

HOUSING SYSTEMS: BRIEFING

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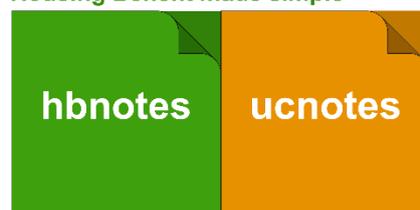
Homes affected by floods- impact on Housing Benefit / Universal Credit

The recent flooding has left many tenants having to live in temporary accommodation. This is a guide as to how the Housing Benefit and Universal Credit rules work for these tenants.

Please note, that absence from home due to flooding is not specifically covered in the HB / UC Regulations so this document is guidance only. It is intended to be used by Social Landlords to ensure their procedures and their tenants' actions do not unnecessarily cause rent arrears due to falling foul of the HB / UC Regulations.

We start by outlining the rules under Housing Benefit. Please note: some HB Offices may interpret the HB Regulations in a different way to this guidance – if yours does then please contact us for advice.

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The rules under Housing Benefit

Who can get HB for a property that has been flooded that they have had to move out of?

Whether a tenant is able to get HB on the property that has been flooded will depend on:

1. Whether they are liable for rent elsewhere (HB can only be paid in respect of one property in these circumstances ie there is no provision for HB on two homes).
2. Whether the landlord can legally charge a rent on the flooded property (no legal liability, no HB).
3. Whether the tenant intends to return to the property (if not, HB will end from when the tenant moved out – although they may be able to get HB for a notice period if rent can legally be charged).
4. Whether the tenant returns to live in the property as soon as all the essential repairs are complete (if they delay moving back, HB may not be paid for any period when they could be living in the property but choose not to, if they have already been away from the property for 13 weeks or more).

Please note the DWP issued guidance to HB Offices after the flooding in the North East of England in 2007 – this is shown on page 7, and has provided similar guidance in the HB Guidance Manual – also shown on page 7.

Absence due to 'essential repairs'

Housing Benefit Regulation 7 (4) states: *'Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home, and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.'*

'move into temporary accommodation' – assumes that the tenant intends to return to the flooded property.

'essential repairs' – as soon as these are completed the tenant will be expected to return to the property. This may mean that if they stay in the temporary accommodation because they wish to decorate the property this may not be seen as essential repairs and therefore HB can no longer be paid under this Regulation (this has been confirmed in case law: CH 393/2002) - but see temporary absences below.

'liable to make payments' – generally a tenant cannot be liable to make payments on a property that is uninhabitable so would only be liable for the rent on the temporary accommodation. Guidance states that it is always the home that the claimant is liable to make payments for that is treated as the home they are occupying (DWP Guidance G10/2007), therefore HB will be awarded in respect of this rent.

There is no time limit as to how long HB can be paid under these rules, however see below if the tenant does not move back into the flooded property as soon as the 'essential repairs' are complete.

Where the tenant has rental liability on the temporary accommodation, but not on the flooded property, HB can be paid for the temporary accommodation.

Where the tenant has a rental liability on both properties, the HB Office could argue that the 'essential repair' rules do not apply – but what tends to happen is that they decide which is the main home and pay HB on that (in line with guidance from the DWP – see page 7).

What are essential repairs?

It is hoped that this will not be made an issue by the HB Office and that they will accept that all flooded properties are undergoing essential repairs.

Note that 'essential repairs' are not defined in the HB Regulations but case law suggests that the repairs work need to be 'necessary' rather than 'luxury'. And DWP Guidance gives examples of structural work and re-roofing. So they are likely to be seen as repairs that are needed to make the property safe / habitable and where the tenant would find it difficult to live in the property whilst the repairs were being done. (The circumstances of the tenant – age, health etc should be taken into account).

NOTE: Redecorating, re-carpeting and so on, would not normally be classed as a repair.

If this becomes an issue with your HB Office, please contact us.

Tenant does not move back into the flooded property as soon as the essential repairs are complete

As soon as the 'essential repairs' are completed ie the flooded property is habitable (taking into account tenant's circumstances) HB under this provision would normally cease, even if some work/repairs were still needed – and the tenant would be expected to move back in. If the tenant does not move back in then HB will stop as this Regulation no longer applies because there are no outstanding essential repairs.

Could HB continue under the temporary absence rules? The temporary absence rules would only be applicable in these cases where the overall absence, taken from the first day the tenant left the flooded property, is under 13 weeks. Therefore if the tenant has already been absent from the property for 13 weeks or more awaiting essential repairs then no HB will be payable under the temporary absence rules if they do not move back in. If, however, they moved back in to the flooded property for a few days and found they could not live in the property so moved back out again, this should be seen to break the period of absence meaning they may be able to get HB under the temporary absence rules for the second period of absence – as long as they intend to return within 13 weeks (this HB would be payable in respect of the flooded property).

What if 'essential repairs' are not needed but the tenant still moves out to allow the property to dry out / some work to be undertaken?

If the tenant is away from the flooded property because it cannot be lived in due to flood damage, but does not need 'essential repairs', then the temporary absence rules may apply – HB Reg 7(13). HB will only be paid if:

1. The tenant is legally liable for rent on the flooded home,
2. The tenant intends to return to the flooded home,
3. They will return within 13 weeks, and
4. They do not sub-let property (a bit unlikely !!!!!).

What if rent is being charged on both the flooded home and the temporary accommodation?

In such cases the HB Office would probably pay HB for the flooded property and not the temporary accommodation, as this is the tenant's normal home.

What if the tenant is away for more than 13 weeks?

As soon as it becomes apparent that the tenant will not return within 13 weeks HB would end. There is no provision to extend the 13 weeks absence.

If it is known from the onset that the tenant is likely to be away for more than 13 weeks and this is not because the property needs 'essential repairs' then no HB will be payable during the period of temporary absence on the flooded property. However, you may be able to argue that the temporary accommodation must therefore be seen to be the tenant's 'normal' home during the period they are absent from the flooded property, and so claim HB on that instead.

Liability for two rents?

There is no provision in the HB Regulations for a tenant to be classed as living in two homes and therefore able to get HB on both of them where they are having to live away from their normal home due to flooding / essential repairs.

Where the property is habitable but it is easier for the landlord to conduct the repairs whilst the tenant is not living in the property, rent could be charged on both the flooded property and the temporary accommodation – normally the landlord's insurance will cover one of these liabilities and the tenant will be able to claim HB for the other.

This could be under HB Reg 7(4) if 'essential repairs' are required or under HB Reg 7(13) ie the temporary absence rules, if not.

If the tenant is liable for two rents then it can be argued that HB Reg 7(4) does not apply as it states *..... is liable to make in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation.* Although DWP Guidance suggests it does apply the HB Office may decide otherwise and the tenant would then only be able to claim HB on their normal home ie the one that was flooded, under the temporary absence rules – so they would need to be intending to return within 13 weeks.

What if the tenant has moved in to live with friends/family?

Where the tenant has moved in with friends/family they will generally not be liable for rent at this new property.

If the landlord is able to claim the rental loss for the flooded property from their insurance then there is no need for HB as there is no rental liability. The tenant will retain the tenancy of the flooded property, although the landlord may set the rent on it to nil because it is uninhabitable.

Where the landlord's insurance does not cover such loss this is the landlord's responsibility. Whether or not the tenant can get HB on this property will depend on whether the tenant intends to return to the flooded property and whether the landlord can legally charge a rent on the flooded property.

There may also be a risk that the HB Office consider that the liability has been set up to take advantage of the HB system as they would argue that it is the landlord's responsibility to ensure that their insurance covers such loss, and that they cannot rely on the HB system to help them out if they have failed to do so.

If the tenant does intend to return, and the landlord can legally charge a rent, and the HB Office is happy that there is a legal liability, then HB may be payable under the 'temporary absence' or 'essential repairs' HB Regulations (see above).

If the friends/family whose house the tenant has moved into, claim HB, will the tenant be a non-dependant and affect the friends'/family's entitlement to HB?

As long as the tenant intends to return to the flooded property once the repairs are complete, they should not be treated as a non-dependant. This is because it is only a temporary stay and the tenant has their normal home elsewhere. This also means that they (and their family) would not be considered living with the friends/family for the HB under-occupancy rules. ([Standard letter ND1](#))

What if we are still assessing the damage to the flooded property?

It is hoped that this will not be made an issue by the HB Office and that they will accept that all flooded properties are undergoing essential repairs.

If however, your HB Office argue that if initially it is not known whether or not the flooded property needs essential repairs, the temporary absence rules may apply, but as soon as it becomes clear that essential repairs are needed the 'essential repairs' rule would take over and there would be no time restriction on when the tenant intends to return to the property.

What if the flooded property is a shared ownership property?

DWP Guidance is that *'It is always the home that the claimant is liable to make payments for that is treated as the main home'*. So if the tenant has a mortgage on the flooded property, this will be their main home and they will not be able to claim HB on any temporary accommodation. Whether they can claim HB on the flooded property will depend on whether or not the landlord is legally able to charge a rent on it, and whether the HB Office accept this liability. HB may be payable under the 'temporary absence' or 'essential repairs' HB regulations.

What if the temporary accommodation is a caravan?

If the tenant is being charged a rent, then their circumstances would be treated the same as if they were in a temporary accommodation.

If the tenant is not being charged a rent, then their circumstances would be treated the same as if they had moved in with friends/family.

What if the tenant has handed in their notice to terminate their tenancy?

If the tenant has already left the property and is receiving HB under one of the rules outlined above ie due to 'essential repairs' or 'temporary absence', the HB under these rules will stop from the date the tenant decided they are not going to return to the property.

Depending on where they are now living they may be able to claim HB on their new or temporary property instead.

If the tenant is wishing to terminate their tenancy they may be able to get HB for their notice period on the flooded property, but the landlord must be able to legally charge a rent on the property. If there is a legal rental liability then HB can be paid for the notice period where:

1. The tenant is unavoidably liable for housing costs on two homes (their new home does not have to be rented, it could be a residential care home, mortgage etc) HB Reg 7 (6d), or
2. Where the tenant has had to terminate their tenancy and could not reasonably have avoided the liability eg sudden moves HB Reg 7 (7).

[Click here](#) for more information on HB for a notice period.

Regulations and Guidance

Extract from HB Guidance Circular G10/2007 issued 9th July 2007

Homes affected by floods

- 10 *We have received a few enquiries regarding the payment of Housing Benefit (HB) for properties that have been damaged by floods and so causing the occupants to seek alternative accommodation.*
- 11 *As you know HB is normally only payable in respect of one home at any one time. In exceptional circumstances HB can be paid for two homes but this is not one of those circumstances.*
- 12 *There is provision for HB to be paid while the main home is undergoing essential repairs provided there is only one liability. In some cases those renting a property will have moved to another home and not have a liability for the flood damaged property. In these cases HB can be paid for the new home. If the claimant moves out and has two liabilities the LA will have to decide which home can be treated as the main home.*
- 13 *When a person is making payments of mortgage interest on the home they own and then rents another, they will not be able to claim HB on the rented home as the home they own will be treated as the main home. It is always the home that the claimant is liable to make payments for that is treated as the main home.*

Extract from HB Guidance Manual

Claimant leaves normal home while essential repairs are done

3.390 *HB can be paid to a claimant who has had to leave their normal home while essential repair work is done. An essential repair may be, for example, structural work or re-roofing. If the claimant is liable to make mortgage interest payments or rent for either the temporary home or the normal home, treat the claimant as occupying the home they are liable to make payments on.*

3.391 *If you consider the claimant does not have to move out, treat the home being repaired as the normal home.*

3.392 *If there is a liability to make payments for both the temporary and normal home*

- *treat the claimant as occupying their normal home, and*
- *do not pay HB for the temporary accommodation*

3.393 *If, however, the liability to make payments on the normal home is waived for the period of vacation, for example, the mortgage payments are suspended, then you may consider HB for the rent paid on temporary accommodation.*

The rules under Universal Credit

The rules under Universal Credit are very similar to the rules under HB ie there is a set of rules governing absences due to ‘**essential repairs**’ and another set for **temporary absences**. Everything written above regarding Housing Benefit, will also apply to the Housing Costs Element for those tenants on Universal Credit with two key differences:

- The Universal Credit temporary absence rules allow absences of up to six months as opposed to 13 weeks under Housing Benefit, and
- Universal Credit is a monthly benefit, which means that any change in entitlement takes place from the beginning of the claimant’s monthly assessment period in which the change took place (and if a beneficial change – ie more Universal Credit due as a result of the change, it needs to be notified in time).

So, whether a tenant is able to get the Housing Costs Element included in their Universal Credit award on the property that has been flooded will depend on:

1. Whether they are liable for rent elsewhere (the Housing Costs Element can only be paid in respect of one property in these circumstances ie no provision to help with the rent on two homes).
2. Whether the landlord can legally charge a rent on the flooded property (no legal liability, no Housing Costs Element).
3. Whether the tenant intends to return to the property (if not, the Housing Costs Element in respect of the flooded property cannot be included in the UC assessment in the monthly assessment period in which the tenant decides to move out permanently – there is no provision within UC to get help with paying the rent for any notice period).
4. Whether the tenant returns to live in the property as soon as all the ‘essential repairs’ are complete (if they delay moving back, a Housing Costs Element may not be included if they could be living in the property but choose not to).

And how long the Housing Costs Element can be awarded will depend on whether the tenant is falling under the ‘essential repairs’ rules (no time limit as long as the reason for being away from the flooded property is to allow ‘essential repairs’ to be completed), or the temporary absence rules (six months maximum as long as tenant intends to return to the property within six months). For further information / discussion see section on Housing Benefit – and whenever ‘13 weeks’ is mentioned read as ‘six months’ instead.

For more information on monthly assessment periods – [click here](#).

The Regulations and Guidance

Claimant living in other accommodation during essential repairs

Schedule 1, paragraph 3.—(1) Where a claimant—

(a) is required to move into accommodation (“the other accommodation”) on account of essential repairs being carried out to the accommodation the claimant normally occupies as their home;

(b) intends to return to the accommodation which is under repair; and

(c) meets the payment condition and the liability condition in respect of either the other accommodation or the accommodation which they normally occupy as their home (but not both),

the claimant is to be treated as normally occupying as their home the accommodation in respect of which those conditions are met.

(2) A claimant is subject to the general rule in paragraph 1 where—

(a) sub-paragraph (1)(a) and (b) apply to the claimant; but

(b) the claimant meets the payment condition and the liability condition in respect of both the other accommodation and the accommodation which they normally occupy as their home.

Universal Credit Guidance – Advice for Decision Makers

Other accommodation for essential repairs

F2171 A claimant who

- 1. has to move into other accommodation so that essential repairs can be carried out to their home*
- 2. intends to return to their home following the repairs and*
- 3. is liable to pay for only one home*

shall be treated as normally living in the home which meets all of the conditions 1. to 3. above.

F2172 Where a claimant has moved into other accommodation in the circumstances set out in F2171 but is liable to pay for both homes the DM must decide which the claimant normally occupies as his home.

F2173 In F2171 and F2172 essential means necessary and not a luxury.

Periods of temporary absence exceeding six months

Schedule 1, paragraph 9.—*(1) Subject to sub-paragraphs (2) and (3), a claimant is to be treated as no longer occupying accommodation from which they are temporarily absent where the absence exceeds, or is expected to exceed, six months.*

(2) Sub-paragraph (1) does not apply to a claimant who falls within paragraph 3.

(3) Where a claimant who falls within paragraph 6 is temporarily absent from the accommodation which they normally occupy as their home, the claimant is to be treated as no longer occupying that accommodation where the absence exceeds, or is expected to exceed, 12 months.

Universal Credit Guidance – Advice for Decision Makers

Periods of temporary absence exceeding six months

F2211 A claimant will be treated as no longer occupying their home where they are temporarily absent and the absence exceeds, or is expected to exceed six months.

F2212 F2211 does not apply where a claimant is temporarily absent due to essential repairs as in F2171 et seq.

F2213 In the circumstances set out in F2191 et seq (fleeing violence) the period in F2211 is 12 months.