

Purpose
Exempt Accommodation
Excluded Tenancies
Local Housing Allowance

Purpose

This factsheet, describes

- in what circumstances tenancies are "exempt" or "excluded" from the ordinary rules that apply to calculating how much Housing Benefit can be paid in private sector tenancies - a maximum figure defined as a 'local housing allowance' (LHA), set by the Rent Officer. This would be more or less the average rent paid for the size of accommodation in the area.
- In what circumstances rent can be restricted in "exempt" or "excluded" accommodation
- In what circumstances Local Housing Allowance applies
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Exempt Accommodation

Social Security Commissioner Turnbull (CH/423/2006, CH/3811/2006, CH/1289/2007) looked at the definition of "exempt" accommodation under regulation 10 of the 1995 Housing Benefit regulations. He defined the first test of whether accommodation should be treated as exempt as that the landlord is a:

- County Council or metropolitan council, or
- Housing association, or
- Charity, or
- Voluntary organisation.

The second test is that the landlord (or someone acting on their behalf) has an obligation to provide care, support or supervision to the tenant. On behalf of should be taken to mean that the care, support or supervision if not provided by the landlord should be provided for them. There should be 'some form of interposition' for the landlord in providing these services.

The amount of care, support or supervision provided by the landlord can vary considerably but it must be more than minimal. It could be the case that the tenant has a very intensive package of care or it could be that the support is fairly minor, but, nevertheless goes beyond that which is normally provided by a housing provider.

As with the provision of accommodation it should be the landlord that has ultimate responsibility for providing care, support or supervision or provides a level of support that the authority is satisfied is more than minimal. It is not sufficient for the landlord to simply facilitate, co-ordinate or just be involved in the provision of care, support or supervision either on behalf of others, i.e. social services, the NHS or within a joint responsibility.

If the care, support or supervision is not directly provided by the landlord or by someone acting on their behalf, for example if all the care, support and supervision are independently commissioned by Social Services, then 'exempt accommodation' status will not apply." (HB/CTB Circular A22/2008)

If a local HB office is satisfied that the accommodation is "exempt" then "eligible rent and HB entitlement should be assessed under the 'old' HB scheme rules (Housing Benefit (General) Amendment Regulations 1995 (SI 1995 No. 1644, now revoked) which originally introduced the Local Reference Rent (LRR) Otherwise the eligible rent will be calculated by the 'new' HB scheme rules including the maximum rent (LHA)" (HB/CTB Circular A22/2008) (described at para 1 above)."

Exempt accommodation is currently being reviewed by the Department of Work and Pensions. Details can be found in the consultation paper "Housing Benefit Reform - Supported Housing" (July 2011)

Excluded Tenancies

Housing Benefit Regulations 2006 Schedule 2 Regulation 14 defines excluded tenancies as those that are provided by a landlord who is a Registered Provider (i.e. registered with the Homes and Communities Agency)

"There is no requirement to refer an application (for HB in an excluded tenancy) to the rent officer unless the accommodation is larger than reasonably required by the claimant and any others who occupy that dwelling (it is important to bear in mind that the size criteria applied by the rent officer are different from the test to be applied by the LA here. The test here is whether the dwelling is larger than the claimant reasonably needs, whereas the rent officer is simply applying a formula based on the number of occupants), or rent payable for the property is unreasonably high" (HB/CTB Circular A22/2008)

The decision to refer a registered Housing Association case to the rent officer rests with the LA, but for the sake of transparency the LA should have a policy for determining whether a referral is appropriate as a high rent or a large property is not wholly determinative: the test is unreasonably high or larger than reasonably required. HB officers are encouraged to work closely with their RSL partners and to create a Service Level Agreement between parties:

"Letting them know what criteria (for referral are being used). This raises confidence in the HB system.

HB/CTB staff will need to liaise with other departments within the local authority (notably Housing and Homelessness Sections) in developing and implementing procedures in regard to RSL referrals to the rent officer." (*HB/CTB Circular A28/2002*).

Local Housing Allowance

The Government has simplified Housing Benefit (HB) system for private tenants. For people renting from private landlords or from non-profit making landlords but not covered by the 'exempt accommodation' or "excluded tenancy" rules, the 'Local Housing Allowance' (LHA) system now operates for private tenancies which start from April 2008 onwards. As existing housing benefit claims come up for review through 2008 and early 2009, they will move onto the LHA system as well.

LHA will not apply where the landlord is a Registered Social Landlord or a local authority, or in some specific circumstances. The main exceptions to the new rules which are likely to affect people with learning disabilities are where people pay for board or attendance, or if people live in accommodation provided by a Housing Association, County Council, or by a charity or a voluntary organisation where that body or someone on their behalf also provides care and support (i.e. 'exempt' accommodation).

In the new system, HB is based on a flat-rate 'local housing allowance' which is based on the average of local market rents, covering quite large geographical areas. These figures will be public information, and will be up-rated every year by at the Consumer Prices Index rate. These figures are not increased to include extra service charges. Service charges eligible for housing benefit are included as an item of 'gross' rent and subject to the maximum appropriate LHA. There are different rates for the type of accommodation you are entitled to. These are:

- Shared Room Rate
- One bedroom Rate
- Two bedroom Rate
- Three bedroom Rate
- Four bedroom Rate

If your rent payable is more than the appropriate room rate, you will need to top up the difference from other income. If it is less you will receive that amount.

If you occupy a self-contained one bedroom property but are under 35 years old you will only be eligible for the shared room rate, unless you claim DLA Care at the middle or higher rate, in which case you will be eligible for the one room rate.

From 1st April 2011 Housing Benefit (HB) regulations are amended to provide for a bedroom that is used overnight by a non-resident carer to be included when applying the size criteria in private rented sector cases.

The amendment defines a 'person who requires overnight care' as someone who

- receives Attendance Allowance (AA), or
- receives the middle or highest rate care component of Disability Living Allowance (DLA), or
- if they do not receive either of the above, has provided the local authority (LA) with sufficient evidence to show that this type of care is required

In addition, the claimant, will only meet the definition if the LA is satisfied that the claimant,

'reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should

i be engaged in providing overnight care;

ii regularly stay overnight at the dwelling for that purpose; and

iii be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home.'

The claims will not be retrospectively applied but existing claimants who required a room for a non-resident carer before 1st April 2011 will be able to claim from that date

The provision for an extra bedroom for a non-resident overnight carer does not apply over and above the property size cap of four bedrooms that will also be introduced from 1 April 2011. i.e., if a claim is received for a single household entitled to four bedrooms, a fifth bedroom that is used by a non-resident carer cannot be included in determining the HB award.

Help with the extra room will also be available to those who have their own individual tenancy agreement in a property that is shared with other tenants who also receive care and there is a bedroom that is used by a non-resident carer. Any or all of the residents receiving the overnight care and claiming HB could have the same carer's room included in their benefit assessment provided HB are satisfied they meet the requirements as individuals. This means that individual tenants will each be able to claim the 2 room rate in their own right, limited to the value of the their individual overall rental liability or the property size cap for a 2 bed property, currently £290.

Claimants under 35 eligible for the passport from Shared Room rate to self-contained rate (those who receive mid or high rate DLA or Severe Disability Premium) will also be eligible for the uplift to the 2 room rate as described above.

Once it has been established that the claimant has an extra bedroom, LAs will then need to be satisfied that there is a medical need for the care. Anyone receiving AA or the middle or highest rate care component of DLA will be deemed to have a medical need for care

There may be a small number of claims where a claimant (or partner) has overnight care, but does not receive either AA or the relevant DLA component. In these cases, LAs have discretion to decide what alternative evidence, if any, is needed to demonstrate that overnight care is required, given the circumstances of the case - for example a letter provided by the claimant from a GP or other medical professional.

Finally, LAs will need to satisfy themselves that the claimant or partner actually receives care that requires a carer, or team of carers, to stay overnight. Again, LAs have discretion to decide what evidence, if any, is needed in each case, and from whom it should be obtained, such as from adult social services or the care agency providing the care.

Claimants do not need to be receiving overnight care every night of the week. The regulation stipulates that a carer should stay overnight 'regularly' but does not prescribe a minimum number of nights that would satisfy this requirement. However, it is not intended that the provision should apply for regular but infrequent care, but rather for claimants where the need for care and therefore the bedroom is frequent, thereby enabling them to continue to live in the community.

Current rates and a bedroom entitlement calculator for every local authority can be found at http://www.direct.gov.uk/en/Diol1/DoItOnline/DG_196239

Usually, HB will be paid directly to tenants, bringing it in line with other allowances. There will be some scope for payment to the landlord either if it was done this way prior to LHA starting, or if the council feels it improbable that you will pay your rent.

Readers wanting more information from the research done in this by Shelter can view it at their website - www.shelter.org.uk

The Department of Work and Pensions (DWP) has done its own evaluations, which can be found on - www.dwp.gov.uk/housingbenefit/lha

Neither organisation's evaluations have given details about the effect that LHA rules may be having on accommodation provision for people with extra care or support needs.