

The Housing Benefit and Universal Credit
(Size Criteria) (Miscellaneous Amendments)
Regulations 2013 (S.I.2013 No.2828)

Report by the Social Security Advisory Committee
under Section 174(1) of the Social Security
Administration Act 1992 and statement by the
Secretary of State for Work and Pensions in
accordance with Section 174(2) of that Act

The Housing Benefit and Universal Credit
(Size Criteria) (Miscellaneous Amendments)
Regulations 2013 (S.I.2013 No.2828)

Report by the Social Security Advisory Committee
under Section 174(1) of the Social Security
Administration Act 1992 and statement by the
Secretary of State for Work and Pensions in
accordance with Section 174(2) of that Act

*Presented to Parliament by the Secretary of State for Work and Pensions
pursuant to Section 174(2) of the Social Security Administration Act 1992*

© **Crown copyright 2013**

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at HOUSING.BENEFITENQUIRIES@DWP.GSI.GOV.UK

ISBN: 9780108560064

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2601238 11/13 34254 19585

Printed on paper containing 75% recycled fibre content minimum.

Statement from the Secretary of State for Work and Pensions

The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013

INTRODUCTION

The Department welcomes the Committee's report. Before responding to the specific recommendations it may be helpful to set the context for these amendments to the regulations.

The policy change is in response to a Court of Appeal judgment. The issue being addressed is specific to severely disabled children who would be exposed to, or would give rise to an unacceptable level of disruption or physical risk if they shared a room, than would ordinarily be expected. The regulations allow for an additional bedroom in these exceptional cases. See extract from judgment in the case of *Burnip, Gorry and Trengrove* below;

"...there is no question of a general exception from the normal bedroom test for disabled people of all kinds. The exception is sought for only a very limited category of claimants, namely those whose disability is so severe that an extra bedroom is needed for a carer to sleep in (or, in cases like that of Mr Gorry, where separate bedrooms are needed for children who, in the absence of disability, could reasonably be expected to share a single room)."

The Committee's report has sought to extend the scope of the policy beyond this narrow consideration. We do not accept this approach. Discretionary Housing Payments are available to support vulnerable groups affected by the size criteria. The High Court judgment on the judicial reviews brought in relation to a group of disabled claimants affected by the size criteria, in *MA and others*, held that Discretionary Housing Payments constitute a proportionate approach to the difficulties suffered by such persons

The Committee's report considers benefit families claiming benefit in isolation. The Government has a responsibility to take a broader consideration, including reference to taxpayers who fund Housing Benefit, and working families who themselves are coping with the care needs of disabled children. The Government believes that people should not be better off on benefits than in work. The policy response that is enabled through these regulations provides a proportionate and fair solution that meets the requirements of the court.

The Committee's Comments on the Gateway

1. The Committee recognises that DLA is a measure of the extent of the extra costs incurred as a result of disability, and that therefore a gateway that requires a child to be entitled to the DLA care component at either the highest or middle rate would be an appropriate filter for identifying a severely disabled child in many cases. However the Committee believes that the severity of the disability is less important for the purposes of the new regulations than the impact that the disability has upon another child who is forced to share with that child.

The Department agrees that an award of DLA is in part recognition of the extra costs incurred as a result of disability and that it is an appropriate filter for identifying a severely disabled child. As it is impractical to estimate the extra costs incurred on a case by case basis the appropriate rate of DLA is awarded dependant on the type of needs which the person has as a result of their disability (care or mobility) and the severity of the disability (lower, middle or highest rate) not as a measure of the amount of additional financial resources each individual is likely to incur as a result of their disability.

The decision to set the gateway at the entitlement to either the middle or highest rate of the DLA care component was made being mindful that the highest rate applies in those cases where the disabled individual has both day and night needs whilst the middle rate applies to those with **either** day or night needs. Children not entitled to these components, including those entitled to the mobility element only, have not been assessed as having significant night needs either in the form of carer intervention or oversight and are not therefore likely to give rise to a significant risk of physical harm or disruption to either child. The Department considers that night time carer intervention would pose a risk of disrupting the sleep of a child sharing a bedroom with a disabled sibling over and above normal disruptions caused by two children sharing a bedroom in other circumstances, and that oversight implies that there could be a threat of danger to either child.

2. The Committee has concerns that the proposed first stage of the benefit gateway criteria would exclude a proportion of other cases where a child is disabled and there is a genuine need for an additional bedroom and have provided the following examples where they have concerns that this may prove to be the case. While the following list is not intended to be exhaustive, these cases include the following scenarios:

- i. a disabled child is not considered to require prolonged or repeated attention at night and qualifies for the lower rate care component of DLA only, but by reason of his or her impairment is disruptive at night and with whom sharing a bedroom therefore has a negative impact on a sibling;**
- ii. a disabled child is not considered to require prolonged or repeated attention at night and qualifies for the lower rate care component of DLA only, but has a need to use disability-related equipment which is disruptively noisy for the other child;**
- iii. a disabled child is not considered to require prolonged or repeated attention at night as they are able to self-manage the condition, but this is still disturbing for a child sleeping in the same room;**
- iv. a disabled child who wakes frequently during the night because of their disability but whose doctors have advised that they should be left alone, and hence are not entitled to the DLA care component at the middle rate;**

- v. **a disabled child experiences the onset of impairment and is in the 3-month qualifying period before DLA can be paid;**
- vi. **a decision not to award DLA at the middle or higher rate care component is being appealed;**
- vii. **a child qualifies for the mobility component of DLA only (and possibly the low rate of the care component) and sharing a bedroom would be likely to cause significant disruption to either the disabled child or their sibling – for example, children with severe visual impairments who have problems sleeping and require parental intervention to help soothe them, but not at a level which opens entitlement to the middle rate of DLA;**
- viii. **a child qualifies for the mobility component of DLA only (and possibly the low rate of the care component) and the bedroom is also used to store bulky equipment meaning there is insufficient space for sharing or who may disrupt a sibling when using walking aids or wheelchairs during the night; indeed the proposed legislation makes no reference to the size and suitability of the room in the context of a disabled child needing a separate room;**
- ix. **the carer of a disabled child chooses not to apply for DLA;**
- x. **a child who only occasionally has sleep disrupted but where the intervention needed is so severe it might have a traumatic effect on their sibling.**

The Department believes that children who need care at night are those who are most likely to disturb other children by reason of their disability and potentially pose a risk to them. Children can be disruptive for many reasons, and the Department acknowledges that there will be some children (both disabled and non-disabled) who will not satisfy the gateway criteria but for whom it would be beneficial to have their own bedroom.

This legislation is intended to specifically cover a discrete and clearly identifiable group of children for whom sharing is unlikely to be appropriate, because severe disability of one or both children causes frequent and significant disruption and/or danger. The Department believes that it is not appropriate, or possible, for the benefit system to account for every conceivable circumstance. Claimants in the circumstances noted by the committee can apply to their Local Authority for a Discretionary Housing Payment (DHP).

The Committee's Comments on Discretionary Housing Payments (DHPs)

3. The Committee recognises the Department's proposal that disabled children who do not meet the proposed DLA gateway will have recourse to apply to their local authority for a Discretionary Housing Payment (DHP). However the Committee believes that DHPs are an inappropriate way of addressing this issue for the following reasons:

- i. **they are entirely discretionary, local authorities are free to set their own priorities and there can be no guarantee that a reasonably founded application will be successful;**
- ii. **whilst indefinite awards can be made by a local authority, many are time-limited and means that successive applications will be required and again, there can be no guarantee of payments once made continuing;**
- iii. **families require an ongoing financial commitment to provide for the additional bedroom, but there is not yet a decision on the level of DHP funding for the period 2015/16 onwards;**
- iv. **the competition for DHPs is highlighted by recent DWP research that shows that more than one quarter of local authorities do not currently award a DHP because of the additional cost of having a disabled family member (73 percent of local authorities said they awarded DHPs for this reason) and almost two-thirds (64 percent) expect to spend or commit their full DHP allocation despite a significant increase in central Government funding towards DHPs;**
- v. **families affected may simply be unaware of the existence of DHPs.**

The management and administration of DHPs is the responsibility of Local Authorities. They are best placed to be aware of and to deal with local needs and make local decisions on how the DHP fund is spent.

Local Authorities need to decide if a person is eligible for a DHP, taking into consideration their personal and financial circumstances and any other relevant factors.

There are no restrictions on how long a Local Authority can make an award for. The period of time over which DHPs can be made is entirely at the Local Authorities' discretion. They may be awarded for a short period to give a claimant time to sort out their financial circumstances or for an indefinite period until the claimant's circumstances change. It is sensible for local authorities to review claimants' circumstances periodically, including reported health conditions within the family, which may change over time. We will look to strengthen the DHP guidance to encourage longer term awards where they are appropriate.

The DHP scheme has been in existence since 2001, so Local Authorities have a number of years experience of managing the scheme. Local Authorities are advised in advance how much DHP funding they will receive for the year and can budget accordingly. In addition, they are able to top up the DHP fund up to two and a half times the original Government contribution.

The Department has stated that DHPs will continue beyond 2014/15 and we will look to inform Local Authorities as to the government contribution available well in advance of 2015/16.

Departmental guidance to Local Authorities has promoted publicising DHPs. Information on local schemes is routinely made available to members of the public, and claimants affected by housing benefit restrictions should be made aware of all their options, including DHPs. Operational guidance is routinely reviewed and revised in response to feedback from the sector and claimants .

The Committee's Comments on an exceptions process.

4. The Committee raised the point that the definition of “person in need of overnight care” in regulation 2 of the Housing Benefit Regulations 2006 allows an extra room in the HB size criteria for people who require overnight care without limiting the gateway to a DLA test. A “person who requires overnight care” is defined as a person who is in receipt of attendance allowance or the middle or highest rate of the DLA care component, or who “satisfies the authority that overnight care is required.”

To qualify for an additional room within Housing Benefit for an overnight carer the claimant must demonstrate both a need for overnight care and also that this care is being provided by a non-resident carer. The need for overnight care is typically demonstrated either by receipt of a benefit (Attendance Allowance or the middle or highest rate care components of DLA) or by the provision of other evidence. In both cases the claimant must demonstrate that frequent overnight care is in fact provided. In these instances there is little judgement required on the part of decision-makers.

The policy concerning disabled children on the other hand has been designed to comply with the court judgement in the case of Gorry

In order to comply there are 2 considerations to be made;

- A. is the child expected to share a room severely disabled; and
- B. does that disability make sharing a room inappropriate.

We believe that group “A” will be best identified through entitlement to highest or middle rate DLA. We do not accept the need for an exceptions process outside of the current DHP arrangements.

Local Authority decision-makers will have comprehensive guidance to support them in making a judgement about appropriateness of sharing a bedroom, however it is unlikely that they would have sufficient medical expertise to be able to confidently arrive at a diagnosis of the severity of disability.

Recommendations

5. The Committee recommends that the benefit gateway is extended to include entitlement to the lower rate of the DLA care component and either rate of the mobility component.

The Department has considered the recommendation put forward by the Committee and recognises their concerns. However, the Department is looking to cover a discrete

group of severely disabled children, and not to open up a broader exemption for children with disabilities. The Government view is that a DLA gateway based on entitlement to either the middle or highest rate of the DLA care component is a clear and consistent test of severe disability.

As previously mentioned, the decision to set the gateway at the entitlement to either middle or highest rate of the DLA care component was made being mindful that the highest rate applies in those cases where the disabled individual has both day and night needs whilst middle rate applies to those with **either** day or night needs. We discounted using lower rate care as an identifier as those in receipt of this level of DLA have been assessed as not having significant night needs. The mobility element of DLA has also been discounted as it is not directly connected with carer intervention or supervision.

We accept and acknowledge that we are unable to legislate for every possible scenario, and thus accept that there will be some disabled (and non-disabled) children who may not qualify for the relevant award of DLA but may still not be reasonably able to share a bedroom. However, we believe that in these (rare) circumstances Discretionary Housing Payments – with appropriate guidance to local authorities - are a proportionate mitigation. Equally, it is very unlikely that any gateway would cover all possible circumstances, but a gateway of some kind is needed in order to guide decision-makers and keep administrative burden at a reasonable level. In the circumstances, and given analysis of the data available we are confident that the chosen gateway, based on entitlement to the middle or highest rate of the DLA care component is a sensible and reasonable one.

6. The Committee additionally recommends that the legislation is amended to include an exceptions process for those who do not satisfy this gateway but who nevertheless are able to satisfy the authority that a child is disabled and that it would be inappropriate for them to share a bedroom.

The Department introduced a DLA gateway as this option can be clearly set out in legislation and is administratively simple. It also provides a clear bright line that is transparent to staff and claimants alike. Were we to introduce a separate exceptions process over and above this it would have the same effect as removing the gateway entirely.

The Department also believes that were the allocation of an additional room to be on the basis of a Local Authority decision, decision makers would be unlikely to have sufficient medical expertise to be able to confidently arrive at a diagnosis of disability. In many cases it would be difficult for a lay person to differentiate between different types of disruptive childhood behaviour, some of which are not driven by disability. This could lead to unintentional inequalities. It would also be particularly difficult to operate in Universal Credit.

Rt Hon Iain Duncan Smith MP
Secretary of State for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

29 October 2013

Dear Secretary of State,

The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013

Introduction

The Committee considered the above named draft regulations at its meeting on 2 October. The Department's Explanatory Memorandum (copy provided at Annex D) explains the background to the regulations in detail, but a brief summary is provided below.

The Court of Appeal (*Burnip & others v. Birmingham City Council & others*) ruled, in May 2012, that the Local Housing Allowance size criteria were in breach of Article 14 of the European Convention on Human Rights.

A subsequent High Court judgement (*MA & others v. Secretary of State for Work and Pensions & others*) specified that, if new regulations were not made by 31 October 2013 to ensure compliance with the earlier Court of Appeal ruling, the parties would be granted liberty to apply to the Court for relief.

The Department's draft regulations are intended to comply with the terms of that Court order. They are designed to ensure that, when applying the size criteria to calculate the maximum amount of Housing Benefit or housing costs under Universal Credit, the relevant authority can allow for an extra bedroom where a child who would usually be expected to share a room is unable to due to a disability.

While it was not the Committee's intention to unduly delay the Department's compliance with the terms of a court order, having carefully considered all of the available evidence provided by DWP, we reached the conclusion that there would be merit in looking more closely **at the definition of the proposed gateway**. The proposed gateway criteria require:

- a disabled child to be entitled to the middle or higher rate care component of Disability Living Allowance (DLA), and
- the relevant authority to be satisfied that if the disabled child was to share a bedroom with another child this would pose a threat of physical harm to either child and/or frequent and significant disruption to the sleep of the non-disabled child.

As part of our consideration of these regulations, we decided it was necessary to seek views and evidence from a broad range of organisations and individuals. Accordingly, we advised the Department that we required formal reference of the draft proposals in accordance with section 172(1) of the Social Security Administration Act 1992, and put them out for consultation between 4 -18 October 2013.

While this was a shorter consultation period than usual, its focus was narrowly defined. The Committee is of the firm view that this was reasonable and proportionate in the circumstances. In addition Members held a workshop for a small number of stakeholders on 11 October. The Committee is confident that the quality of its advice has not been compromised by the short consultation period.

We are grateful to the 18 respondents (listed at annex A) who took part in the workshop or provided thoughtful and well-informed written evidence to the Committee. Some of the evidence provided addressed issues that were outside the scope of our consultation, but they are important points nonetheless and we have separately passed them to the Department for consideration. We would also like to thank Departmental officials for their assistance throughout the process.

It is worth noting at the outset that respondents almost unanimously agreed that the proposed gateway was too narrowly defined, although there were differing views as to how to address this. At one end of the spectrum there was endorsement of expanding the DLA gateway but at the other there was a view that the decision should be left to the discretion of the individual decision-maker. We consider each of the main options supported by respondents to this consultation below.

The Key Issues

The key issue in this consultation was whether the gateway was defined appropriately so that it did not exclude cases where there was a clear and genuine need for a disabled child to be considered by the relevant authority for

a bedroom of their own. The Committee's focus has therefore been on the following questions:

1. Is the proposed first stage of the gateway (i.e. the child's entitlement to the middle or highest rate of the care component of DLA) appropriate?
2. Should the gateway be extended to include entitlement to any of the three rates of the care component?
3. Should it go further and include entitlement to either of the two rates of the mobility component?
4. Should it go further still to include an exceptions process to protect those families with a disabled child who fall outside of the above options but have a clear and genuine need?

Our assessment is framed both by the Court judgement and the recognition, also noted in the DWP equality analysis, of the critical importance of sleep to a child's development and educational attainment. In practice our recommendations are primarily driven by the latter factor.

Is the proposed first stage of the gateway appropriate?

Whilst DLA measures the extent of the extra costs incurred as a result of disability, and is therefore a blunt instrument in terms of measuring impairment severity, there are some broad parallels between the rate of the care component received and impairment severity. A first stage to the gateway that requires entitlement of a child to the DLA care component at either the higher or middle rate would therefore be an appropriate filter for identifying a severely disabled child in many cases. But the severity of the disability is less important for the purposes of the new regulations than the impact that the disability has upon another child who is forced to share with that child.

These are stringent and specific criteria. It is quite possible in our view for it to be very difficult for a disabled child to share a room but for that child not to receive the higher or middle rate of the care component of DLA. Limiting the impact of the court's ruling to those children in receipt of these parts of DLA only risks further legal action and, more important, imposing suffering and risks to the health of disabled children, their siblings and other family members.

Habinteg

However, the Committee is concerned that the proposed first stage of the benefit gateway criteria would exclude a proportion of other cases where a child is disabled and there is a genuine need for an additional bedroom. While the following list is not intended to be exhaustive, these cases include the following scenarios:

- i. a disabled child is not considered to require prolonged or repeated attention at night and qualifies for the lower rate care component of DLA

only, but for reason of his or her impairment is disruptive at night and with whom sharing a bedroom has a negative impact on a sibling;

- ii. a disabled child is not considered to require prolonged or repeated attention at night and qualifies for the lower rate care component of DLA only, but has a need to use disability-related equipment which is disruptively noisy for the other child;

Especially for an older child, the equipment they have to aid independence will take up a lot of room and, depending on the level of visual impairment, could be speech-based. This may include speech software on a computer, talking watches, clocks and phones, colour detectors, talking books (just to name a few).

Mandy is 12 years old and is blind. She receives the higher rate of the mobility component and the low rate of the care component. She has a 14-year old sister Natalie. They have separate bedrooms as Mandy uses audio equipment and speech software (in this case JAWS) in the bedroom. Sharing a bedroom with her sister would not be suitable due to distraction caused by noise and disturbance in concentration due to the presence of Natalie.

Disability Rights UK (example provided by RNIB)

- iii. a disabled child is not considered to require prolonged or repeated attention at night as they are able to self-manage the condition, but this is still disturbing for a child sleeping in the same room;
- iv. a disabled child who wakes frequently during the night because of their disability but whose doctors have advised that they should be left alone, and hence are not entitled to the DLA care component at the middle rate;
- v. a disabled child experiences the onset of impairment and is in the 3-month qualifying period before DLA can be paid;
- vi. a decision not to award DLA at the middle or higher rate care component is being appealed;
- vii. a child qualifies for the mobility component of DLA only (and possibly the low rate of the care component) and for whom sharing a bedroom would pose significant disruption to either the disabled child or their sibling – for example, children with severe visual impairments who have problems sleeping and require parental intervention to help soothe them, but not at a level which opens entitlement to the middle rate of DLA;
- viii. a child qualifies for the mobility component of DLA only (and possibly the low rate of the care component) and the bedroom is also used to store bulky equipment meaning there is insufficient space for sharing or who may disrupt a sibling when using walking aids or wheelchairs during the night; indeed the proposed legislation makes no reference to the size and suitability of the room in the context of a disabled child needing a separate room;

We would like to see decision-makers given the discretion to allow a separate bedroom for any child with a long-term condition, or chronic ill-health, which makes it unreasonable for them to share a bedroom. This would also cover situations where a child requires special equipment in their bedroom, which either leaves no room for another child's bed and accoutrements, or which effectively makes the bedroom a treatment room, and therefore unsuitable for an able-bodied sibling to share as a bedroom.

Housing Options Scotland

- ix. the carer of a disabled child chooses not to apply for DLA;
- x. a child who only occasionally has sleep disrupted but the intervention needed is so severe it might have a traumatic affect on their sibling.

A number of respondents suggested that the DLA gateway should be dispensed with and that a decision regarding severity of disability, and the implications of the disability for sharing a bedroom, be based entirely on evidence submitted to the decision maker. Whilst stakeholders suggested that entitlement to DLA could form part of the decision maker's consideration, there are mixed views among local authorities as to whether this approach would create problems regarding their ability to correctly assess medical evidence, resulting in inconsistent or incorrect decision making, although the vast majority of respondents to this consultation supported more discretion for local authorities.

While it is generally true that children who require their own room will be in receipt of DLA Care there may be cases where they only receive the mobility rate, or indeed no DLA at all. However, they may still have medical evidence stating that their condition requires them to have a room of their own due to the disturbance and/or harm that they might cause their siblings if they had to share. The proposed regulations mean that in cases such as this we would not be able to allow them the extra room, whereas the previous guidance allowed us to consider the evidence provided by the doctor and make our own decision.

Camden Benefits Service, London Borough of Camden

DWP proposes that disabled children who do not meet the proposed DLA gateway will have recourse to apply to their local authority for a Discretionary Housing Payment (DHP). It should be noted that assessment of a DHP application will require broadly the same decision making process as regulations with gateway criteria based on the evidence submitted to a decision maker.

We are mindful of the comments made about DHPs in the judgement on *MA & others v. Secretary of State for Work and Pensions & others* but, in any event, we firmly believe that requiring families to resort to DHPs is an

inappropriate way of addressing this issue. This is for a combination of reasons:

- they are entirely discretionary, local authorities are free to set their own priorities and there can be no guarantee that a reasonably founded application will be successful;
- whilst indefinite awards can be made by a local authority, many are time-limited and means that successive applications will be required and again, there can be no guarantee of payments once made continuing;
- families require an ongoing financial commitment to provide for the additional bedroom, but there is not yet a decision on the level of DHP funding for the period 2015/16 onwards;
- the competition for DHPs is highlighted by recent DWP research that shows that more than one quarter of local authorities do not currently award a DHP because of the additional cost of having a disabled family member (73 percent of local authorities said they awarded DHPs for this reason) and almost two-thirds (64 percent) expect to spend or commit their full DHP allocation despite a significant increase in central Government funding towards DHPs;¹
- families affected may simply be unaware of the existence of DHPs.

After surveying 250 disabled people and receiving 42 responses to Freedom of information requests with local authorities, we found that 1 in 3 disabled people applying for DHPs are refused, the same number as non-disabled people. There appears to be no priority given to disabled tenants, the applications are very much assessed on financial need, not on whether the tenant has a genuine reason for needing the spare bedroom.

Contact a Family

The need for families to have longer-term certainty that they will be entitled to an additional bedroom for their severely disabled child, coupled with the current evidence that suggests DHPs cannot guarantee this, leads us to the view that an alternative approach is needed. We therefore assessed the feasibility of widening the first stage of the gateway to include the lower rate of the DLA care component and both elements of the mobility component.

DHPs cannot be a satisfactory outcome for those children who genuinely cannot share a room. DHPs are by their nature temporary while alternative accommodation is sought, while a child who cannot share will be unable to share wherever the family is eventually housed.

Child Poverty Action Group

¹ DWP, Local Authority Insight Survey, Wave 24; findings relate to October – December 2012 and are based on response of 211 LAs.

Should the first stage of the gateway be extended to include the lower rate of the DLA care component and the DLA mobility component?

At the Committee's meeting on 2 October, the Department noted that the initial intention was to limit consideration to cases where the child was in receipt of the highest rate of the care component within DLA, but that this was subsequently extended to children on the middle rate. The Department's case for fixing the gateway at that particular point is linked to the criteria for entitlement. Whereas the conditions of entitlement to the lowest rate of the care component include the requirement of attention from another person in connection with bodily functions for a significant portion of the day, the conditions of entitlement to the middle or highest rate also focus on night-time needs. However, as described above, there will be a significant number on the lowest rate who will be considerably disruptive at night and who need a separate bedroom.

Entitlement to Disability Living Allowance is solely concerned with the attention required from another person in connection with bodily functions. It is not concerned with the general impacts of a claimant's disability on both themselves and those around them. This means that it is entirely possible for a child to be in receipt of low rate care but for the nature of their condition to mean that sharing a room is not possible.

ENABLE Scotland

The Department is seeking to respond to the Court of Appeal judgment in order to rectify the indirect unjustified discrimination against disabled people, pursuant to Article 14 of the European Convention on Human Rights, in the relevant Housing Benefit provisions. In the cases of Ian Burnip and Lucy Trengrove both claimants were severely disabled. In the case of Richard Gorry – the case which is directly relevant in the context of introducing this particular set of regulations – two of his three children were daughters who were both disabled.

For those reasons we have carefully considered whether the initial gateway should reasonably be extended to cover all cases where a child is in receipt of a care component or the mobility component of DLA. The Committee is of the view that this would allow families with a disabled child in receipt of DLA but not at the higher/middle care rate, who does disrupt the sleep of a sibling sharing a bedroom, to present their case for an additional bedroom. This may also reduce the risk of further legal challenge. At the same time, the additional caseload would also be relatively small.²

² The Committee calculated that the additional caseload would be made up of the 19,590 children entitled to the lower rate of the DLA care component and the 5,090 children entitled to the DLA mobility component whose families are affected by the size criteria (source DWP tabulation tool, data for February 2013).

Should there be an exceptions process to protect the position of those families with a disabled child who do not satisfy the gateway but have a clear and genuine need?

It has been pointed out by one of the respondents that the definition of “person in need of overnight care” in regulation 2 of the Housing Benefit Regulations 2006 allows an extra room in the HB size criteria for people who require overnight care does not limit the gateway to a DLA test. A “person who requires overnight care” is defined as a person who is in receipt of attendance allowance or the middle or highest rate of the DLA care component, or who “satisfies the authority that overnight care is required.” Whilst we are aware that this arrangement is not being carried forward under Universal Credit, it demonstrates the precedent of an exceptions process for legitimate cases who do not, for whatever reason, fulfill the benefit gateway. In the case of the regulations we are consulting on, we believe the over-riding importance of child protection merits an exceptions process in its own right.

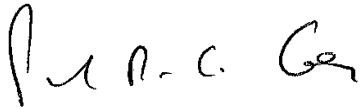
The Committee and the respondents to this consultation are extremely concerned that the Department’s proposed approach would unfairly exclude disabled children who can legitimately present a strong case for having a bedroom of their own under the size criteria. Whilst the Committee accepts that the DLA test should bring greater consistency in decision making and certainty for claimants and is mindful of the possible administrative costs in removing a DLA linked gateway altogether, we believe it is essential that the Department finds a solution for ensuring that exceptional cases that can demonstrate genuine need also have the opportunity to apply for an additional bedroom.

Conclusion and recommendation

The Committee understands the Department’s attraction to establishing a gateway which is linked to the higher and middle rates of the DLA care component. We understand why it would work for a good number of disabled children since it is related to night-time care needs. However, this report draws attention to the fact that it is an imperfect match and the Committee has strong reservations about relying exclusively on it. The Committee is keen that a solution is identified which captures the exceptions but without burdening the Department or (until Universal Credit is fully operational) local authorities with heavy administrative burdens. We believe this solution should not include the use of Discretionary Housing Payments because they cannot provide a carer with long-term certainty that they will have sufficient financial support to provide an additional bedroom for their disabled child.

The Committee recommends that the benefit gateway is extended to include entitlement to the lower rate of the DLA care component and either rate of the mobility component.

We additionally recommend that the legislation is amended to include an exceptions process for those who do not satisfy this gateway but who nevertheless are able to satisfy the authority that a child is disabled and it would be inappropriate for them to share a bedroom. We request that the Department makes clear in its response to this report what plans it intends to put in place to protect these exceptional cases.

A handwritten signature in black ink, appearing to read 'Paul Gray'.

Paul Gray
Chair

List of respondents

Citizen's Advice³
Contact a Family⁴
Child Poverty Action Group⁴
Disability Rights UK⁴
EK Services
ENABLE Scotland
Habinteg
Housing Options Scotland
Link Housing Association Ltd
London Borough of Camden
Peabody Trust⁴
Scottish Federation of Housing Associations
Shelter³
Social Inclusion Unit (City and County of Swansea)
South Lanarkshire Council
Strover, Ms E
The Children's Society³
Walker, Professor Janet

³ Attended SSAC workshop on 11 October

⁴ Attended SSAC workshop on 11 October, and provided written submissions

ANNEX B

Members of the Social Security Advisory Committee

Paul Gray (Chair)
Les Allamby
John Andrews
Simon Bartley
Adele Baumgardt
John Ditch
Keith Faulkner
Colin Godbold
Chris Goulden
Matthew Oakley
Nicola Smith
Diana Whitworth

Expert Adviser (Scotland) to the Committee

Jim McCormick

Housing Policy Division

ANNEX C

DWP Department for
Work and Pensions

Our address

3rd Floor
Caxton House
6-12 Tothill Street
London
SW1H 9NA

My phone number 01282 663014

My email lisa.sutherland@dwp.gsi.gov.uk

Denise Whitehead
Secretary
Social Security Advisory Committee
Caxton House
Tothill Street
London
SW1A 9NH

18 September 2013

Dear Denise

I am writing to formally request, in accordance with section 172 of the Social Security Administration Act 1992 for the Committee to consider proposals to amend the following sets of Regulations:

- **The Housing Benefit Regulations 2006 (SI 2006/213)**
- **The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)**
- **The Universal Credit Regulations 2013 (SI 2013/376)**

The Order amending the Rent Officers (Housing Benefit Functions) Order 1997 and Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 is also included as this completes the picture for housing benefits subject to the local reference rent.

- **Housing Benefit Regulations 2006: (SI 2006/213)**

The proposed amendments to these regulations clarify the number of bedrooms to which a claimant is entitled, based on the number, sex and ages of individuals who reside in his dwelling; the amendments make provision for a disabled child who would otherwise be expected to share a bedroom under the size criteria rules to have sole use of a bedroom where the child is unable to share due to severe disability.

These amendments also make provision for a room to be included where a joint tenant (or joint tenant's partner) requires overnight care or is a qualifying foster parent or carer, when determining whether a dwelling is under-occupied for the purposes of applying a reduction in the social rented sector

There is also an amendment to the definition of "young individual". This ensures that a qualifying foster parent or carer cannot be a young individual and so subject to the shared accommodation rate.

- **Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)**

The proposed amendments to these regulations clarify the number of bedrooms to which a Housing Benefit claimant of State Pension Age is entitled, based on the number, sex and ages of individuals who reside in his dwelling; the amendments make provision for a disabled child who would otherwise be expected to share a bedroom under the size criteria rules to have sole use of a bedroom where the child is unable to share due to severe disability.

- **Rent Officer (Housing Benefit Functions) Order 1997 (SI 1997/1984) and The Rent Officers (Housing Benefit Functions)(Scotland) Order 1997 (SI 1997/1995)**

The order requires the rent officer to apply size criteria when making determinations; the proposed amendments allow a bedroom for a child who would normally be expected to share a room under the size criteria rules but is unable to do so due to severe disability.

- **Universal Credit Regulations 2013**

The proposed amendments to these regulations clarify the number of bedrooms to which a claimant is entitled based on the number, sex and ages of individuals who reside in his dwelling.

The amendments make provision for a disabled child, who would otherwise be expected to share a bedroom under the size criteria rules to have sole use of a bedroom where the child is unable to share due to severe disability.

They also ensure that only children/young persons whom a claimant is responsible for (within the meaning given in the UC Regulations) are treated as part of the claimant's extended benefit unit and allocated a room for the purposes of the size criteria.

I have attached an explanatory memorandum as an annexe to this letter. I have also attached the draft regulations as well as a Keeling version of the proposed amendments. The drafts remain subject to legal clearance.

The Committee is invited to consider whether the proposed amending regulations may be made without further formal references.

I hope these documents fully explain the proposals. Officials will attend the Committee's October meeting to answer any queries members may have and we will be happy to provide any further information they may require.

Lisa Sutherland
Housing Policy Division

Explanatory Memorandum

Background to the proposed changes

In May 2012 The Court of Appeal ruled that the Local Housing Allowance (LHA) size criteria were in breach of Article 14 of the European Convention on Human Rights (ECHR) and unlawfully discriminated against children who could not be expected to share a room due to their severe disabilities.

The size criteria apply to claimants living in both the private and social rented sectors and affects the maximum amount of Housing Benefit (or Universal Credit) which they can receive. Although the Court of Appeal ruling only relates directly to the size criteria as applied in the administration of Housing Benefit, the same principles are used in the calculation of the housing costs element of Universal Credit, hence why we are also proposing to make amendments to the Universal Credit regulations. The size criteria rules require children to share a bedroom in certain circumstances. If children are aged under ten then two children are usually expected to share a bedroom, regardless of gender, and children of the same gender who are between 10 and 16 must also usually share.

The Court of Appeal judgement required a policy response which provides differential treatment under the size criteria where:

- a) A child or children expected to share a room are severely disabled; and
- b) That disability means that they are unable to share a room.

In the recent case of R (on the application of MA& Others), the Department was criticised by the judge for relying on guidance (rather than regulations) to give effect to the abovementioned Court of Appeal ruling. The order issued by the court following judgment in MA& Others specified that, if new Regulations are not made by 31 October 2013 to ensure compliance with the judgment of the Court of Appeal, then the parties will be granted liberty to apply to the court for relief.

The proposed amendments to Regulations are therefore intended to comply with the terms of the court order, by ensuring that, when applying the size criteria to calculate the maximum amount of Housing Benefit or housing costs under Universal Credit, the relevant authority can allow for an extra bedroom where a disabled child who would usually be expected to share a room is unable to share due to their disabilities.

1. Housing Benefit Regulations 2006 (SI 2006/213)

Regulation 2(2)

We propose to insert a definition of “child who requires their own bedroom” into regulation 2(1) of the housing benefit regulations. This applies to a child who is entitled to the care component of Disability Living Allowance at the

higher or middle rate, by reason of their disability is unable to share a bedroom with another child and for whom there is a bedroom additional to those a claimant would be entitled to were the child able to share a bedroom.

We also propose to amend the definition of “young individual” so that a person who is a qualifying parent or carer (person who is an approved foster parent or in Scotland an approved foster carer or kinship carer) will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by Housing Benefit in the private sector.

Regulation 2(3)

This amends regulation B13 which makes provision for the determination of the amount of rent eligible to be met by way of Housing Benefit for claimants renting in the social sector.

We propose to amend regulations to include an additional room for an overnight carer and / or foster child in the overall size criteria calculation for a joint tenant in the property. This is intended to ensure that when determining whether a dwelling is under occupied for purposes of applying a reduction a room is included where a joint tenant or their partner require overnight care or are a qualifying parent or carer. The amendment also ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules.

Regulation 2(4)

This amends regulation 13D which makes provision for the determination of the amount of rent eligible to be met by way of Housing Benefit for claimants renting in the private sector to whom the LHA applies.

The amendment ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules subject to a maximum of four bedrooms.

Regulation 2(5) and 2(6)

These amends regulation 14 of the Housing Benefit Regulations, which applies to private sector claimants not covered by the LHA and to some social sector claimants where the relevant Local authority considers the rent to be unreasonably high. This amendment ensures that a referral to a rent officer will be made if a child becomes or ceases to be a child who requires their own bedroom.

2. Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)

We propose to make equivalent amendments to Regulations 2, 13D and 14 of Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) (Size Criteria) Regulations 2006 in respect of a child who requires their own bedroom. These Regulations have no equivalent to Regulation B13 of the Housing Benefit Regulations 2006 as B13 refers to the social sector size criteria which only apply to claimants of working age.

3. Universal Credit Regulations 2013 (SI 2013/376)

Regulation 4(2)

We propose to amend paragraph 9 of Schedule 4 to the Universal Credit Regulations, which specifies who should be treated as part of a renter's extended benefit unit for the purposes of the housing costs calculation. This amendment is to ensure that only a child or young person for whom the renter is responsible for are treated as part of the extended benefit unit and allocated room under the size criteria rules.

Regulation 4(3)

We propose to revise paragraph 12 of Schedule 4 to the Universal Credit Regulations. The amendments allow for an additional room to be allocated for a child who would usually have to share a room if:

- a) They are entitled to the care component of Disability Living Allowance at the higher or middle rate, and;
- b) They are unable to share a bedroom with another child by reason of their disability.

Consistent with Universal Credit design a claimant in the private sector who qualifies for an extra bedroom will be entitled to the corresponding award of LHA regardless of whether or not the room exists in their dwelling, subject to the 4 bedroom maximum.

4. Rent Officers (Housing Benefit Functions) Order 1997 (SI 1997/1984) and The Rent Officers (Housing Benefit Functions)(Scotland) Order 1997 (SI 1997/1995)

These amendments are to Rent Officers (Housing Benefit Functions) Order 1997 and also to the Rent Officers (Housing Benefit Functions) (Scotland Order 1997). We propose to make amendments to Schedule 2 requiring the rent officer to allow an additional bedroom for a child who would normally be expected to share a room under the size criteria rules but is unable to do so due to his or her disability.

Equality Analysis for The Size Criteria and children with disabilities

Date: Updated 4 October 2013

Completed by: Lisa Sutherland

Policy Intent

1. The policy intent is to safeguard the wellbeing of children and prevent them being put at risk of physical harm or having their sleep frequently and significantly disrupted by virtue of sharing a bedroom when it is inappropriate to do so because of severe disability.

Background

2. Both housing benefit and the housing costs element of Universal Credit are awarded to people in and out of work who require financial support in order to pay their rent.
3. The amount of housing benefit (or the amount of the housing costs element in Universal Credit) to which a person is entitled is in part dependant on the size and make up of their household.
4. The size criteria applies to claimants living in both the private and social rented sectors and prescribes the number of bedrooms a claimant would be entitled to based on their household size and makeup. For private rented sector cases this is subject to a 4 bedroom maximum LHA amount, however larger properties may be affordable.
5. The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home —
 - (a) a couple
 - (b) a person who is not a child (16 years of age and over)
 - (c) two children between the ages of 10 and 15 of the same sex;
 - (d) two children who are less than 10 years old;
 - (e) a child.
 - (f) The claimant or their partner is a person who requires overnight care
 - (g) The claimant or their partner is a qualifying parent or carer
6. In May 2012 the Court of Appeal ruled that the Local Housing Allowance (LHA) size criteria were in breach of Article 14 of the European Convention on Human Rights (ECHR) and unlawfully discriminated against children who could not be expected to share a room due to disability if the nature of their disability made it inappropriate for them to do so (case of Gorry). The government has decided not to appeal the court's decision and so will legislate to reflect this.

7. The Court judgment requires differential treatment under the size criteria where:
 - a. a child or children expected to share a room are severely disabled; and
 - b. that disability makes sharing a room inappropriate.
8. In the Gorry case both of the children expected to share a room were disabled and the combination of disabilities made sharing particularly difficult. However, the guidance we subsequently issued required local authorities to consider situations where only one child (under 16 years of age) was disabled, and we propose to carry that forward into legislation.
9. In developing our policy response we have considered the position of all people with disabilities affected by the size criteria, we did not restrict the scope of our consideration to children. The proposed amendments to regulations were formed as a result of this analysis and are intended to comply with the terms of the court order.

Brief outline of policy

10. The regulations we are bringing forward grant entitlement to an additional bedroom for families with disabled children subject to the following conditions;
 - (a) The disabled child (ren) would be expected to share a bedroom under the size criteria rules were it not for their disability. For housing benefit cases there would have to be a room in the dwelling which would be surplus to that determined under size criteria rules were the disabled child(ren) able to share;
 - (b) The disabled child(ren) is entitled to the care component of Disability Living Allowance (DLA) at the middle or higher rate; and
 - (c) The relevant authority is satisfied that if the disabled child(ren) was to share a bedroom with another child this would pose;
 - i). A threat of physical harm to either child; and/or
 - ii). Frequent and significant disruption to the sleep of the non-disabled child.
11. Condition C will be judged on the merits of each individual case. Guidance will be issued to Local Authorities and Universal Credit decision makers to support them in making this judgement.

Impact of the policy

12. This measure allows the relevant authority to allow for an extra bedroom where a disabled child is unable to share due to their disabilities when calculating the maximum amount of help with housing costs.
13. We are unable to provide reliable estimates for conditions A and B above due to small sample sizes. The data we have access to, does however indicate that there are in the region of 10,000 households claiming Housing Benefit who meet both conditions A and B who would stand to gain. With the average cost of under occupation in the social rented sector and private rented sector at £14 and £33 per week respectively, this equates to an increase in AME costs of approximately £10 million per annum. This is likely to be an upper estimate as we are not able to assess how many of these households might qualify under condition C above.

Consultation

14. DWP has consulted formally with the Local Authority Advisory Steering Group which represents Local Authorities across Great Britain and will further consult on the guidance produced for their comment prior to issue.
15. DWP also plans to engage with housing stakeholder and disability groups in order to obtain their input in creating the guidance for decision makers to follow. This will also enable us to gain more insight into the diversity of issues faced by disabled tenants both in the social and the private rented sectors.

Impact with regard to protected groups

16. In the main we have looked at equality on the basis of the Housing Benefit claimant not the disabled child as the policy is designed to impact equally on disabled children regardless of other characteristics.
17. Although we hold information on the characteristics of children with disabilities the Department does not hold information on age, gender or other protected characteristics of disabled children broken down to identify those whose families are Housing Benefit claimants affected by the size criteria.

Impact with regard to disability of child

18. The policy is designed to prevent severely disabled children and their families from being disproportionately disadvantaged by the size criteria in both the private rented sector and the social rented sector.
19. The policy intent is that children ought not to be expected to share a bedroom if there would be a risk of physical harm to either child or where there are frequent and significant care needs in the night that would disturb the other child significantly.
20. The policy bases entitlement on the presence of a child in the benefit unit being in receipt of the care component of DLA, at the middle or higher rate followed by a further assessment of whether the disability makes sharing inappropriate.
21. We have included a DLA gateway as a clear and consistent test of severe disability ensuring equal treatment across the group. Also it would seem to be unreasonable for Local Authority or Universal Credit decision makers (who are not medical experts) to make this assessment.
22. DLA has been chosen as the relevant disability benefit as unlike its counterparts PIP and AA it currently applies to under 16s. It provides assurance of the degree and regularity of additional care needs experienced by the child through an independent medical assessment, and gives an indication of the extent of their additional vulnerability and the potential disruption that their condition may cause.
23. The care component of DLA is a benefit split into 3 levels of entitlement (Higher, Middle and Lower rates) and is available to children from birth to 16 years (subject to a 3 month qualifying period). Higher rate applies in those cases where the disabled individual has both day and night needs whilst middle rate applies to those with **either** day or night needs. We discounted using lower rate care as those in receipt of this level have been identified as not having significant night needs. The mobility element of DLA has also been discounted as it is not directly connected with carer intervention.
24. The criteria for the care component of DLA provide an assessment of whether this is likely to be the case, with the criteria being;
 - lowest rate - requires help for a significant portion of the day, whether during a single period or a number of periods
 - middle rate - frequent help or supervision either during the day or at night.
 - highest rate - Help or supervision throughout both day and night, or terminal illness

25. Children who need care at night are those most likely to disturb another child with whom they share a bedroom by reason of their disability.
26. We have also considered the position of children who may have severe disabilities but are not currently in receipt of DLA. These will mainly consist of those who have either not applied for DLA or those who are in the qualifying period.
27. There will also be a small number of children who are only entitled to the lower rate of DLA care, or not entitled at all but may still disrupt the sleep of someone sharing a bedroom. An example of this would be teenagers with airway problems or hypoventilation which require the use of noisy equipment at night such as a ventilator. In many circumstances they would manage this themselves and thus be unlikely to have night care needs. In these cases claimants will have recourse to DHPs which will be reflected in guidance to Local Authorities.
28. Given the need to balance the policy aims with financial constraints and operational practicalities, we propose that using the middle and higher rate care component as a Gateway provides a identifiable group for whom sharing is most likely to be inappropriate.
29. However, in reaching this decision, we have borne in mind the substantial support £190 million (including £10 million transitional payment) in 2013/14 made available through Discretionary Housing Payments (DHPs) for cases where the claimant has a greater need for further housing support over and above that provided by housing benefit. Local authorities have broad discretion over the use of DHPs, but are supported with DWP guidance.

<http://www.dwp.gov.uk/docs/dhpguide.pdf>

30. We have also considered the entitlement of disabled children to the middle and higher rate care components by their qualifying condition. Evidence from this shows that the majority of sufferers are entitled to the middle or higher rate.

DLA cases by entitlement (under 16s) February 2013

Condition giving Entitlement	Caseload (thousands)	Higher Rate (% of sufferers)	Middle Rate (% of sufferers)	Lower Rate (% of sufferers)	Nil Rate care – in receipt of mobility (% of sufferers)
Learning Difficulties	151.92	37.84	59.02	2.65	0.49

Behavioural Disorders (including hyperkinetic syndrome)	63.10	37.21	57.62	4.29	0.86
Neurological Diseases and Disorders	37.00	46.49	46.95	5.65	0.92
Metabolic Diseases (including diabetes)	18.82	19.45	74.02	6.38	0.11
Disease or trauma of the Muscles, Bones or Joints	13.94	38.38	43.04	14.71	3.95
Deafness	11.35	7.14	85.90	5.11	1.76
Organ Disorders	7.10	55.49	31.27	12.96	0.14
Skin disease	6.88	36.05	28.20	35.61	0.15
Blindness	5.78	15.57	68.86	7.61	7.96
Severely mentally impaired (including dementia)	5.14	99.61	0.39	–	–
Chest Disease (including respiratory disorders)	4.86	56.17	26.13	16.87	0.62
Heart Disease	3.71	59.84	31.27	5.66	2.96
Cystic Fibrosis	3.49	40.11	44.99	14.90	–
Malignant Disease	3.04	75.66	19.08	3.95	1.32
Psychoneurosis and personality disorders	2.04	38.24	44.12	9.80	7.84
Blood Disorders	1.71	42.69	46.20	10.53	1.17
Major Trauma or chronic pain	1.35	48.15	37.78	11.85	3.70
Vascular Diseases	0.97	42.27	45.36	10.31	1.03
Psychosis	0.58	50.00	43.10	5.17	1.72
Infectious diseases	0.16	56.25	31.25	6.25	–
All Conditions		38.60	54.93	5.53	0.94

Source: Work and Pensions Longitudinal Study (WPLS)

Note: Caseload figures are rounded to the nearest ten

- Totals may not sum due to rounding

31. Families with disabled children are disproportionately represented amongst Housing Benefit claimants. The majority of families who are in receipt of DLA in respect of a child are entitled to the DLA care component at the middle or higher rate.

	Total Population	Working Age HB Claimants in the SRS	Working Age HB Claimants in the PRS	All Working Age HB Claimants
Disabled Care Component Higher or Middle	0.4%	1.7%	0.9%	1.4%
Disabled Child Premium	0.6%	2.7%	1.4%	2.2%
Not Disabled Child	99.4%	97.3%	98.6%	97.8%

Source: Policy Simulation Model 2011/2012 using 2009/10 reference data from the Family Resources Survey

Notes: Sample sizes underlying these percentages are very small so all numbers should be treated with caution.

-The Disabled Child Premium is an add-on premium and is received if the child is registered blind or is in receipt of any component of DLA.

Impact with regard to Gender of claimant

32. The policy is designed to impact equally on disabled children whether boys or girls and will also apply in the same way to single men single women and couples with a disabled child, all are potentially able to benefit should they meet the conditions. However, because single females are disproportionately represented in the Housing Benefit caseload and among claimants with a disabled child (ren) who are affected by the removal of the spare room subsidy, this change is expected to have greater impact on this group. This is illustrated in the table below. Compared with the distribution of the Housing Benefit caseload the measure does not have a significantly different impact on claimants of either gender.

	Working age HB caseload by tenure		Proportion of Working Age SRS claimants affected by RSRS
	SRS	PRS	
Singe Males	27%	28%	24%
Single Females	50%	40%	51%
Couples	23%	33%	24%

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

Impact with regard to Age of claimant

33. In accordance with size criteria rules both adult couples and children are normally expected to share a bedroom. This policy applies only to children who cannot share due to disability. However, we have received representations regarding adult couples where it is asserted that they cannot share a room. Whilst we recognise the difficulties facing some claimants, we believe that there are important differences between adults and children in this context.
34. Couples are expected to share a bedroom. Further adults are able to exercise choice in all aspects of their lives. They are able to enter living arrangements knowing that they may have to compromise to accommodate their needs. As well as making applications for disability related benefits and Discretionary Housing Payments, they are also able to negotiate with landlords and Local Authorities, take proactive steps to find more suitable accommodation of the right size, take in a lodger, find work or increase hours of work. Children do not have this level of independence or control over decision-making. Also, as regards disruption to sleep it is widely recognised that sleep is important for development and educational attainment in children. As a result we are recognising that children require a level of additional protection.

Impact with regard to Ethnicity

35. Figures on the ethnicity of the household reference person in affected households indicate that black and minority ethnic claimants are less likely to be affected by the measure than white claimants. This is associated with a higher than average family size meaning that under the size criteria larger properties are likely to be already appropriate for the claimant.

	Breakdown of working age SRS HB claimants affected by RSRS	Breakdown of all working age SRS HB claimants	Breakdown of all working age PRS HB claimants
White	90%	85%	80%
Black and minority ethnic	10%	15%	20%

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

Impact with regard to Rural communities

36. There is no change to the way in which Housing Benefit is administered to those who live in rural communities as a result of this policy. We do not envisage an adverse impact on these grounds.

Impact with regard to Gender reassignment

37. The Department does not collect information on its administrative systems of transgender people and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

Impact with regard to Sexual orientation

38. The Department does not collect information on its administrative systems of sexual orientation and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

Impact with regard to Religion or belief

39. The Department does not hold information specifically on the religion or beliefs of claimants and it is not likely that this will be available in the future. We do not envisage an adverse impact on these grounds.

Impact with regard to Marriage or Civil partnership

40. The information held by the Department on its administrative systems does not distinguish between different types of partnership. We do not envisage an adverse impact on these grounds.

Impact with regard to Pregnancy and maternity of claimant

41. The Department only holds information on pregnancy and maternity on its administrative systems in very specific circumstances, for example where it is the primary reason for incapacity. It cannot be used therefore, to accurately assess the equality impacts; however, we do not envisage an adverse impact on these grounds.

Monitoring and Evaluation

42. The material in this Equality Impact Assessment covers the equality groups currently covered by the equality legislation, i.e. age, disability, gender (transgender), ethnicity, religion, sexual orientation, pregnancy/maternity and civil partnerships. DWP is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.
43. We will use administrative datasets, including the Single Housing Benefit Extract (SHBE), to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. We start collecting administrative information on the households that benefit from this policy next year. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.
44. We will use survey data, such as the Family Resources Survey (FRS), to assess trends in the incomes of the protected groups. The FRS will collect information on age, disability, gender, ethnicity and civil partnerships.
45. We will use qualitative research and feedback from stakeholder groups to assess how the policy is impacting on the protected groups, particularly in the context of the removal of the spare room subsidy.
46. We will draw on broader DWP research where appropriate, including the independent monitoring and evaluation of the removal of the Spare Room Subsidy, which is being taken forward by a consortium led by Ipsos-Mori

Next Steps

47. We propose to make the regulations and issue guidance to clarify the policy detail. This will be kept as simple as possible to reduce added complexity and avoid lack of transparency in Departmental and local authority processes for both claimants and staff.

Contact details

Lisa Sutherland

Housing Policy Division

HOUSING.BENEFITENQUIRIES@DWP.GSI.GOV.UK

2013 No.

SOCIAL SECURITY**The Housing Benefit and Universal Credit (Size Criteria)
(Miscellaneous Amendments) Regulations 2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 123(1)(d), 130A(2) to (5), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act⁽⁵⁾ and sections 11(4) and 42(2) of the Welfare Reform Act 2012⁽⁶⁾.

[The Social Security Advisory Committee has agreed that proposals in respect of these Regulations need not be referred to it⁽⁷⁾.]

[In accordance with section 176(1) of the Social Security Administration Act 1992⁽⁸⁾, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.]

Citation and commencement

1. These Regulations may be cited as The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 and come into force on [].

Amendment of the Housing Benefit Regulations 2006

2.—(1) The Housing Benefit Regulations 2006⁽⁹⁾ are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “child tax credit” insert—

““child who requires their own bedroom” means a child—

⁽⁵⁾ 1992 c.4. Section 130A was inserted by section 30(2) of the Welfare Reform Act 2007 (c.5) and amended by section 69 of the Welfare Reform Act 2012 (c.5). Section 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 138(1) is cited for the meaning of “prescribed”.

⁽⁶⁾ 2012 c. 5.

⁽⁷⁾ See sections 172(1) and 173(1) (b) of the Social Security Administration Act 1992 (c.5).

⁽⁸⁾ 1992 c.5. Section 176(1) was amended by Schedule 9, paragraph 23 to the Local Government Finance Act 1992 (c.14), Schedule 13, paragraph 3(4) to the Housing Act 1996 (c.52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000.

⁽⁹⁾ S.I. 2006/213.

- (a) who is entitled to the care component of disability living allowance at the higher or middle rate prescribed in accordance with section 72(3) of the Act;
 - (b) who the relevant authority is satisfied is unable, by virtue of his or her disability, to share a room with another child; and
 - (c) for whom there is a bedroom in the dwelling which is additional to the number of bedrooms to which the claimant would be entitled by virtue of the size criteria in regulation B13(5), 13D(3) or Schedule 2 to the Rent Officers Orders, as the case may be, were the child able to share with another child.”;
- (b) in the definition of “young individual”⁽¹⁰⁾—
- (i) at the end of paragraph (g) omit “or”;
 - (ii) after paragraph (h) add—
 - “or;
 - (i) who is a qualifying parent or carer”.
- (3) In regulation B13 (determination of a maximum rent (social sector))⁽¹¹⁾—
- (a) in paragraph (5) after sub-paragraph (b) insert—
 - “(ba) a child who requires their own bedroom”;
 - (b) in paragraph (6) (a) and (b) for “the claimant or the claimant’s partner is (or each of them is)” substitute “a relevant person is”.
 - (c) for paragraph (7) substitute—
 - “(7) Where—
 - (a) more than one sub-paragraph of paragraph (6) applies the claimant is entitled to an additional bedroom for each sub-paragraph that applies;
 - (b) more than one person falls within a sub-paragraph the claimant is entitled to an additional bedroom for each person falling within that sub-paragraph, except that where a person and that person’s partner both fall within the same sub-paragraph the claimant is entitled to only one additional bedroom in respect of that person and that person’s partner.”;
 - (d) after paragraph (8) add—
 - “(9) In this regulation “relevant person” means—
 - (a) the claimant;
 - (b) the claimant’s partner;
 - (c) a person (“P”) other than the claimant or the claimant’s partner who is jointly liable with the claimant or the claimant’s partner (or both) to make payments in respect of the dwelling occupied as the claimant’s home;
 - (d) P’s partner.”.
- (4) In regulation 13D (determination of a maximum rent (LHA))⁽¹²⁾ in paragraph (3) after sub-paragraph (b) insert—
- “(ba) a child who requires their own bedroom”.
- (5) In regulation 14(8) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance”⁽¹³⁾ for “or (g)” substitute “, (g) or (h)”.

⁽¹⁰⁾ The definition of “young individual” was substituted by S.I. 2007/2868 and amended by S.I. 2010/3835, 2011/1736 and 2011/1740.

⁽¹¹⁾ Regulation B13 was inserted by S.I. 2012/3040 and amended by S.I. 2013/665.

⁽¹²⁾ Regulation 13D was inserted by S.I. 2007/2869 (as amended by S.I. 2008/586) and amended by S.I. 2009/614, 2010/2835 and 2013/665.

⁽¹³⁾ The definition of “change relating to a rent allowance” was amended by S.I. 2010/2835 and 2013/665.

(6) In paragraph 2(3) of Schedule 2 (excluded tenancies)⁽¹⁴⁾ after paragraph (g) add—

“(h) an occupier becomes or ceases to be a child who requires their own bedroom where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽¹⁵⁾ are amended as follows.

(2) After the definition of “child tax credit” in regulation 2(1) (interpretation)⁽¹⁶⁾ insert—

““child who requires their own bedroom” means a child—

- (a) who is entitled to the care component of disability living allowance at the higher or middle rate prescribed in accordance with section 72(3) of the Act;
- (b) who the relevant authority is satisfied is unable, by virtue of his or her disability, to share a room with another child; and
- (c) for whom there is a bedroom in the dwelling which is additional to the number of bedrooms to which the claimant would be entitled by virtue of the size criteria in regulation B13(5), 13D(3) or Schedule 2 to the Rent Officers Orders, as the case may be, were the child able to share with another child.”.

(3) In regulation 13D (determination of a maximum rent (LHA))⁽¹⁷⁾ in paragraph (3) after sub-paragraph (b) insert—

“(ba) a child who requires their own bedroom;”.

(4) In regulation 14(8) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance”⁽¹⁸⁾ for “or (f)” substitute “, (f) or (g)”.

(5) In paragraph 2(3) of Schedule 2 (excluded tenancies)⁽¹⁹⁾ after paragraph (f) add—

“(g) an occupier becomes or ceases to be a child who requires their own bedroom where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

Amendment of the Universal Credit Regulations 2013

4.—(1) Schedule 4 to the Universal Credit Regulations 2013⁽²⁰⁾ is amended as follows.

(2) In paragraph 9—

(a) In sub-paragraph (2) after “if the person” insert “normally”;

(b) After sub-paragraph (2)(f) insert—

“(g) a child or qualifying young person for whom no-one in the renter’s extended benefit unit is responsible.”;

(c) In sub-paragraph (3) after “(or either joint renter)” insert “or a person described in paragraph 2(d)”.

⁽¹⁴⁾ Paragraph 2 was substituted by S.I. 2007/2869 and amended by S.I. 2010/2835 and 2013/665.

⁽¹⁵⁾ S.I. 2006/214.

⁽¹⁶⁾ There are amendments not relevant to this instrument.

⁽¹⁷⁾ Regulation 13D was inserted by S.I. 2007/2869 (as amended by S.I. 2008/586) and amended by S.I. 2009/614, 2010/2835 and 2013/665.

⁽¹⁸⁾ The definition of “change relating to a rent allowance” was amended by S.I. 2010/2835 and 2013/665.

⁽¹⁹⁾ Paragraph 2 was substituted by S.I. 2007/2868 and amended by S.I. 2010/2835 and 2013/665.

⁽²⁰⁾ S.I. 2013/376.

(3) For paragraph 12⁽²¹⁾ substitute—

“Additional room

12.—(1) A renter is entitled to an additional bedroom if they satisfy any of the following conditions—

- (a) the overnight care condition (see sub-paragraph (3));
- (b) the foster parent condition (see sub-paragraphs (4) and (5));
- (c) the disabled child condition (see sub-paragraph (6)).

(2) Sub-paragraph (1) applies subject to sub-paragraphs (7) to (9).

(3) A renter satisfies the overnight care condition if—

- (a) they are in receipt of either—
 - (i) the care component of disability living allowance at the middle or highest rate;
 - (ii) attendance allowance; or
 - (iii) the daily living component of personal independence payment; and
- (b) one or more persons who do not live in the renter’s accommodation are engaged to provide overnight care for the renter and to stay overnight in the accommodation on a regular basis; and
- (c) overnight care is provided under arrangements entered into for that purpose.

(4) A renter satisfies the foster parent condition if the renter is—

- (a) a foster parent; or
- (b) an adopter with whom a child has been placed for adoption.

(5) For the purposes of sub-paragraph (4) “foster parent” includes a person who would be a foster parent, but for the fact that they do not currently have any child placed with them, provided that any period since the date when their last placement ended (or, if they have not yet had a child placed with them, since the date when they were approved to be a foster parent) does not exceed 12 months.

(6) A renter satisfies the disabled child condition if they are responsible for a child who would (but for the provisions of this paragraph) be expected to share a bedroom and that child is—

- (a) in receipt of the care component of disability living allowance at the middle or highest rate; and
- (b) by virtue of their disability, unable to share a room with another child.

(7) Where a renter, or one or both of joint renters, satisfy—

- (a) the overnight care condition; or
- (b) the foster parent condition

they are entitled to one additional bedroom by virtue of satisfying each condition.

(8) Where a renter, or one or both of joint renters, satisfy the disabled child condition in relation to one or more children, they are entitled to as many additional bedrooms as are necessary to ensure that each such child has their own bedroom.

(9) Where a renter, or one or both of joint renters, satisfy two or more of—

- (a) the overnight care condition;
- (b) the foster parent condition; or
- (c) the disabled child condition

⁽²¹⁾ Paragraph 12 was amended by S.I.2013/803.

the total number of additional bedrooms they are entitled to is determined by adding together the number of additional bedrooms which they are entitled to by virtue of satisfying each of those conditions.”.

Date

Name
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 and the Universal Credit Regulations 2013 (“the Universal Credit Regulations”).

Regulation 2(2) inserts a definition of “child who requires their own bedroom” into regulation 2(1) of the Housing Benefit Regulations. This applies to a child who is entitled to the care component of disability living allowance at the higher or middle rate, by reason of their disability is unable to share a bedroom with another child and for whom there is a bedroom that is additional to those a claimant would be entitled to were the child able to share a bedroom.

It also amends the definition of “young individual” so that a person who is a qualifying parent or carer (also defined in regulation 2 of the Housing Benefit Regulations) is not a young individual and so will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by of housing benefit in the private sector.

Regulation 2(3) amends regulation B13 of the Housing Benefit Regulations, which makes provision for the determination of the amount of rent eligible to be met by way of housing benefit for claimants renting in the social sector. The amendments do two things. The amendments in regulation 2(3)(b) to (d) ensure that when determining whether a dwelling is under-occupied for the purposes of applying a reduction, a room is included where a joint tenant (or a joint tenant’s partner) requires overnight care or is a qualifying parent of carer.

The amendment in regulation 2(3) (a) ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom, one is allowed under the size criteria applicable in the claimant’s case.

Regulation 2(4) makes a similar amendment in respect of a child who requires their own bedroom to regulation 13D of the Housing Benefit Regulations, which makes provision for the determination of the amount of rent eligible to be met by way of housing benefit for claimants renting in the private sector to whom the local housing allowance applies. However under regulation 13D there is a maximum of four bedrooms.

Regulation 2(5) amends regulation 14 of the Housing Benefit Regulations, which applies to private sector claimants not covered by the local housing allowance and to some social sector claimants where the local authority considers the rent to be unreasonably high. Taken in conjunction with the amendment to Schedule 2 made by regulation 2(6), this amendment ensures that a referral to a rent officer will be made if a child becomes, or ceases to be, a child who requires their own bedroom.

Regulation 3 makes equivalent amendments to regulations 2, 13D and 14 of and Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 in respect of a child who requires their own bedroom. (These Regulations have no equivalent to regulation B13 of the Housing Benefit Regulations and they do not apply to young individual.)

Regulation 4(2) amends paragraph 9 of Schedule 4 to the Universal Credit Regulations, which specifies who should be treated as part of a renter’s extended benefit unit for the purposes of the housing costs calculation. The purpose of the amendment is to ensure that only children whom the renter is responsible for (within the meaning of regulation 4 of the Universal Credit Regulations) are treated as part of the extended benefit unit and allocated a room under the size criteria.

Regulation 4(3) substitutes a revised version of paragraph 12 of Schedule 4 to the Universal Credit Regulations. The revised wording allows for an additional room to be allocated for a child who would usually have to share a room, if:

(a) they are entitled to the care component of disability living allowance at the higher or middle rate, and;

(b) by reason of their disability, they are unable to share a bedroom with another child.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call: 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Houses of Parliament Shop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders: 020 7219 3890/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other accredited agents

ISBN 978-0-10-856006-4



9 780108 560064