

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A3/2011

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	New provision for non-resident overnight carers: further guidance

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *Chapter 4*.

This information also affects the Local Housing Allowance Guidance Manual. Please annotate this circular number against *Chapter 2*.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
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New provision for non-resident overnight carers: further guidance

Background

- 1 Adjudication circular [A25/2010](#) gave information about the [Housing Benefit \(Amendment\) Regulations 2010 No 2835](#) and the [Rent Officers \(Housing Benefit Functions\) Amendment Order 2010 No 2836](#) that were laid before Parliament on 30 November 2010. Copies of these can be downloaded from the [DWP website](#) or the government's [legislation website](#).
- 2 As well as making changes to the Local Housing Allowance (LHA) arrangements, these also provide for a bedroom that is used overnight by a non-resident carer to be included when applying the size criteria in private rented sector cases.
- 3 From 1 April 2011, the amendment regulations will allow funding for one additional bedroom when the
 - customer or their partner has an established need for overnight care that is provided by someone outside of the household, and
 - customer occupies a property with an additional bedroom that is used for this purpose
- 4 This circular gives further information about assessing claims when this type of care arrangement exists.

How the law has changed

- 5 The new provision for non-resident overnight carers is implemented by
 - the insertion of a definition of 'a person who requires overnight care' in Regulation 2 of the working age and pensioner HB regulations, and
 - an addition to Regulation 13D to allow for an additional bedroom when the customer or their partner or both satisfies this definition
- 6 A corresponding change has been made to the size criteria in the Rent Officers Order for private rented sector cases that are referred individually to the rent officer.

Definition of a ‘person who requires overnight care’

- 7 The amendment to Regulation 2 defines a ‘person who requires overnight care’ as someone who
- receives Attendance Allowance (AA), or
 - receives the middle or highest rate care component of Disability Living Allowance (DLA), or
 - if they do not receive either of the above, has provided the local authority (LA) with sufficient evidence to show that this type of care is required
- 8 In addition, the customer or partner, will only meet the definition if the LA is satisfied that the customer or partner, (‘P’ in the amendment regulations)
- ‘reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should*
- i be engaged in providing overnight care for P;*
 - ii regularly stay overnight at the dwelling for that purpose; and*
 - iii be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home.’*

Rent Officer referrals

- 9 Amendments have also been made in the HB regulations to
- Regulation 14(8) (requirement to refer to rent officers)
 - Paragraph 2(3) of Schedule 2 (excluded tenancies), and
 - Regulation 114A(9) and 95A(9) of the working age and pensioner regulations respectively (setting out the information that is required to be sent to the rent officer)
- 10 These changes ensure the rent officer receives the relevant information they need for them to take a non-resident carer into account when appropriate in their determinations. However, it avoids triggering a new rent officer referral when, for example the customer is already a person requiring overnight care and his partner then also becomes a person requiring overnight care. As entitlement remains at one extra room there is no need for a rent officer referral. Similarly, if both the customer and their partner require overnight care and one of them ceases to require it, then they still get the extra room so there would be no need for a rent officer referral.

How the change will apply

- 11 The change will apply to all HB customers who rent their property in the Private Rented Sector who fall within the qualifying definition from 1 April 2011. For existing customers there is no time limit on the period for which arrears can be awarded provided that the qualifying conditions are met, but the changes cannot be applied before 1 April 2011 because they are not retrospective. This means that customers who are in receipt of benefit and meet the conditions before 1 April 2011 will be entitled to arrears of benefit from 1 April, even if their award is not superseded until a later date. The change is effective from 1 April, rather than the following Monday, because it is covered by the provision in HB Regulation 79(3)(b) concerning amendments to the regulations.
- 12 For existing claims, the application of this change will trigger a new rent officer referral or a new maximum rent (LHA) determination. This will set a new anniversary date for cases assessed under the LHA arrangements or the annual rent officer referral date for pre-April 2008 claims.

Identifying claims

Existing customers

- 13 There will be a number of existing customers who could benefit from the new provision when it is introduced in April 2011. It is estimated that there are around 10,000 households in Great Britain that receive HB and have this type of care arrangement. Unfortunately, there is no practical and cost-effective method that DWP can use to identify them in a single exercise, so the change is being advertised in a variety of ways to encourage customers who may be entitled to come forward.
- 14 DWP published an article in the December/January issue of [Touchbase](#) to tell the welfare rights community about this change. It has also designed a model leaflet (HB(Apr)2) that can be used both by LAs and welfare organisations to publicise it. Copies of the leaflet in English and Welsh, which have already been sent to benefit managers and published on the [DWP website](#), are attached in **Annex A** and **Annex B**.
- 15 DWP has also discussed the new provision with the Association of Directors of Adult Social Services (ADASS), which has agreed to publicise the new provision through its network of stakeholder forums and via its Directors' Bulletin.

- 16 If a customer contacts their LA before April 2011 as a result of this publicity, DWP suggests that the LA flags the claim for future action and advises the customer that it will contact them nearer the time about this, when it may also ask for evidence of the care arrangements. The LA should also explain what evidence it might need (see below), and could also consider asking the customer to complete the consent form in **Annex C**, if it wishes to obtain quick confirmation from social services when the provision comes into force.

New customers

- 17 To enable relevant new claims to be identified, DWP is arranging for a question to be added to forms HCTB1, HCTB1(PC) and HCTB1(PC)RT, as follows

‘Do you or your partner have a carer who lives somewhere else, but provides care overnight in your home?’

- 18 If the customer answers ‘yes’ to this question, a note on the form advises them that they may be asked for further information about this.

Claims taken by DWP

- 19 From April 2011, this new question will be added to the desk aide for staff in Jobcentre Plus taking new claims by phone to prompt them to ask customers whether they have a bedroom that is used by a non-resident carer. For income-based Jobseeker’s Allowance (JSA(IB)) customers claiming via the on-line system this new question will be asked when the customer attends their work focussed interview within the jobcentre. The answer to this question will be given in the case notes section of the Local Authority Input Document (LAID) for JSA and Income Support (IS) claims and Local Authority Claim Information (LACI) document for Employment and Support Allowance (ESA) claims.
- 20 The Pension, Disability and Carers Service (PDCS) will not ask new customers about a bedroom used by a non-resident carer when taking new claims by phone, so the LACI form will not contain information about this. Instead, the HCTB1(PC)RT form that PDCS issue will be revised as described above.

Assessing claims

Including an extra bedroom in the assessment

- 21 When a customer informs an LA that they or their partner receive overnight care from a non-resident carer, the LA should first establish that the customer has more bedrooms than the size criteria prescribed for the size of household. The new provision does not provide for customers who would be entitled to HB for an extra bedroom because of the nature of their care arrangements, but who do not actually have that extra bedroom.

- 22 For example, a couple with one child would ordinarily be entitled to HB based on a property with two bedrooms. In this case, the LA will only need to consider the new provision if the property has at least three bedrooms. If the customer lives in a two bedroom property, it is irrelevant under the new provision whether a non-resident carer stays overnight - for example on a sofa bed in the living room - and no further action need be taken.
- 23 The provision for an extra bedroom for a non-resident overnight carer does not apply over and above the property size cap of four bedrooms that will also be introduced from 1 April 2011. Thus, if a claim is received for a household entitled to four bedrooms, a fifth bedroom that is used by a non-resident carer cannot be included in determining the HB award.
- 24 The regulations have been amended so that, if HB is paid under the provisions of Regulation 7 covering circumstances when a person is to be treated as occupying a dwelling as his home, the element for the extra bedroom can also be paid in the same way (see also paragraphs 43 and 44).
- 25 Help with the extra room will also be available to those who live in a property that is shared with other tenants who also receive care and there is a bedroom that is used by a non-resident carer. This is most likely to apply when a number of residents share the same property and overnight care is provided to all of them by the same carer or team of carers using just the one bedroom.
- 26 Even if younger than 25 (i.e. a young individual), a customer in these circumstances who needs regular overnight care is likely to be exempt from the shared room rate and therefore qualify for the one bedroom self-contained rate of the local housing allowance. Adding an extra bedroom for the non-resident shared carer would entitle them to the two bedroom rate even though they live in a property with other tenants. However, if the two bedroom LHA rate exceeds the cap rent, the claimant's maximum rent (LHA) will be the cap rent. This would also be the case for those subject to the maximum rent.
- 27 Any or all of the residents receiving the overnight care and claiming HB could have the same carer's room included in their benefit assessment provided the LA is satisfied they meet the requirements as individuals.

Evidence of medical need for care

- 28 Once it has been established that the customer has an extra bedroom, LAs will then need to be satisfied that there is a medical need for the care, as described in paragraph 7 above. The majority of customers (or partners) receiving overnight care will be getting AA or the middle or highest rate care component of DLA, and confirming receipt of one of these benefits is sufficient to confirm a medical need.

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

Confirming the care arrangements

- 30 The final consideration is for LAs to satisfy themselves that the customer or partner actually receives care that requires a carer, or team of carers, to stay overnight. Again, LAs have discretion to decide what evidence, if any, is needed in each case, and from whom it should be obtained, such as from adult social services or the care agency providing the care.
- 31 The new Welfare Reform Bill that was introduced in Parliament on 17 February 2011 contains a provision to permit information relating to a customer's care arrangements to be shared between social services and HB teams without having first to obtain the customer's consent for disclosure. This will make it easier for benefits teams to confirm care arrangements with social services departments.
- 32 However, until this provision is brought into force, the customer's consent (or the partner's, if they get the care) will need to be obtained if LAs want to request information directly from adult social services. A model consent form is provided in **Annex C**. Alternatively, the customer may be able to provide information about the care arrangements, obviating the need to ask social services for it.
- 33 There are likely to be cases where customers have made private care arrangements without the involvement of social services. Again, LAs have discretion to decide what evidence is needed for each case. For example, this might be in the form of a care plan, a letter detailing the need for overnight care, or an invoice for care fees.
- 34 In some cases overnight care will be provided informally, perhaps by a member of the family. Customers with such informal arrangements can also benefit from the new provision (provided that the carer continues to live elsewhere). LAs should use their discretion in each case to decide what supporting evidence, if any, is needed, considering the informality of the arrangements.
- 35 LAs may decide that effective case management will require the regular review of relevant claims to confirm a continuing requirement for the overnight care and that it is still being provided. In particular, they may wish to set case controls to review claims if it appears that the care, whether formal or informal, is being provided on a short-term or time-limited basis.

- 36 Customers do not need to be receiving overnight care every night of the week. The regulation stipulates that a carer should stay overnight 'regularly' (see paragraph 8 above), but does not prescribe a minimum number of nights that would satisfy this requirement. However, it is not intended that the provision should apply for regular but infrequent care, but rather for customers where the need for care and therefore the bedroom is frequent, thereby enabling them to continue to live in the community. LAs should decide whether the provision applies based on the circumstances of the individual case. Information about the medical need for the care should help LAs to make this decision (see paragraphs 28 and 29 above).

Superseding decisions on existing awards

- 37 When the new provision comes into force in April, the change in the law will be a relevant change of circumstances for any existing claim to which the new provision applies, but not a change of circumstances that is required to be notified. Awards should be superseded as appropriate when cases are identified.
- 38 As described in paragraph 11 above, there is no time limit for supersession and, if appropriate, arrears may be awarded from 1 April 2011.

Applying the provision alongside the LHA reforms

- 39 New LHA caps will be introduced in April which may also affect customers with non-resident overnight care. In such cases, it is important that the provision for an extra bedroom is considered before applying the new LHA cap. This will ensure that customers with this type of care receive the correct transitional protection.
- 40 For example, a claim from a single customer with non-resident overnight care who is living in a two bedroom flat would have been assessed on the basis of the rate for a one bedroom property. From 1 April, the award is superseded to take the second bedroom into account. This new award would then have nine months' transitional protection from the claim anniversary date if the new cap on two bedroom accommodation is for a lower amount. [A25/2010](#) has more information about the legal context for transitional protection.

Changes of circumstances: some possible events

- 41 As stated, an HB award for a customer who receives non-resident overnight care for themselves or their partner will not include any element for an extra bedroom for the carer if the customer does not have an extra bedroom for the carer to use. If the customer subsequently moves to a larger property that does include this extra room, the LA may supersede the award to take this into account. LAs should therefore take care to identify such cases when determining the new award.

- 42 Some customers will not initially satisfy the conditions for the inclusion of an extra bedroom in the HB assessment when the provision is introduced from 1 April, but may do so at a later date. Such cases should be handled as a change of circumstances in the normal way. The customer would need to report the change of circumstances within a month of the day the change happened to have their award superseded from that date, and any increase in the HB award would be payable from the following Monday.
- 43 Customers (or partners) who need overnight care may be more likely to be temporarily absent from the home because they have been admitted to hospital or residential accommodation. LAs should apply the provisions for temporary absences from the home that are set out in Regulation 7 of the HB Regulations in the normal way. If the conditions for treating the customer/partner as occupying their home are satisfied, then the element of HB payable for a bedroom for a non-resident overnight carer will also continue to apply, even though no care is being provided during the spell of hospital treatment.
- 44 Regulation 7 also provides for customers who become newly liable for a tenancy while in hospital or residential accommodation, but who have not moved into the property straight away. It permits payment of HB up to four weeks prior to such customers moving into their new home and, in these circumstances, LAs may include an extra bedroom that will be used by a non-resident carer when determining the award, provided the dwelling contains the extra bedroom.
- 45 Non-residential overnight care may end because of the death of the customer or partner who was receiving the care. In this event, the 12 month protection prescribed in Regulation 12D(3) will apply, and the extra bedroom that had been used by the non-resident carer can continue to be included for that period, provided the customer does not move dwelling

Leaflet

Do you or your partner have a carer who stays overnight in your home?

Do you rent your home from a private landlord?

Is the overnight care provided by a carer who doesn't live in your home?

Do you have a room that your carer uses to sleep in overnight?

If the answer to all these questions is yes, then from **April 2011** the help you get with your rent can take account of this.

From April 2011, a bedroom that is used by a carer (or team of carers) who doesn't actually live in your home can be taken into account when working out how much Housing Benefit to pay.

In some cases, this could result in an increase in Housing Benefit. But there will also be other changes to the Housing Benefit rules coming in at the same time that may affect any extra that could have been paid. This means that **all** of your circumstances will need to be considered to take account of **all** the new rules to decide whether you can get more money.

Even if your Housing Benefit doesn't increase as a result, it is still in your interest to tell your local authority if you or your partner has this type of care arrangement. So, if you think that you might be entitled to help with the cost of an extra bedroom that is used by a carer, please speak to an adviser or contact the benefits department* at

[space for LA contact details]

* delete as appropriate

Leaflet (Welsh)

Oes gennych chi neu'ch partner ofalwr sy'n aros dros nos yn eich cartref?

Ydych chi'n rhentu eich cartref gan landlord preifat?

A yw'r gofal dros nos yn cael ei ddarparu gan ofalwr nad yw'n byw yn eich cartref?

Oes gennych chi ystafell y mae eich gofalwr yn ei defnyddio i gysgu ynddi dros nos?

Os mai'r ateb i bob un o'r cwestiynau hyn yw 'ydw/ydy/oes', yna o **Ebrill 2011** gall yr help a gewch gyda'ch rhent ystyried hyn.

O Ebrill 2011, gellir ystyried ystafell wely y mae gofalwr (neu dîm o ofalwyr) nad yw'n byw yn eich cartref yn ei defnyddio, wrth weithio allan faint o Fudd-dal Tai i dalu.

Mewn rhai achosion, gall hyn olygu cynnydd mewn Budd-dal Tai. Ond caiff newidiadau eraill i reolau Budd-dal Tai eu cyflwyno ar yr un pryd hefyd a allai effeithio ar unrhyw beth ychwanegol y gallai fod wedi ei dalu. Mae hyn yn golygu y bydd angen ystyried eich **holl** amgylchiadau er mwyn ystyried yr **holl** reolau newydd i benderfynu a allwch gael mwy o arian.

Hyd yn oed os na fydd eich Budd-dal Tai yn cynyddu o ganlyniad i hyn, mae o fudd i chi o hyd ddweud wrth eich awdurdod lleol os oes gennych chi neu'ch partner y math hwn o drefniant. Felly, os ydych o'r farn y gallech fod â hawl i gael help gyda chost ystafell wely ychwanegol a ddefnyddir gan ofalwr, siaradwch ag ymgynghorydd neu cysylltwch â'r adran budd-daliadau* yn

[space for LA contact details]

* dilëwch fel y bo'n briodol

Model customer consent form

This consent form authorises _____ * Adult Social Services
to disclose relevant information about my care arrangements to _____ **
for the purpose of assessing the Housing Benefit claim made by

Name _____

Details of the person receiving care

Name: _____

Address: _____

DOB: _____

Customer consent

I agree that _____ * Adult Social
Services may provide information about my care arrangements to _____ **
for the purpose of assessing my housing benefit or my partner's housing benefit.

I understand that I may withdraw my consent to the disclosure of such information at any
time by writing to***

Signed **** _____
(customer/partner of customer/appointee/legal representative)

Date _____

* *Insert name of the local authority*

** *Insert name of Council HB department. If this service is contracted out, insert '[name of organisation], acting on behalf of XXXX Council'*

*** *Insert the name and address of the data controller*

**** *If the information required relates to care arrangements for the customer's partner, the partner should sign this form (or legal representative).*