



Under-occupation of social housing: Housing Benefit entitlement

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Social landlords have long had an interest in tackling under-occupation in order to achieve the best use of their housing stock. Landlords have developed incentive schemes to encourage tenants to relocate to smaller properties; however, as a general rule, they do not have the power to force social tenants to move against their will.

The Government intends to use powers contained in the *Welfare Reform Act 2012* to provide that, from April 2013, working-age social tenants in receipt of Housing Benefit will experience a reduction in their benefit entitlement if they live in housing that is deemed to be too large for their needs. The main exception to this will be households who are not of working-age. Restrictions on entitlement to Housing Benefit based on the size of the accommodation occupied have long applied to claimants living in privately rented housing.

Draft regulations, [The Housing Benefit \(Amendment\) Regulations 2012](#), were laid on 28 June 2012. They will be subject to the “affirmative” procedure which means that they must be approved by both the House of Commons and House of Lords before they can come into force. The regulations will be debated in Grand Committee in the House of Lords on 15 October 2012. The DWP has published guidance in Housing Benefit/Council Tax Benefit Circular [A4/2012](#).

The policy is highly controversial and has been labelled the “bedroom tax”. Amendments to the Bill were secured during its passage through the House of Lords but they were not agreed by the House of Commons and did not survive into the final Act. A recent Court of Appeal judgment, concerning the application of size restrictions in the private rented sector to households containing disabled adults/children, may have ramifications for the “bedroom tax” in the social housing sector (see section **3.4**).

This note provides information on under-occupation in the social rented sector, explains the potential impact of the policy and possible responses by landlords and tenants. The Chartered Institute of Housing has published [Making it fit: a guide to preparing for the social sector size criteria for social landlords](#) and a [guide to reducing under-occupancy](#).

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1 Why does under-occupation arise?

Under-occupation arises where a household lives in a property that is deemed to be too large for its needs. It is usually defined in terms of excess bedrooms.

The classic cause of under-occupation is older tenants/couples remaining in their home after their children have grown up and left. Family breakdown can also result in under-occupation.

Some social landlords, particularly in areas with less demand for social housing, create under-occupation on initial allocation, i.e. they offer a household a larger property than they need. This may arise because of a mismatch between the size of properties available and households in need of housing or the landlord may wish to support parents with children who do not reside with them permanently. The allocation policy may also anticipate increases in family size – thus reducing the pressure for future transfer requests.

Research carried out by the Cambridge Centre for Housing and Planning Research (CCHPR) for the Housing Futures Network indicates that a substantial number of under-

occupying households do not regard themselves as such. Their “spare” bedrooms are used by children (irrespective of age and gender) who have their own rooms. A number of couples sleep in separate bedrooms. Spare bedrooms are used when children visit at weekends as part of a shared parenting arrangement; rooms are also used for storing disability related equipment.¹

Social landlords have tended to focus on tackling under-occupation amongst elderly tenants. This generally takes the form of an incentive to move and assistance with removal costs.² Good practice guidance on managing under-occupation was published by the then Government in April 2000 [Managing under-occupation: A guide to good practice in social housing](#). The Tenant Services Authority (TSA) and DCLG published a new guide to tackling overcrowding and under-occupation, [Overcrowding and Under-Occupation: Self-Assessment for Social Landlords](#), in 2009. In 2007 the Labour Government allocated funding to 38 pathfinder areas to devise solutions to tackle overcrowding – this work also included a focus on under-occupation and a report on progress is contained in the TSA/DCLG 2009 paper.

The key message from landlords who have been active in this area seems to be that cash incentives are largely irrelevant in most cases. What is important, and leads to successful moves, is the provision of the right support and finding the right property.

The CCHPR concludes that successful schemes to reduce under-occupation “generally only manage to move a very small proportion of all under-occupiers each year. The main reason for this is that most do not want to leave the homes they are settled in.”³

2 The rationale for Government intervention

Two key reasons for the introduction of size criteria, and associated limitations in Housing Benefit entitlement in the social rented sector, have been advanced by the Government; namely, the need to reduce expenditure on Housing Benefit and the desire to secure behaviour changes amongst social housing tenants:

At October 2010, there were 3.3m Housing Benefit claimants living in the social rented sector. Claimants in the social rented sector made up approximately 69% of all Housing Benefit claimants. The overall cost of Housing Benefit needs to be controlled, and reduced in order to tackle the budget deficit. This measure is part of the effort to contain Housing Benefit expenditure.

There is currently little reason for Housing Benefit claimants in the social rented sector to move from accommodation which is too large for their needs. The match between the size of accommodation and the household is irrelevant for calculating Housing Benefit entitlement for the vast majority of these Housing Benefit claimants. This could be seen as inequitable when compared with the operation of Housing Benefit in the private rented sector. It is unfair to allow tenants in the social rented sector to enjoy more spacious accommodation than they could justify if they were on Housing Benefit in the private rented sector. In these circumstances it would be reasonable for under-occupying claimants in the social rented sector to make some contribution towards the more generously-sized accommodation.

[...]

¹ Cambridge Centre for Housing and Planning Research, [Under-occupation and the new policy framework](#) December 2011

² CCHPR, [Under-occupation in North Hertfordshire](#), March 2011

³ Cambridge Centre for Housing and Planning Research, [Under-occupation and the new policy framework](#) December 2011

The high proportion of tenants in receipt of Housing Benefit means that it has the potential to influence the behaviour and actions of many tenants and landlords. It is this role that the introduction of the size criteria intends to capitalise on, providing support where accommodation is suitable for the needs of the tenant; and providing an economic incentive for tenants to move to smaller properties where their accommodation is considered larger than necessary to meet their needs and those of their household.

Housing Benefit claimants in the social rented sector will face similar choices to their counterparts in the private rented sector: Tenants will be able to choose whether to occupy appropriately sized accommodation, or pay towards accommodation which is larger than the needs of their household. Where the choice is to move, the lower rent will help to provide an additional work incentive, and enable claimants to 'float off' Housing Benefit at lower income levels.⁴

Lord Freud justified the measure during the passage of the *Welfare Reform Act* through Parliament:

I remind noble Lords of the core argumentation. We do not think that taxpayers should be expected to meet the cost of somewhere approaching 1 million spare bedrooms, a cost of around £0.5 billion every year. Clearly this is unfair, or certainly different, to those in the private rented sector who receive benefits based on their household need.⁵

It is clear from the February 2012 *Impact Assessment* that the desired savings in Housing Benefit expenditure will only be realised in full if social tenants do not seek to move from the homes they are under-occupying:

Estimates of Housing Benefit savings are based upon the current profile of tenants in the social rented sector, with little tenant mobility assumed. If a significant number of tenants wished to move, this would reduce direct savings and place extra demands on social landlords.⁶

Further questions have been raised around the impact on Housing Benefit expenditure of social tenants moving into smaller private rented accommodation given that rents are higher in that sector.

The Government rejected this proposition:

Some in this House, and indeed in the other place, have suggested that we should perhaps abandon this measure altogether as it will not deliver savings if substantial numbers of tenants move into the private sector. I assure noble Lords that if that really were the case, we would not be implementing this change. It is important to look at the bigger picture. If there were movement into the private rented sector, that would free up accommodation in the social rented sector, enabling it to be let to others who may otherwise have been renting privately. Alternatively, it could be offered to people who are currently placed in often expensive temporary accommodation. So, while I can understand how some may conclude that this measure would result in an increase in housing benefit expenditure, I firmly believe that it will achieve precisely the opposite as the effects ripple outward.⁷

⁴ DWP, *Impact Assessment*, 16 February 2012

⁵ HL Deb 14 February 2012 c706

⁶ DWP, *Impact Assessment*, 16 February 2012

⁷ HL Deb 29 February 2012 c1370

3 Housing Benefit: defining under-occupation and who is affected

The draft [Housing Benefit \(Amendment\) Regulations 2012](#) state that the under-occupation restriction will not apply where:

- a. the tenancy is an excluded tenancy defined in paragraphs 4-12 of Schedule 2 to the [Housing Benefit Regulations 2006](#);
- b. the charge is a mooring charge for houseboats or a pitch fee for a mobile home or caravan;
- c. where the claimant or the claimant's partner has attained the qualifying age for state Pension Credit or where both have attained that age (see section 3.2 below); and
- d. where the dwelling is temporary accommodation.⁸

Under-occupation restrictions on Housing Benefit will also not apply to shared owners.⁹

3.1 How many bedrooms are allowed?

Historically, social housing tenants have enjoyed long-term security of tenure and have not faced penalties such as Housing Benefit restrictions or forced moves to smaller accommodation when their families have grown up and moved out. From April 2013 this will no longer apply to under-occupying social tenants of **working-age**.

In the social housing sector from April 2013 one bedroom will be allowed for each person or couple living as part of the household with the following exceptions:

- a child of 15 or under will be expected to share with another child of the same gender; and
- a child of 9 or under will be expected to share with one other child aged 9 or under, regardless of gender.

No exemption or account will be taken of children whose main residence is elsewhere.¹⁰

A bedroom will be allowed for a non-resident carer where they provide overnight care for the Housing Benefit claimant or their partner (also see section 3.4 below).

This definition of under-occupation replicates the size criteria applied to tenants in private rented housing who are in receipt of Housing Benefit.

Protection (for up to 52 weeks) will apply to ensure that tenants who are recently bereaved do not experience an immediate reduction in their Housing Benefit entitlement.¹¹ There will also be 13 weeks of protection where the tenant could previously afford the rent and Housing Benefit has not been claimed in the last 52 weeks.

The onus will be on Housing Benefit claimants to report their household circumstances.¹² However, the DWP has made amendments to the data sharing regulations to allow for local

⁸ Defined in paragraph 4 of the draft regulations as accommodation made available by a local authority to homeless households.

⁹ People who own a share of their home and pay rent on the remaining share.

¹⁰ [Explanatory cover note by the Department of Work and Pensions](#), 2012

¹¹ HL Deb 29 February 2012 c1371

¹² HL Deb 14 February 2012 c707

authorities and registered providers of social housing (includes housing associations) to share information in order to identify under-occupying claimants. The *Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012* came into force on 2 July 2012.

The explanatory notes to the draft regulations refer to the fact that no definition of a bedroom is contained therein:

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.¹³

The issue of bedroom sizes and suitability for sharing was raised during the Committee stage of the *Welfare Reform Bill* in the House of Lords. There is concern that while some bedrooms will accommodate two children sharing, others will not. The National Housing Federation, commenting on the draft regulations, has said:

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.

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.¹⁴

The National Housing Federation has also raised concerns about the application of the size criteria where household members are temporarily absent:

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

¹³ [Explanatory cover note by the Department of Work and Pensions](#), 2012

¹⁴ NHF, [Comments on the draft size criteria regulations](#), 2012

home for any of the reasons set out above and in existing regulations. The Government should provide clarification.¹⁵

3.2 What is working-age?

Working-age is defined as those below the qualifying age for Pension Credit. Pension Credit age is expected to be 61 at the time the under-occupation provisions come into effect in April 2013 and will rise in line with the women's state pension age until equalisation with men is achieved in 2018. There are further proposals to increase the state pension age for everyone to 66 by October 2020; it is likely that Pension Credit age will follow this, resulting in more households being affected by the under-occupation provisions.

As noted above, the draft regulations make it clear that where the claimant *or* the claimant's partner has attained the qualifying age for state Pension Credit, or where both have attained that age, the under-occupation restriction will not apply.

The DWP's [explanatory cover note](#) to the draft regulations provides the following guidance:

The deduction applies to working age claimants only, and so whether someone is affected by the application of size criteria in the social rented sector will be linked to the qualifying age for Pension Credit which, for both men and women is linked to women's State Pension age.

Until April 2010, working age included cases where both the claimant (and any partner) was under the age of 60. By 2020, legislation currently provides that the relevant age threshold will be 66 (in line with changes in the State Pension age for women, and entitlement to the guarantee element of State Pension Credit). The Autumn Statement on 29 November 2011 announced the intention to increase this to 67 by 2028.

Housing Benefit claims from those claimants who have reached the qualifying age for state pension credit will be unaffected by this measure at the point that the size criteria changes are introduced from 1 April 2013. Couples not affected by this change at the point of introduction will be those where either the claimant *or* their partner has reached the qualifying age for state pension credit. (New Reg A13(2)(c)).¹⁶

The National Housing Federation asked for further clarification in light of changes that the Universal Credit will introduce:

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?¹⁷

¹⁵ *ibid*

¹⁶ [Explanatory cover note by the Department of Work and Pensions](#), 2012

¹⁷ NHF, [Comments on the draft size criteria regulations](#), 2012

The DWP has confirmed that for mixed age couples, both will need to be over the Pension Credit age to be exempt from the size criteria when Universal Credit is introduced. However, there will be protection where one is already in receipt of Pension Credit.¹⁸

The Universal Credit will only apply to new claimants from October 2013. Full migration of existing claimants to Universal Credit is not expected to be complete until 2017.

3.3 How much Housing Benefit will be lost?

As noted above, the Housing Benefit restrictions for under-occupation will only apply to **working-age** claimants.

Affected tenants will face a reduction in their Housing Benefit entitlement of 14% for one additional (spare) bedroom and 25% where there are two or more additional (spare) bedrooms. The Government decided to reduce Housing Benefit entitlement by a percentage in order to take account of different rent levels in different areas.¹⁹

Working tenants on a low income who receive Housing Benefit will also experience a percentage reduction in this Benefit.

The [explanatory cover note](#) to the draft regulations provides the following examples of how the deduction will operate:

The deduction will apply to the total eligible rent including any eligible service charges. For example a couple living in a three bedroom property with two children aged one and three:

Rent = £60 plus service charges of £20. £5 of the service charge is ineligible so total eligible rent = £75. They are deemed to be under occupying by one bedroom so a 14% reduction of £10.50 is applied to the eligible rent of £75 resulting in Housing Benefit entitlement of £64.50.

In cases of joint tenants the eligible rent is apportioned appropriately between the tenants after the percentage reduction has been applied. For example three individuals jointly responsible for rent live in a four bedroom property. Total eligible rent =£100. A 14% under occupancy reduction is made and then the rent is apportioned £100 -£14, divided by 3 = £28.67.

Apportionment will apply even if the case is made that the under occupation is applicable to one of the other tenants. For example a four bedroom house is occupied by a single person and a lone parent and her daughter. The lone parent is the claimant and has an agreed responsibility for half the rent and therefore maintains that she is not under occupying. Total eligible rent = £65, less the 14% reduction of £9.10 = £55.90 and application of the apportionment of 50% = £27.95 Housing Benefit.²⁰

The [Impact Assessment](#) on the under-occupation provisions (updated in June 2012) estimates the number of affected claimants:

The introduction of the size criteria is likely to affect an estimated 660,000 Housing Benefit claimants living in the social rented sector at the time of its introduction in 2013/14. This is approximately 31% of all working age Housing Benefit claimants living in social housing. At the time of its introduction each claimant will see an estimated

¹⁸ See section 8 of this note.

¹⁹ DWP, [Impact Assessment](#), 16 February 2012

²⁰ [Explanatory cover note by the Department of Work and Pensions](#), 2012

average reduction in Housing Benefit of approximately £14 per week, taking into account forecast increases in social sector rents.

As the qualifying age for State Pension Credit increases, the number of claimants affected is also likely to increase, assuming no other changes to the caseload.²¹

The majority (around 81%) of under-occupying social tenants of working-age are believed to have one spare bedroom:

Under occupation of accommodation by	Estimated Number of affected Claimants	Percentage of affected Claimants	Average Weekly Housing Benefit loss per affected Claimant (2013/14)
1 bedroom	540,000	81%	£12
2 or more bedrooms	120,000	19%	£22
ALL BEDROOMS	660,000*	100%	£14

Source: Policy Simulation Model, using 2009/10 reference data from the Family Resource Survey.

*Total numbers do not sum because of independent rounding.

65% of claimants are expected to experience a benefit reduction of less than £15 per week at 2013/14 prices. Around 40,000 claimants in receipt of partial Housing Benefit are expected to lose their entitlement altogether.²²

There are regional variations in the number of affected tenants. A higher percentage of tenants will be affected in Wales and the north east and north west of England than in London and the south east.²³

The National Housing Federation has asked for a commitment that the rates of Housing Benefit reduction will not be increased “if the size criteria measure fails to generate the savings expected.”²⁴

3.4 Disabled tenants

As noted in section 3.1, disabled tenants, who require an additional bedroom for a non-resident carer who provides overnight care for the Housing Benefit claimant or their partner, will not experience a Housing Benefit reduction. There are no exemptions for other disabled tenants – the Government said it would make additional funding for Discretionary Housing Payments available for disabled people who live in significantly adapted accommodation (section 4.1 below).

However, in a [unanimous ruling](#) on 15 May 2012 the Court of Appeal held that the size criteria in the current Housing Benefit regulations (only applied to claimants living in private rented housing) discriminates against disabled people by not allowing an additional room

²¹ DWP, [Impact Assessment](#), (revised) 28 June 2012

²² *ibid*

²³ *ibid*

²⁴ NHF, [Comments on the draft size criteria regulations](#), 2012

where the disabled person has a carer,²⁵ or where two children cannot share a room because of disability.

Lord Justice Maurice Kay said:

The case for the appellants is not that the statutory criteria amount to indirect discrimination against the disabled. It is that, in one way or another, they have a disparate adverse impact on the disabled or fail to take account of the differences between the disabled and the able-bodied. In their skeleton argument and oral submissions, counsel for the appellants describe these ways of putting their case as 'complementary and overlapping' rather than mutually exclusive. (paragraph 10)

He went on to hold that the claimants had established a 'prima facie' case of discrimination for the purposes of Article 14 of the European Convention on Human Rights, and agreed with Mr Justice Henderson that the Secretary of State had failed to establish objective and reasonable justification for the discriminatory effect of the statutory criteria.

Having granted declaratory relief, Lord Justice Maurice Kay left it to the Secretary of State to decide on the rectification of discrimination in the three cases. Commentators note that the judgement could have significant implications for the application of benefit restrictions for disabled people.²⁶ The DWP is seeking permission to appeal against this judgement.

Housing Benefit/Council Tax Benefit Circular [A4/2012](#) contains the following guidance:

Due to a Court of Appeal judgment in the cases of Burnip, Trengove and Gorry those whose children are said to be unable to share a bedroom because of severe disabilities will be able to claim Housing Benefit for an extra room from the date of the judgment, 15 May 2012. However it will remain for local authorities to assess the individual circumstances of the claimant and their family and decide whether their disabilities are genuinely such that it is inappropriate for the children to be expected to share a room. This will involve considering not only the nature and severity of the disability but also the nature and frequency of care required during the night, and the extent and regularity of the disturbance to the sleep of the child who would normally be required to share the bedroom. This will come down to a matter of judgment on the facts.

3.5 Shared care of children

Housing Benefit/Council Tax Benefit Circular [A4/2012](#) contains the following guidance on cases where the care of children is shared between separated parents:

Where parents who don't live together have shared care of their children the children are only treated as living with the parent that is treated as responsible for them and provides their main home. For a person to be treated as responsible for a child or young person, the child or young person must normally be living with that person. If a child or young person spends equal amounts of time in different households, or there is a question as to whom they normally live with, they will be treated as living with the person who is receiving child benefit for them. This is consistent with those living in the private rented sector.

²⁵ The rules were amended from April 2011 to allow a room for a non-resident overnight carer.

²⁶ *Inside Housing*, "[Judgement to force changes to benefit rules](#)", 15 May 2012

3.6 Sheltered and supported housing

During debate on the *Welfare Reform Bill* 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.”²⁷

Housing Benefit/Council Tax Benefit Circular [A4/2012](#) advises:

The size criteria rules will not be applied to those in supported ‘exempt’ accommodation. This is 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.

The National Housing Federation has expressed concerns about this approach:

... 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 report²⁸ 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.^{28 29}

3.7 Foster carers

Tenants who are foster carers who keep a spare bedroom in expectation of a placement are not exempt from the under-occupation restrictions:

²⁷ HL Deb 18 October 2011 GC102

²⁸ Housing Corporation Circular 03/04. The term ‘supported housing’ applies to purpose designed housing or housing designated for a particular client group .

²⁹ NHF, [Comments on the draft size criteria regulations](#), 2012

As with claims in the PRS, when calculating how many bedrooms a family unit requires, a room for a foster child will not be included. Therefore, a household that has an extra room for a current or potential foster child will be treated as under-occupying.

It is however, important that this measure does not discouraged people from being foster carers. An extra £5 million has been made available to the DHP fund to assist foster carers (including those between placements) who find themselves with a reduction in their housing benefit due to under-occupation.³⁰

Information on Discretionary Housing Payments can be found in section 4.1 (below).

4 The options for tenants

Under-occupying social housing tenants (of working-age) in receipt of Housing Benefit will experience a shortfall between their rent levels and the Housing Benefit they receive. They will have the option of remaining in their homes and meeting the shortfall from other income (this may be benefit income) or may seek a move to smaller accommodation in the social or private rented sectors.

One possibility, and a concern of social landlords, is that the measure will result in increased rent arrears and the eviction of affected households resulting in costly homeless applications. Lord Freud, speaking in the House of Lords, said that the Government “will also look at ways of minimising the risk of claimants falling into arrears. No one wants this to happen. Landlords have a key role to play and we are looking at how to support them in that role, and how to help them manage the possible risks.”³¹

Research carried out by the CCHRP found 52% of tenants surveyed said that they would find it “very difficult” to make up the shortfall while 31% said it would be “fairly difficult.”³²

4.1 Discretionary Housing Payments

One option for claimants experiencing a shortfall will be to apply to the local authority for a Discretionary Housing Payment (DHP). To qualify for a DHP the only requirement is that there must be a shortfall between benefit being paid and the rent, but the council will usually take into account special circumstances that contribute to financial difficulties.

Local authorities are not under any duty to make a discretionary housing payment – they are generally not paid in perpetuity. [The Good Practice Guide on DHPs](#) was updated and reissued in March 2011 – it is likely to be updated again before April 2013.

A PQ from 2008 explains how funds for these payments are allocated:

Mr. Plaskitt: The discretionary housing payment fund is allocated to each local authority based on the mid-point between the amount they were allocated and the amount they actually spent in the previous full financial year (e.g. the 2008-09 allocation was calculated using 2006-07 data, as this was the most recent full financial year data that was available at the time of calculation).

Any remaining funding is then distributed across local authorities based on their annually managed expenditure, and their average rent restrictions. 50 per cent. of the remaining funding is allocated based on each local authority's proportion of overall

³⁰ HB/CTB Circular [A4/2012](#)

³¹ HL Deb 14 February 2012 c707

³² Cambridge Centre for Housing and Planning Research, [Under-occupation and the new policy framework](#) December 2011

annually managed expenditure, and the remaining 50 per cent. of the funding is allocated based on each local authority's average rent restrictions.³³

In order to mitigate the impact of some of the reductions to Housing Benefit entitlement the Government increased funding for these payments by £10 million in 2011/12.³⁴ An additional £40m will be allocated in 2012/13 and in each remaining year of the Spending Review period so that total funding for DHPs will be £60m (annually). The distribution of the funding in 2012/13 is set out in DWP [HB/CTB Circular S10/2011 \(revised\)](#).

During the passage of the *Welfare Reform Act 2012* through Parliament several amendments were proposed in an attempt to secure exemptions from the under-occupation provisions for various groups, including disabled tenants of adapted properties and foster carers. Baroness Wilkins drew attention to the 21st Report of the Joint Committee on Human Rights in which it considered the *Welfare Reform Bill* and recommended "additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions."³⁵

The Government resisted amendments to the Bill but announced an additional £30m (annually from 2013/14) for DHPs aimed at two groups:

- £25m for disabled people who live in significantly adapted accommodation to enable them to remain in their existing homes (see section 3.4 above); and
- £5m for foster carers who need to keep an extra room for when they are in between fostering.

The Government thinks that this £30m will help around 40,000 cases based on an average reduction of £14 per week. It is based on a group of 35,000 potentially affected claimants who are wheelchair users and who live in adapted accommodation and an estimate of around 5,000 foster carers. Lord Freud said the sum available would be kept under review.³⁶ HB/CTB Circular [A4/2012](#) refers to the possibility of claimants applying for DHPs in advance:

You may decide it is helpful to allow claimants to apply for DHPs in advance (once regulations relating to the changes have been made in Parliament). This will help alleviate uncertainty for some claimants and allow those going through assessment to become foster carers to provide the necessary assurances to social services that they will have the additional room required. You may then decide to inform the claimant of an award that could start at a future date, subject to any subsequent change in circumstances.

4.2 Moving to a smaller home

The Government sees potential in the under-occupation measure to improve levels of mobility within the social housing sector:

We in the House have had many discussions about the behavioural response of claimants to the measure. Clearly it is too soon to know what they will do. Some may decide to downsize. Others will decide to continue to live where they are and to cover the shortfall through other means. One thing that is interesting and different about the

³³ HC Deb 29 September 2008 c2380W

³⁴ Total funding was £30m

³⁵ HL Deb 14 December 2011 c1312

³⁶ HL Deb 14 February 2012 c720

social housing sector is how little mobility there is. The figure runs at around 5 per cent per annum. The size criterion is potentially the kind of thing that will start to make people think about what accommodation they need to live in, and how much they can afford. If it does, it will start to free up properties for the 250,000 or so families who are living in overcrowded accommodation, as well as for those living in expensive temporary accommodation. One could see it as a nudge to help drive some of the outcomes intended to be realised through the Localism Act, which will allow landlords to use their existing housing stock more efficiently.³⁷

However, social landlords have raised significant concerns over their ability to offer alternative accommodation of a suitable size to the affected tenants. Coast and Country Housing Association was reported in *Inside Housing* (June 2012) as having 2,500 tenants affected by the under-occupation measure but only 16 one-bed properties in which to place them.³⁸ The *Impact Assessment* acknowledges that this is an issue:

According to estimates from DCLG there is a surplus of 3 bedroom properties, based on the profile of existing working-age tenants in receipt of Housing Benefit, and a lack of 1 bedroom accommodation in the social sector. 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. In these circumstances individuals may have to look further afield for appropriately sized accommodation or move to the private sector, otherwise they shall need to meet the shortfall through other means such as employment, using savings or by taking in a lodger or sub-tenant.

Some social landlords are pooling their homes in order to increase the chances of securing a move for tenants requiring smaller accommodation.³⁹

The Government's *Allocation of accommodation: Guidance for local housing authorities in England* (June 2012) stresses the importance of authorities prioritising transfer applications from under-occupying tenants who are prepared to downsize:

1.7 Authorities should consider the importance of giving social tenants who under-occupy their accommodation appropriate priority for a transfer. This will be important in light of the measure in the Welfare Reform Act 2012 which will reduce Housing Benefit entitlement for working age social sector tenants who under-occupy their property (measured in accordance with the Local Housing Allowance size criteria) from April 2013. Authorities should also consider whether there are other provisions that might make it more difficult for under-occupiers to move, such as a prohibition against tenants with minor rent arrears transferring, and the scope for removing or revising these in relation to under-occupiers.

4.3 Taking in a lodger

During the Lords debate on the Bill Lord Freud raised the possibility of tenants taking in lodgers to avoid the under-occupation restrictions:

One thing that people will be able to do is offer spare rooms to lodgers, which in some cases will be a sensible option. There will be a double benefit from that, certainly before universal credit comes in, because the room will not be considered to be a spare room, and the first £20 of weekly income from the lodger will be disregarded when calculating benefit entitlement. There has been misunderstanding and confusion

³⁷ HL Deb 14 February 2012 c706

³⁸ *Inside Housing*, "Landlord can't rehouse 'bedroom tax' families", 18 June 2012

³⁹ *Inside Housing*, "West midlands landlords pool homes to avoid bedroom tax," 8 June 2012

about taking in lodgers. The confusion is between what a lodger is and what subletting is. It is worth pointing out that all social tenant residents can apply to their social landlord for permission to take in a lodger. We will expect social landlords to take a pretty liberal line on this. Some may have a policy not to allow it, but they will have a keen interest in reviewing the position, given the context of what we are doing here.

We are emphasising the point to social landlords as part of our implementation work. The Chartered Institute of Housing is developing a toolkit for the implementation of the measure that will include this advice.⁴⁰

The CIH's toolkit has been published: [*Making it fit: a guide to preparing for the social sector size criteria for social landlords*](#).

HB/CTB Circular [A4/2012](#) makes it clear that, until Universal Credit is introduced, lodgers are allowed a room under the size criteria:

When assessing the make-up of the household for the purposes of determining how many rooms are required, any boarder or lodger will be taken into account. Therefore in a three bedroom house with a couple, their child and a lodger, the claimant would not be considered to be under-occupying and there would be no reduction in Housing Benefit due to under-occupancy.

4.4 Re-designation of rooms

A further potential response of social landlords was highlighted by Lord Freud:

One aspect that has not been explored in our debates is the response from social landlords. The rent they receive reflects the size of their property. If there were, for example, a very small room such as a box room that the landlord called a bedroom, they might reconsider, if they have not done so already, whether to count that room when deciding on the number of bedrooms that should be written into the tenancy, as well as on the rent associated with it. The designation of property size is another area where there may be flexibility. We are exploring this with social landlords as part of our implementation work.⁴¹

A survey conducted by *Inside Housing* has indicated that a majority of the largest social landlords in England are not considering the reclassification of their properties:

Out of 18 landlords contacted in a snap survey by Inside Housing, 13 said they were not planning to reclassify homes so tenants are no longer judged to have a spare room under the new rules, which come into effect next April. The resulting drop in rental income and concerns about existing loan agreements were cited as factors for not adopting the approach.⁴²

4.5 Earning more money

Creating an incentive for benefit recipients to return to work or increase their working hours is central to the Government's welfare reform agenda. In respect of the under-occupation restrictions Lord Freud said:

⁴⁰ HL Deb 14 February 2012 c706

⁴¹ HL Deb 14 February 2012 c707

⁴² *Inside Housing*, "[Landlords do not plan to reclassify their homes](#)," 1 June 2012

Just a few hours' work may help some of those affected cover the shortfall, particularly where there is a disregard such as the £25 weekly earnings disregard for lone parents in work.⁴³

The CCHRP research for the Housing Futures Network found that tenants hoped to earn more money though those who were seeking work were doing so already:

...no one suggested that they would try to find a job or increase earnings as result of the HB reforms. The majority however considered themselves to be permanently outside of the workforce, suffering a variety of health difficulties such as arthritis, back problems and mental health difficulties. As most were within five or ten years of retirement, they did not envisage returning to work.⁴⁴

5 What can landlords do?

The Chartered Institute of Housing (CIH) has published *Making it fit: a guide to preparing for the social sector size criteria for social landlords* and a *guide to reducing under-occupancy*.

The CCHRP has identified some approaches that landlords can adopt to reduce the impact on tenants and rent collection levels.

- revise allocation policies to ensure that the initial allocation is at the bedroom standard for working-age households;
- inform tenants ahead of April 2013 to give them a chance to prepare and downsize where possible;
- review and publicise policies on taking in lodgers;
- have effective downsizing schemes in operation;
- have plans in place for tenants who fall into arrears as a result of the under-occupation restrictions.⁴⁵

The DWP has also produced a toolkit, including model letters and factsheets, for local authorities to use as part of HB/CTB Circular [A4/2012](#). This Circular sets out the action that authorities should be taking prior to implementation in April 2013.

6 Evaluation

Implementation of the size criteria will be independently monitored and will cover the impact of the measure on:

- supply issues;
- rural impacts;
- people unable to share rooms (couples, disabled children);
- vulnerable individuals;

⁴³ HL Deb 14 February 2012 c707

⁴⁴ Cambridge Centre for Housing and Planning Research, *Under-occupation and the new policy framework* December 2011

⁴⁵ *ibid*

- financial status of the landlord and tenant;
- health and well being; and
- family life, particularly where the family has multiple problems.

Initial findings are expected to be available in early 2014 with the final report in 2015.

7 House of Lords amendments

As noted previously, the Housing Benefit restrictions for social tenants who are under-occupying are controversial and generated much debate as the Act progressed through Parliament. This section summarises the key amendments agreed by the House of Lords – the amendments did not survive into the final Act.

At Report Stage in the House of Lords a composite amendment was agreed (by 258 votes to 190) to provide that no under-occupation restriction would be applied where a tenant had not been offered suitable alternative accommodation. In addition, under-occupation would be defined by the DCLG's [bedroom standard](#), a more generous standard than the DWP's size criteria as it allows for the existence of one spare bedroom.⁴⁶

Financial privilege was invoked for all amendments agreed by the Lords following Government defeats. On 14 February 2012, during consideration of Commons amendments, Lord Best sought to achieve a compromise on under-occupation. He moved an amendment, to which the Lords agreed by 236 to 226 votes, which would have exempted certain social housing tenants, i.e. those not required to seek work, carers, people with disabilities, war widows and foster carers, from a reduction in Housing Benefit due to under-occupation where they had no more than one spare bedroom and where no alternative suitable accommodation was available.⁴⁷ He argued that the cost of this amendment would be around half of the amendment previously agreed at Lords Report Stage on 14 December 2011.

Lord Freud, for the Government, estimated that the amendment would still cost £100m “a lot of money in the present climate.”⁴⁸

The Commons rejected Lord Best's amendment on 21 February 2012 and the Lords once again considered the Bill on 29 February 2012. Lord Best moved a further amendment:

The amendment places an obligation on the government to review the impact of the under-occupation penalty on the families concerned and on levels of poverty and homelessness; to calculate the cost to local authorities and housing associations; to look at whether levels of under-occupancy actually fall; and to consider other foreseeable and unforeseeable consequences. The exercise would begin six months after implementation of the provisions in the bill.⁴⁹

Ultimately this amendment was withdrawn and the Bill completed its stages. Lord Freud said that the Government would “carry out research on this measure, once it has been introduced, to understand the effects of the changes, but I do not see the need to put that in the Bill.”⁵⁰

⁴⁶ HL Deb 14 December 2011 cc1285-1310

⁴⁷ HL Deb 14 February 2012 cc707-712

⁴⁸ HL Deb 14 February 2012 cc721

⁴⁹ HL Deb 29 February 2012 c1373

⁵⁰ HL Deb 29 February 2012 c1382

8 Size criteria and Universal Credit

The DWP has produced a table showing some key differences between the implementation of the size criteria prior to and post introduction of Universal Credit. The Universal Credit will only apply to new claimants from October 2013. Full migration of existing claimants to Universal Credit is not expected to be complete until 2017.

From April 2013	Under Universal Credit
Those over State Pension Credit age will not be affected, including where one member of a couple is below this age and one is over.	Mixed aged couples – both will need to be over pension age not to be affected by the size criteria. Where one is already in receipt of Pension Credit there will be protection.
Non-dependent deductions: six separate rates that vary by income. Under 25s on benefit are exempt.	There will be one flat-rate Housing Cost Contribution of around £65 per month. All under 21s will be exempt from this
Non-dependents: couples get one room between them. They pay a non-dependent deduction unless <u>both</u> are exempt.	Each adult non-dependent will be allowed a room – each will pay the Housing Cost Contribution unless exempt.
Sub-tenants and boarders are allowed a room. Their income is taken into account, subject to a disregard.	There will be no room allowed for sub-tenants and boarders. Any income received from sub-tenants or boarders will be subject to a 100% disregard.
In joint tenancy cases the under occupancy deduction can still apply.	Under occupancy deduction will not apply in joint tenancy cases.
Protection in the event of a death resulting in under-occupation for up to 52 weeks.	Benefits will run on for 3 months.
13 week protection where the tenant could previously afford the rent and Housing Benefit has not been claimed in the previous 52 weeks.	Size criteria will apply immediately.