domestic violence.

The definition of domestic violence is the same as in other social security legislation. It includes controlling and coercive behaviour and different kinds of abuse. There is no requirement that the claimant needs or receives any care, support or supervision.

Housing authority non-self-contained supported housing (such as hostels)

The Government agreed to extend protection from Universal Credit housing costs and the household benefit cap to housing authority supported housing – but only if the claimant's accommodation is not self-contained.

The regulations use the expression 'hostel' but that expression has a long and complicated definition in the Housing Benefit Regulations which ends up covering more accommodation than most people expect.

Please note the additional requirement that the tenant must actually receive care, support or supervision – see final section on care, support and supervision – general principles.

The definition of a hostel is that it must be a building (other than a care home) 'in which there is provided for persons generally or for a class of persons domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both.'

'Self-contained' is generally understood to mean the claimant must have in their own premises facilities for:

- Eating
- Sleeping
- Cooking – unless, perhaps, all meals are provided
- Washing – of the person, not just a toilet and a hand basin of the claimant's own.

The result is a lot of supported housing may qualify but not any but the very oldest forms of sheltered housing where tenants share bathrooms.

3. How is specified accommodation protected from the impact of recent benefit changes?

Household benefit cap

The changes to the Housing Benefit Regulations came into force on 10 April 2014. From that date people who claim Housing Benefit in respect of specified accommodation have been ignored for the purposes of the benefit cap – as is already the case with exempt accommodation.

Size criteria

The three new categories of specified accommodation are not protected from the social housing size criteria (the 'bedroom tax') because Housing Benefit is assessed under normal Housing Benefit rules for social housing unlike 'exempt accommodation' where the size criteria does not apply.

Universal Credit

Housing costs for those living in 'specified accommodation' cannot be met through Universal Credit (UC) and must be paid through Housing Benefit instead. A tenant can still receive UC but will have no entitlement to help with housing costs in UC and has to make a separate claim for Housing Benefit to cover the cost of the rent.

People living in specified accommodation in UC Full Service areas:

- are entitled to claim Housing Benefit under existing rules to cover the cost of eligible rent and service charges. This can be paid direct to the landlord.
- Any Housing Benefit received will not count towards the overall benefit cap.

There is a question on the UC claim form to allow a claimant to state that he or she is living in supported housing. If the claimant answers yes then the claim for housing costs in UC will not proceed. As the local authority administered Housing Benefit, it determines whether the accommodation meets the 'specified' definition. Some local authorities do maintain lists of schemes.

4. Identifying specified accommodation

So that help with the housing costs is provided correctly through either Universal Credit or Housing Benefit it will be necessary that properties falling into the new definitions are identified accurately. As Universal Credit staff will have a limited knowledge of the local housing sector local authorities are probably better placed to identify the supported housing in their area that meets the definition. Housing organisations should talk to their local authorities to ensure their supported housing that meets the new definition is identified as specified accommodation for the purposes of paying housing benefit.

We will continue to work with local authorities and the DWP to ensure that the system for identifying 'exempt accommodation' and 'specified accommodation' claims is workable and does not place any undue bureaucratic demands on housing providers and local authorities.

5. Care, support and supervision – general principles

Whenever the regulations mention an organisation providing or a person receiving care, support or provision, it is important to remember that judges have decided the following always apply:

- The care, support or supervision must not be a ‘trifling’ amount – it must make a difference to the claimant’s ability to maintain the tenancy.
- It’s not enough that the care, support or supervision is available, the claimant must actually take advantage of it – or, if the benefit decision is being made at the beginning of the tenancy before there is any evidence, it must be likely the claimant will do so.
- The claimant must actually need the care, support or supervision – if it’s provided and the claimant does not actually need it, it doesn’t count.

So the exempt accommodation rule applies in theory to individual benefit claimants and not necessarily to whole projects:

- Some tenants may not take up the support offered.
- Others may receive support they don’t need.

The rules are complex and have been challenged many times over the years so there is a great deal of legal casework that refines the definition. This briefing does not give a full picture of the law and any organisation is advised to seek their own legal advice if looking to challenge a local authority determination.