Supported Housing & Welfare Reforms –

How help with rent works for tenants living in supported housing under the different reforms.

Key Points

Unless the HB Office/DWP has the full and correct information about the supported housing scheme a claimant is living in, and the care, support and supervision being provided to them, they may not receive the correct level of help with their rent from the correct benefit authority.

- The rules are complex and have left benefit authorities, housing providers and claimants confused, with some claimants not knowing whether they should be claiming Housing Benefit or Universal Credit to cover their rent (and some being refused both!).
- There are four different ‘types’ of supported housing that a claimant can be deemed to be living in and the welfare reform changes affect each differently.
- What ‘type’ of supported housing the claimant is deemed to live in depends (amongst other things) on what care, support or supervision they are receiving and who is providing it.
- Case law has decided that care, support and supervision can extend beyond the traditional face to face support and can include services such as onerous repairs and maintenance.
- Some claimants will get their rent supported through Housing Benefit (where generally Intensive Housing Management charges are deemed eligible); others will need to claim Universal Credit (where Intensive Housing Management charges are not eligible).
- As HB Offices investigate what type of supported housing a claimant lives in they are having to review the amount of rent they are able to cover and many housing providers are starting to see rent restrictions imposed.
- It is important that supported housing providers have a clear understanding of what ‘type’ of supported housing their tenants are living in and how the rent and service charges compare to similar supported housing schemes.
Introduction

There is much confusion around how the various welfare reforms affect claimants living in supported housing. This briefing aims to outline the rules to help you minimise potential problems and ensure supported housing residents are receiving the correct help with their rent.

Under the benefit rules there are four ‘types’ of supported housing a claimant could be deemed to live in:

- Exempt Accommodation.
- Specified Accommodation.
- Temporary Accommodation.
- Other Supported Housing.

Each type of accommodation has different rules under each of the different welfare reforms. The welfare reforms we consider in this briefing are:

- Bedroom Tax,
- Benefit Cap,
- Universal Credit,
- Proposed LHA Cap, and
- Help with rent for 18–21 year olds.

(We do not go into detail about each of these reforms in this briefing – it is already long enough! Please see the website if you do require any further information.)

Each ‘type’ of supported housing is treated differently meaning HB Offices/DWP are having to make decisions about what type of supported housing the claimant is living in to process their claim appropriately - please see table in Appendix A. The result is that we are seeing HB Offices starting to take a closer look at the ‘type’ of supported housing a claimant is living in. (The DWP appear to be taking a less active part in the decision making process).

When working out what ‘type’ of supported housing a claimant is living in, it is not the scheme’s generic characteristics that count, but the claimant’s particular circumstances. This will include who their landlord is, how much support they actually receive, who provides the support, why they entered the accommodation, etc. This means that it is quite possible for two claimants living in the same supported housing scheme to be regarded as living in different ‘types’ of supported accommodation.

There are also some situations where a claimant living in what might normally be seen as general needs housing could be regarded as living in ‘exempt’, ‘specified’ or ‘temporary’ housing; and situations where a claimant living in what is normally considered supported housing might not meet the criteria to be classed as living in one of these ‘types’ of supported housing, so will be affected by the welfare reforms as if living in general needs housing.

This has been an issue since 2013 ie since the introduction of the Bedroom Tax and Benefit Cap, but has become a bigger issue with the introduction of Universal Credit and, and the rollout of the ‘Full’/Digital service. This is because, unless the claimant lives in ‘specified accommodation’, Housing Benefit cannot be awarded to a Universal Credit claimant – so they have a Housing Costs Element included as part of the UC assessment instead.

To work out what ‘type’ of supported housing the claimant is living in HB Offices are having to gather information that they may not have requested before, and taking a closer look at any care, support and supervision being provided and who provides it. This has led, in some cases, to the HB Office changing their decision on the ‘type’ of accommodation in which the claimant lives (with the result that we are seeing an increasing number of rent restrictions – we explain why in the briefing).

Please note that this briefing has been written to help raise awareness of the issues and is not a statement of law, so should not be relied upon when making policy decisions and the information outlined may change over time.

Please see [www.housingsystems.co.uk](http://www.housingsystems.co.uk) for more information
EXEMPT ACCOMMODATION

Exempt accommodation- Definition

A claimant is classed as living in ‘exempt accommodation’ where:

1. The accommodation is temporary accommodation for homeless people funded by (or previously funded by - ie before Supporting People Subsidy) the Resettlement Agency ie under section 30 of the Jobseekers Act 1995.

OR

2. The accommodation is provided by (ie the claimant’s tenancy agreement is with):
   - A housing association, whether registered or unregistered,
   - A registered charity,
   - A non-profit making voluntary organisation,
   - In England only, a non-metropolitan county council,

(ie not an ALMO or a council).

AND ‘that body or a person acting on its behalf also provides the claimant with care, support or supervision’ – and caselaw has found that this must not be ‘de minimis’ (ie minimal).

(The definition of ‘exempt accommodation’ can be found at para 4 (10) of Schedule 3 of the Housing Benefit (Consequential Provisions) Regulations 2006.)

So if the landlord is a registered housing association, registered charity etc and provides care, support or supervision directly to the claimant (ie it employs staff or directly contracts a support/care provider*) then, as long as this is more than minimal (‘de minimis’) the accommodation will be classed as ‘exempt’ (case law has stated that 3 hours a week could be more than minimal).

*Where the landlord does not employ the support/care staff directly, they can still be classed as providing care, support or supervision where they are providing services to the claimant as a direct result of the claimant’s disabilities/support needs and those services would not be provided by a ‘general needs’ housing provider or are ‘onerous’ – ie more than would normally have to be provided.

Examples (ie this is not an exhaustive list) include:

- adaptations required after letting due to the disability needs of the claimant,
- onerous repairs/maintenance caused by the claimant due to the nature of their disability,
- dealing with family/appointees with issues unrelated to normal housing management,
- meetings with support providers,
- scheme inspections,
- extra time spent explaining tenancy/rent obligations,
- specialist training for staff - such as those who conduct repairs,
- anything done to minimise upset to the claimant due to the nature of their disability eg special arrangements around repairs.

There has been plenty of case law in this area – the key cases are summarised on our website.

NOTE: Any services or part of the rent deemed as care, support or supervision will not be eligible to be covered by Housing Benefit.

If the claimant is not receiving more than minimal care, support or supervision from the Housing Association (etc) landlord, or their landlord is a Local Authority, then they will not be classed as living in ‘exempt accommodation’ – but they could be classed as living in ‘specified accommodation’ (see page 8).

Please see www.housingsystems.co.uk for more information
Exempt Accommodation – Welfare Reforms

Bedroom Tax
Claimants living in ‘exempt accommodation’ are excluded from the Bedroom Tax.

Example: Joan lives in a women’s refuge with her young daughter. She is currently in one of the three bedroom units as this was all that was available. Her landlord is a HA and they employ the support workers who provide Joan with 24/7 support. As Joan’s landlord is a HA who also provides Joan directly with care, support or supervision to more than a minimal degree, Joan is classed as living in ‘exempt accommodation’. Therefore, Joan’s HB is not reduced by the Bedroom Tax.

Benefit Cap
Claimants living in ‘exempt accommodation’ are NOT excluded from the Benefit Cap (unless Pension Credit age and claiming Housing Benefit).

BUT HB paid on ‘exempt accommodation’ is not included as ‘welfare’ when a claimant’s total ‘welfare’ is worked out to see if the Benefit Cap should be applied. Where this total ‘welfare’ is over the Benefit Cap limit the HB paid on ‘exempt accommodation’ will be reduced accordingly.

Example: Diana and her three children are currently staying in a women’s refuge run by a HA but hopes to return back to her rented property. Her landlord employs the support workers who provide Diana with 24/7 support. As Diana’s landlord is a HA who also provides her directly with care, support or supervision to more than a minimal degree, she is classed as living in ‘exempt accommodation’. When working out whether Diana is affected by the Benefit Cap the DWP will add together any IS/IB-JSA/IR-ESA, Child Tax Credit, HB paid on her normal home, and Child Benefit - the HB paid on the refuge is not included. But if Diana’s total ‘welfare’ is above the appropriate Benefit Cap limit the HB being paid on both the refuge and her ‘normal’ home will be reduced proportionately. If Diana was on UC, then we believe that it would be her UC and not the HB on the refuge that would be reduced.

Universal Credit
Universal Credit claimants living in ‘exempt accommodation’ will continue to have their rent funded by Housing Benefit in the normal way in the short to medium term.

Example: Pavi, age 19, lives in a supported housing foyer for young people where he receives several hours of support from his HA landlord every week. Pavi is in receipt of Universal Credit but gets help with his rent through Housing Benefit.

Please see www.housingsystems.co.uk for more information
Proposed LHA Cap
Claimants living in ‘exempt accommodation’ are classed as living in ‘supported housing’ and will therefore be affected by the proposed LHA Cap from April 2019 – regardless of when their tenancy started. But the Shared Accommodation Rate (SAR) will not apply. A pot of money will be available as a top up – administered locally and we expect it to take into account, amongst other factors: the care, support and supervision needs of the claimant, the type of housing they require and value for money. There is therefore no guarantee that every claimant will receive a top up, or the full help required.

Example: Moria, age 33, lives in a shared house for people with learning difficulties. Her eligible rent is £234 a week. She lives in Bath. Her HA landlord also employs the care staff who look after her – she receives 20 hours a week care, support or supervision. She does not have a need for an overnight carer*. She is therefore deemed to be living in ‘exempt accommodation’ and needing a one bedroom property. The LHA rate for a one bedroom property in Bath is £135.74 a week. In April 2019 Moria’s HB will be reviewed. The HB Office will compare the ‘traditional’ way of working out her maximum HB (ie gross rent less ineligibles, less any Bedroom Tax reduction - £234) with her appropriate LHA rate (ie £135.74). As the LHA rate is lower than her ‘traditional’ maximum HB, her HB will be capped at the LHA rate so the most HB she will be able to receive will be £135.74 a week. She will be able to apply locally for extra financial support for the shortfall. It is likely that the LA (or whoever is administering the pot) will want to check that the property is suitable for Moria’s needs and provides good value for money - ie could she receive similar/better accommodation elsewhere for a lower rent? If it is suitable then (hopefully) any shortfall will be met in full by this ‘pot’, but if not, then she is likely to get some help from this ‘pot’ but she may find that this help is limited in either amount, or time, or both.

*Note if there was an overnight carer that stayed in the property to look after her then she would be deemed to need a two bedroom property – this is the case whether or not the carer is paid and whether or not the carer also provides care to other residents living in the property.

For more details about the proposed LHA Cap please see our Briefing 03/2016.

Help with rent for 18-21 year olds
The government has announced that from April 2017 there will be no new help with rent available for certain 18-21 year olds. They have also confirmed that these changes will only be made to the ‘Full’/Digital Universal Credit Regulations. As Universal Credit claimants living in ‘exempt accommodation’ will receive help with their rent through Housing Benefit, they will be unaffected by this change (until they move on into more independent living – unless excluded: see flowchart in Appendix C).

Example: Even though Pavi (in the example above) is 19, he will not be affected by this measure as he is getting help with his rent through the Housing Benefit system. However, when he moves on into a general needs flat of his own, if he is still under 21 and on UC under the ‘full’/Digital service, no Housing Costs Element may be included unless he falls into one of the groups excluded from these new rules (see Appendix C).
**Exempt Accommodation – Rent Restrictions**

The HB scheme supports the reasonable costs of rent for people on low incomes. Where they are living in the private rented sector this is controlled by the Local Housing Allowance (LHA) scheme.

Claimants living in the social rented sector are excluded from the LHA rules, but their rent can be restricted under the ‘new rules’ (introduced in 1996) if the HB Office feel that the overall rent is unreasonably high when compared to similar properties – sometimes referred to as ‘excluded tenancies’. The HB Office can also restrict individual service charge items where they consider the charge to be excessive in relation to the service provided.

For council and ALMO tenancies, and those tenants who have been on HB continuously without a break since 1996, the HB Office can restrict the rent but this is very uncommon.

**Overall Rent & Rent Restrictions**

Claimants living in ‘exempt accommodation’ are exempt from the ‘new rules’ and their rent can only be restricted if the HB Office feel that their rent is unreasonably high when compared to rents for suitable alternative accommodation taking account of the claimant’s personal circumstances including their support needs – and for certain claimants (including those deemed unfit for work and those who are responsible for a child) the HB Office can only restrict the rent where suitable alternative accommodation is available and it is reasonable to expect the claimant to move. Please see the flowchart in Appendix D.

Some HB Offices have been covering the full eligible rent for claimants living in supported housing provided by social housing landlords on the assumption that the claimant fulfils the criteria to be classed as living in ‘exempt’ accommodation.

However, the welfare reforms and in particular the introduction of Universal Credit have forced them to consider these cases in more detail**, and where they find that the claimant is not living in ‘exempt accommodation’ are finding it hard, in some cases, to justify awarding HB that covers the full eligible rent if the gross rent is unreasonably high.

Many supported housing providers are beginning to see reductions in the amount the HB Office is able to cover – with the award of HB dropping to around LHA levels.

Supported Housing providers need to have a clear understanding of whether their tenants are likely to be seen as living in ‘exempt accommodation’ or not, and the implications in terms of potential rent restrictions.

It is only those claimants classed as living in ‘exempt accommodation’ who are exempt from the ‘new rules’ and it is very difficult for a HB Office to restrict the rent. Claimants living in ‘specified accommodation’, ‘temporary accommodation’ and ‘other supported housing’ can all have their rent restricted – and the HB Regulations state that they should have their rent restricted if the HB Office feel that their rent is unreasonably high when compared to ‘similar properties’.

Please see the website for more information:

- How a HB Office should decide whether or not a rent on ‘exempt accommodation’ should be restricted – [click here](#), and
- How a HB Office decides whether or not a claimant is living in ‘exempt accommodation’ – [click here](#).

** Although Universal Credit has now started throughout GB this is mainly on the ‘Live’/Gateway service and those living in supported housing are excluded from making a new claim for Universal Credit by the Gateway conditions. Therefore until recently there have only been a very small number of supported housing residents claiming Universal Credit - those who were already on UC when they moved in or where neither they nor the DWP realised they were living in supported housing. However as the ‘Full’/Digital service rolls out we will see more and more supported housing claimants on Universal Credit as there are no Gateway conditions under the ‘Full’/Digital service and those living in Supported Housing can make a new claim for it.
Where a Universal Credit claimant is living in / moving into supported housing they may make a claim for HB. The HB Office will then want to decide whether they can, under the Regulations, award HB. They will therefore need to know: what care, support or supervision the claimant is receiving – who is providing this – and where this is not the claimant’s landlord then they will also want to know whether the claimant was admitted to the accommodation in order to receive care. Depending on what they find, they will then need to make a decision as to what ‘type’ of accommodation the claimant is living in and whether they can award Housing Benefit or not. The DWP should accept the decision made by the HB Office.

**Service Charges and Rent Restrictions**

Even where the HB Office does not restrict the overall level of rent they can restrict individual service charge items – and this is regardless of what ‘type’ of supported housing the claimant is living in ie this applies to claimants living in ‘exempt accommodation’.

The HB Regulations (para 4, Schedule 1) allow a HB Office to do this where ‘the relevant authority considers that the amount of a service charge ...... is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services’ and says that where the HB Office considers a service charge to be excessive ‘it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.’

If a HB Office is looking to restrict a service charge item it is worth considering:

- Whether the charge is actually defined correctly as a service charge?
  and if it is
- Is the charge excessive in relation to charges made for the same level of service on similar types of supported housing?

And if not, challenging the reduction.

Please see [www.housingsystems.co.uk](http://www.housingsystems.co.uk) for more information
SPECIFIED ACCOMMODATION

Specified Accommodation - definition

'Specified accommodation' is:

- Accommodation that meets the current 'exempt accommodation' definition - see page 3, or
- Accommodation that the claimant has been admitted to in order to receive care, support or supervision, where the care, support or supervision does not have to be provided by the claimant’s landlord BUT the landlord has to be one of the same groups of housing providers as for 'exempt accommodation' – see page 3), or
- A Domestic Violence Refuge, including refuges provided by the same housing providers as for 'exempt accommodation' – see page 3, but also where the landlord is a Local Authority. It applies where the building or a relevant part of it is wholly or mainly used as non-permanent accommodation for people who have left their home as a result of domestic violence*, or
- A Local Authority 'hostel'* where the tenant receives care, support or supervision.

# The Regulations say ‘admitted to in order to receive care, support or supervision’. We think that this therefore limits which claimants can fall under this definition. There must be a direct link between the allocation of the tenancy and the package of care and support being provided. ‘In order to receive’ may suggest that a move into general needs property will not be covered – as a ‘floating support’ package could be provided wherever the claimant lives. And this definition will not apply where a package of support was not being considered when they moved to the property but put in place some time after moving in. Please see website – click here - for guidance given by the DWP to HB Offices.

~ Domestic violence is defined as controlling or coercive behaviour, violence, or psychological, physical, sexual, emotional, financial or other abuse, regardless of the gender or sexuality of the victim.

* A hostel is defined for these purposes as: any building (other than a care home or independent hospital) where:

- The building provides non-self-contained** accommodation together with meals or adequate facilities for preparing food, and
- The claimant receives care, support or supervision.

**Non-self-contained ie tenant has to share a kitchen, bathroom or toilet.

HB Regulations 2006 – Reg 75H
Specified Accommodation – Welfare Reforms

Bedroom Tax
Claimants living in ‘specified accommodation’ are NOT excluded from the Bedroom Tax (unless Pension Credit age and claiming Housing Benefit).

Example: Nevil lives in a two bedroom terraced house. His landlord is a HA and he is receiving care and support from a local support agency arranged and paid for by Social Services. As his landlord is not providing any care, support or supervision he is not classed as living in ‘exempt accommodation’ but did move to the house in order to receive the care and support so he has been classed as living in ‘specified accommodation’. Because he does not have the need for an overnight carer he is deemed to have one spare bedroom so his HB award is being reduced due to the Bedroom Tax.

NOTE: Although Nevil’s HA are not providing hands on care and support they may be providing some services / repairs that could be deemed as providing care, support or supervision to more than a minimal degree (see page 3). If this is the case, he could be classed as living in ‘exempt accommodation’. He would need to appeal the HB Office’s decision not to class him as such providing details of the care, support or supervision his HA landlord is providing.

Benefit Cap
Claimants living in ‘specified accommodation’ are NOT excluded from the Benefit Cap (unless Pension Credit age and claiming Housing Benefit).

BUT HB paid on ‘specified accommodation’ is not included as ‘welfare’ when a claimant’s total ‘welfare’ is worked out to see if the Benefit Cap should be applied. Where this total ‘welfare’ is over the Benefit Cap limit the HB paid on ‘specified accommodation’ will be reduced.

Example: Holly and her five children are currently staying in a women’s refuge run by the local council and therefore she is classed as living in ‘specified accommodation’. When working out whether Holly is affected by the Benefit Cap the DWP will add together any IS/IB-JSA/IR-ESA, Child Tax Credit and Child Benefit that Holly receives. The HB paid on the refuge is not included. But if Holly’s total welfare is above the Benefit Cap limit, the HB being paid on the refuge will be reduced.

Universal Credit
Universal Credit claimants living in ‘specified accommodation’ will continue to have their rent funded by Housing Benefit in the normal way in the short to medium term.

Example: Phoebe lives in a shared house for people with mild learning difficulties. Although her tenancy is with a HA, the support she receives is from Mencap. Phoebe was admitted to the scheme in order to receive this support. She is therefore classed a living in ‘specified accommodation’. Phoebe claims Universal Credit (she lives in a ‘Full’/Digital UC service area and was recently found fit for work) – but her rent is covered by Housing Benefit.

Please see www.housingsystems.co.uk for more information
Proposed LHA ‘Cap’ for social housing
Claimants living in ‘specified accommodation’ are classed as living in ‘supported housing’ and will therefore be affected by the proposed LHA Cap from 2019 – regardless of when their tenancy started. But the Shared Accommodation Rate (SAR) will not apply. A pot of money will be available as a top up – administered locally and we are expecting to take into account, amongst other factors: the care, support and supervision needs of the claimant, the type of housing required and value for money. There is therefore no guarantee that every claimant will receive a top up, or the full help required.

Example: Tahir, age 39, lives in a one bedroom flat in a supported housing scheme for people with mental health problems. He has lived there for 6 years. His eligible rent is £145 a week. He lives in Newcastle. His landlord is a HA, and his support worker who is based at the scheme works for a specialist mental health organisation. Because he moved to the scheme to receive this support and his landlord is a HA he is classed as living in ‘specified accommodation’. The LHA rate for a one bedroom property in Newcastle is £90.90 a week. In April 2019 Tahir’s HB will be reviewed. The HB Office will compare the ‘traditional’ way of working out his maximum HB (ie gross rent less ineligibles, less any Bedroom Tax reduction - £145) with his appropriate LHA rate (ie £90.90). As the LHA rate is lower than his ‘traditional’ maximum HB, his HB will be capped at the LHA rate: the most HB he will therefore be able to receive will be £90.90 a week. He will be able to apply locally for extra financial support for the shortfall. It is likely that the LA (or whoever is administering the pot) will want to check that the property is suitable for Tahir’s needs and provides good value for money - ie could he receive similar/better accommodation elsewhere for a lower rent? If it is suitable then (hopefully) any shortfall will be met in full by this ‘pot’, but if not, then any help he does get may be limited in amount, or time, or both.

For more details about the proposed LHA Cap please see our Briefing 03/2016.

Help with rent for 18-21 year olds
The government has announced that from April 2017 there will be no new help with rent for certain 18-21 year olds. They have also confirmed that these changes will only be made to the ‘Full’/Digital Universal Credit Regulations. As Universal Credit claimants living in ‘specified accommodation’ will receive help with their rent through Housing Benefit, they will be unaffected by this change (until they move on into more independent living – unless excluded: please see flowchart in Appendix C).

Example: If Phoebe (in the example above) was age 18-21 she would not be affected by this measure as she is getting help with her rent through the Housing Benefit system. However, if she moves on into a general needs flat of her own before her 21st birthday and is on the ‘Full’/Digital service, no Housing Costs Element will be included unless she falls into one of the groups excluded from these new rules (see Appendix B).
Specified Accommodation – Rent Restrictions

The HB scheme supports the reasonable costs of rent for people on low incomes. Where they are living in the private rented sector this is controlled by the Local Housing Allowance (LHA) scheme.

Claimants living in the social rented sector are excluded from the LHA rules but their rent can be restricted under the ‘new rules’ (introduced in 1996) if the HB Office feel that the overall rent is unreasonably high when compared to similar properties – sometime referred to as ‘excluded tenancies’. The HB Office can also restrict individual service charge items where they consider the charge to be excessive in relation to the service provided.

For council and ALMO tenancies, and those tenants who have been on HB continuously without a break since 1996, the HB Office can restrict the rent but this is very uncommon.

Overall Rent & Rent Restrictions

Claimants living in ‘exempt accommodation’ are exempt from the ‘new rules’ – see page 6, but claimants living in any other type of ‘specified accommodation’ are not.

Therefore their rent can be restricted if the HB Office feel that their rent is unreasonably high when compared to rents for suitable alternative accommodation.

Some HB Offices have been covering the full eligible rent for claimants living in supported housing provided by social housing landlords on the assumption that the claimant fulfils the criteria to be classed as living in ‘exempt’ accommodation.

However, the welfare reforms - and in particular the introduction of Universal Credit - have forced them to consider these cases in more detail**, and where they find that the claimant is not living in ‘exempt accommodation’, are finding it hard, in some cases, to justify awarding HB that covers the full eligible rent if the gross rent is unreasonably high.

Many supported housing providers are beginning to see reductions in the amount the HB Office is able to cover – with the award of HB dropping to around LHA levels. Supported Housing providers need to have a clear understanding of whether their tenants are likely to be seen as living in ‘exempt accommodation’ or not, and the implications in terms of potential rent restrictions. If the property is not considered to be ‘exempt accommodation’ then no referral to the Rent Officer is required unless the LA consider the rent is unreasonably high when compared to similar properties. This is outlined in Housing Benefit Regulations 2006, para 2 of Regulation 14 and para 3 of Schedule 2 – please see Appendix C.

Service Charges and Rent Restrictions

Even where the HB Office does not restrict the overall level of rent they can restrict individual service charge items – and this is regardless of what ‘type’ of supported housing the claimant is living in.

The HB Regulations (para 4, Schedule 1) allow a HB Office to do this where ‘the relevant authority considers that the amount of a service charge …… is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services’ and says that where the HB Office considers a service charge to be excessive ‘it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.’

If a HB Office is looking to restrict a service charge item it is worth considering:

- Whether the charge is actually defined correctly as a service charge?
  and if it is
- Is the charge excessive in relation to charges made for the same level of service on similar types of supported housing?

And if not, it is worth challenging the reduction.

Please see www.housingsystems.co.uk for more information
TEMPORARY ACCOMMODATION

Temporary Accommodation – definition

You must first consider if the claimant is living in ‘exempt’ or ‘specified accommodation’ – if they are then that will exclude them from being classed as living in ‘temporary accommodation’.

Note: There are different definitions of ‘temporary accommodation’ under HB and under UC. Many types of accommodation that are not classed as ‘temporary accommodation’ under HB (because they are not held on a lease / license) – will be classed as ‘temporary accommodation’ under UC (as the lease / license rule has been removed).

Housing Benefit

Someone is deemed to be living in ‘temporary accommodation’ (para 3, Reg A13, HB Regulations) if:

They are living in accommodation provided by a Local Authority or registered housing association, which has been made available to the renter EITHER

1. To discharge any of the authority’s functions under Part 3 of the Housing Act 1985, Part 7 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 1987, as the case may be; OR
2. To prevent the claimant being or becoming homeless within the meaning of Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987

AND the accommodation is—

A. Accommodation where meals are provided (including hotels, guest houses etc) which is not a care home, an independent hospital or a hostel; OR
B. Accommodation which the LA or registered housing association holds on a lease and, in the case of a LA in England, is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years; OR
C. Accommodation which the LA or registered housing association has a right to use under an agreement other than a lease with a third party.

Universal Credit

Someone is deemed to be living in ‘temporary accommodation’ (Para 21, Schedule 4, UC Regulations) if:

1. Rent payments are payable to a Local Authority or provider of social housing,

AND

2. The accommodation is not exempt accommodation^ AND

3. The Local Authority / provider of social housing (in pursuance of arrangements made with it by a LA) makes the accommodation available to the renter EITHER

- To discharge any of the Local Authority’s functions under Part 3 of the Housing Act 1985, Part 7 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 1987, OR
- To prevent the person being or becoming homeless within the meaning of Part 7 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 1987.

^ Note: Where the claimant is deemed as living in ‘specified accommodation’ which includes within its definition ‘exempt accommodation’ then the UC claimant will receive help with their rent from Housing Benefit and will not be classed as living in ‘temporary accommodation.

Please see www.housingsystems.co.uk for more information
Temporary Accommodation – Welfare Reforms

Under HB rules you must first consider if the claimant is living in ‘exempt’ or ‘specified’ accommodation – if they are then that will exclude them from being classed as living in ‘temporary accommodation’.

Bedroom Tax
Claimants living in ‘temporary accommodation’ are excluded from the Bedroom Tax under HB rules.

(This is not applicable for Universal Credit claimants living in ‘temporary accommodation’ because the assessment of their Housing Costs Element falls under the LHA rules).

Example: Rob and his young son were evicted from their owner occupied home. They have been temporarily re-housed by the LA under their homelessness duties into a three bedroom terraced house which is managed by a HA who lease the property from a private landlord. As no care, support or supervision is being provided and they were placed there by the LA under its homelessness duties, they are classed as living in ‘temporary accommodation’. They are claiming Housing Benefit to support their rent. Although they have a spare room they are excluded from the Bedroom Tax under the HB rules as they are classed as living in ‘temporary accommodation’.

NOTE 1: Had the HA owned the property, it would not fall under the definition of ‘temporary accommodation’ and Rob’s HB would be reduced by a Bedroom Tax reduction.

NOTE 2: Had Rob been on Universal Credit, whilst living in ‘temporary accommodation’ the assessment of his Housing Costs Element would fall under the LHA rules.

Benefit Cap
Claimants living in ‘temporary accommodation’ are not excluded from the Benefit Cap (unless Pension Credit age and getting Housing Benefit) unless also classed as living in ‘exempt’ or ‘specified’ accommodation. ‘Normal’ Benefit Cap rules will apply and any HB awarded (and all the UC – less the amount of any Child Care Element) will count as ‘welfare’ when the Benefit Cap is assessed.

Example: Jamie and Jess and their three children have been re-housed by the LA under their homelessness duties into a three bedroom flat owned by the LA which is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years. Jamie and Jess get Income-Related ESA and Housing Benefit. If their total ‘welfare’ including the HB paid on the property is above the Benefit Cap their HB is cut by the appropriate amount.

Universal Credit
Universal Credit claimants living in ‘temporary accommodation’ will have any Housing Costs Element included in their award of Universal Credit limited to a maximum of the Local Housing Allowance applicable to the needs of the claimant and their family (paid via UC either to claimant or landlord if ‘vulnerable’ or 2 months+ arrears) unless also classed as living in ‘exempt’ or ‘specified’ accommodation. They will be able to apply for a DHP where this means they are struggling to pay their rent.

Example: Sally and her two children both under 10, have been placed by the LA in a HA two bedroom terraced house while they find them more permanent accommodation. Sally gets Universal Credit. Whilst living in ‘temporary accommodation’ her UC award will include a Housing Costs Element capped at the LHA rate for a two bedroom property.

Please see www.housingsystems.co.uk for more information
Proposed LHA Cap
Claimants living in ‘temporary accommodation’ are likely to be excluded from the proposed LHA Cap if the accommodation is to meet a very short term need – including most refuges and hostels (statement made by Damian Green in Sept 2016) – although the Government may introduce a separate system of control on HB for these types of property.

Claimants living in schemes that provide temporary accommodation for longer periods are likely to be classed as living in ‘supported accommodation’ so will be affected by the proposed LHA Cap from 2019 – regardless of when their tenancy started. But the Shared Accommodation Rate (SAR) will not apply. A pot of money will be available as a top up – administered locally and taking into account, amongst other factors: the care, support and supervision needs of the claimant, the type of housing required and value for money. There is therefore no guarantee that every claimant will receive a top up, or the full help required.

Example: Imagine it is 2020! Iman and her teenage daughter were living in privately rented property but the landlord decided to sell, making them homeless. The LA have housed them in a two bedroom flat owned by a local HA and classed as ‘temporary accommodation’ but does not fall under the definition of ‘very short term’ and therefore not excluded from the LHA Cap. Iman is on ESA and she has been getting HB, CTC and CB. The move into the temporary accommodation does not trigger a new claim for UC (as the move is within the same LA area) and so she stays on HB to help her pay her rent. The HB she receives will be capped at the LHA rate for a two bedroom property.

NOTE: If Iman had been on Universal Credit, as she is living in ‘temporary accommodation’ her Housing Costs Element would be assessed under the LHA rules.

Help with rent for 18-21 year olds
The government has announced that from April 2017 there will be no new help with rent for certain 18-21 year olds. They have also confirmed that these changes will only be made to the ‘Full’/Digital Universal Credit Regulations. As Universal Credit claimants living in ‘temporary accommodation’ will receive help with their rent through a Housing Costs Element in their UC award, they will be affected by this unless specifically excluded (please see Appendix B for the proposed list of exclusions).

Example: Sonia is 19 years old and suffers from mental health issues and has learning difficulties. In May 2017 she feels unable to live with her parents so the LA find some temporary accommodation for her in a scheme run by a HA in a one bedroom flat in a block leased from a private housing company. Although she is likely to need some support none has been set up yet and when it is it is likely to be minimal. Sonia is therefore classed as living in ‘temporary accommodation’. She is already getting Universal Credit and asks for a Housing Costs Element to be included in her assessment – as she is likely to be one of the groups excluded from these new rules Sonia’s UC should now include a Housing Costs Element to help her pay her rent (although limited to the appropriate LHA rate).

Rent Restrictions – Temporary Accommodation
HB: These work in the same way as they do for ‘specified accommodation’ please see page 11.
UC: Housing Costs Element based on LHA rules.

Please see www.housingsystems.co.uk for more information
Other Supported Housing

There are some types of housing that would traditionally be seen as ‘supported housing’ but that do not fall under the definition of ‘exempt’, ‘specified’ or ‘temporary’ accommodation.

These will include supported housing where the claimant is not living in ‘temporary accommodation’ and is:

- Living in HA accommodation but not receiving any care, support or supervision eg some claimants living in sheltered schemes.
- Living in HA accommodation and receiving minimal care, support or supervision eg some low level support schemes, or a claimant whose support needs have diminished.
- Living in LA ‘supported’ accommodation that is not classed as a DV refuge or a hostel (perhaps because it has self-contained units).

Bedroom Tax

Claimants living in ‘other’ supported housing are NOT excluded from the Bedroom Tax (unless Pension Credit age and claiming Housing Benefit).

Example: Ian lives in a two bedroom flat that is linked to a sheltered housing scheme with an emergency pull cord system. He is 57 years old and on ESA. He has no need for an overnight carer. When his HB/UC is assessed it is reduced due to a Bedroom Tax reduction.

NOTE: Many of the claimants living in sheltered housing schemes will not be classed as living in ‘exempt’ or ‘specified’ accommodation – this is because their landlord generally provides no or very minimal levels of care, support or supervision and although a care package may be in place this has often been put into place a long time after the claimant moved in.

Benefit Cap

Claimants living in ‘other’ supported housing are NOT excluded from the Benefit Cap (unless Pension Credit age and claiming Housing Benefit).

‘Normal’ Benefit Cap rules will apply and any HB awarded (and all the UC – less the amount of any Child Care Element) will count as ‘welfare’ when the Benefit Cap is assessed.

Example: Polly and Jacob live with their 6 month old baby in a ‘supported’ scheme run by a HA for young parents – their eligible rent is £202 a week. They needed a lot of support when they first moved in 9 months ago, but their support worker only visits them once a month now – so they are no longer considered to be living in ‘exempt accommodation’. As they live outside Greater London and their total welfare including the HB paid on the property (ie £401.49 / week including the HB) is above the Benefit Cap limit of £384.62 their HB will be cut.

Universal Credit

Universal Credit claimants living in supported housing that is not classed as ‘exempt accommodation’ or ‘specified accommodation’ will have their rent funded by the addition of a Housing Costs Element in their Universal Credit award. The Regulations governing which service charges are eligible to be covered by Universal Credit and which are eligible to be covered by Housing Benefit are different – one key difference is Intensive Housing Management. This charge is generally seen as eligible by HB Offices but is ineligible under Universal Credit – please see website – click here - for more information. Another ‘risk’ area would be items listed as a service charge when they should be in the rent.

Please see www.housingsystems.co.uk for more information
Proposed LHA Cap

Claimants living in ‘supported housing’ will be affected by the proposed LHA Cap from 2019 – regardless of when their tenancy started. But the Shared Accommodation Rate (SAR) will not apply. A pot of money will be available as a top up – administered locally; and we expect it will take into account, amongst other factors: the care, support and supervision needs of the claimant, the type of housing required and value for money. There is therefore no guarantee that every claimant will receive a top up, or the full help required.

For more details about the proposed LHA Cap please see our Briefing 03/2016

Example: Rose, age 89, lives in one bedroom sheltered housing flat. She has lived there for 16 years. Her eligible rent is £125 a week. She lives in Southampton. The LHA rate for a one bedroom property in Southampton is £116.53 a week. In April 2019 Rose’s HB will be reviewed. The HB Office will compare the ‘traditional’ way of working out her maximum HB (ie in this case as excluded from the Bedroom Tax - gross rent less ineligibles- £125) with her appropriate LHA rate (ie £116.53). Where the LHA rate is lower than the ‘traditional’ maximum HB, her HB will be capped at the LHA rate, so the most HB she will be able to receive will be £116.53 a week. She will be able to apply locally for extra financial support for the shortfall. It is likely that the LA (or whoever is administering the pot) will want to check that the property is suitable for Rose’s needs and provides good value for money - ie could she receive similar/better accommodation elsewhere for a lower rent? If it is suitable then (hopefully) any shortfall will be met in full by this ‘pot’, but if not, then any extra help from this ‘pot’ could be limited in amount, or time, or both.

Help with rent for 18-21 year olds

The government has announced that from April 2017 there will be no new help with rent for certain 18-21 year olds. They have also confirmed that changes will only be made to the ‘Full’/Digital Universal Credit Regulations. As Universal Credit claimants living in supported housing that is not classed as ‘exempt accommodation’ or ‘specified accommodation’ will have their rent funded by the addition of a Housing Costs Element in their Universal Credit – they will be affected by this if their Universal Credit comes under the Digital Service, unless specifically excluded (please see Appendix B for a flowchart).

Example: If Tariq (in the example above) has his HB reviewed due to a reduced level of support after April 2017 then he would be looking to have a ‘new’ Housing Costs Element included in his UC claim and therefore the DWP would have to consider whether to allow this or not. We are hoping that he would not be affected by this measure – as he would probably fall into one of the groups excluded from these proposed rules (see Appendix B).

Rent Restrictions – Other Supported Housing

HB: These work in the same way as they do for ‘specified accommodation’ please see page 11.
UC: The amount of the Housing Costs Element included in the claimant’s assessment can be reduced if the DWP consider the rent to be higher than is reasonable to cover.

Please see www.housingsystems.co.uk for more information
### Appendix A: Supported Housing – Help with Rent: Impact of the Reforms

<table>
<thead>
<tr>
<th></th>
<th>‘Exempt Accommodation’</th>
<th>‘Specified Accommodation’</th>
<th>‘Temporary Accommodation’</th>
<th>‘Other Supported’</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bedroom Tax</strong></td>
<td>Excluded</td>
<td>Not excluded (unless PC age on HB).</td>
<td>Excluded</td>
<td>Not excluded (unless PC age on HB).</td>
</tr>
<tr>
<td><strong>Benefit Cap</strong></td>
<td>Not excluded (unless PC age on HB) but HB paid will not count as ‘welfare’.</td>
<td>Not excluded (unless PC age on HB) but HB paid will not count as ‘welfare’.</td>
<td>Not excluded (unless PC age on HB).</td>
<td>Not excluded (unless PC age on HB).</td>
</tr>
<tr>
<td><strong>Proposed LHA Cap</strong></td>
<td>Not excluded regardless of age. Will affect all tenants from April 2019. But shared accommodation rate (SAR) will not apply.</td>
<td>Not excluded regardless of age. Will affect all tenants from April 2019. But shared accommodation rate (SAR) will not apply.</td>
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<td>Not excluded regardless of age. Will affect all tenants from April 2019. But shared accommodation rate (SAR) will not apply.</td>
</tr>
<tr>
<td><strong>UC for help with rent?</strong></td>
<td>No – help via HB.</td>
<td>No – help via HB.</td>
<td>Yes – Housing Costs Element in UC. Based on LHA.</td>
<td>Yes – Housing Costs Element in UC. Watch for different eligible service charge rules, in particular: intensive housing management / external ground floor window cleaning / meals / any items shown as a service charge that should be rent. (ALSO - Special rules for those classed as living in ‘temporary accommodation’).</td>
</tr>
<tr>
<td><strong>Rent Restrictions</strong></td>
<td>Not unless rent is unreasonably high when compared to rents on suitable alternative accommodation taking into account the claimant’s care and support needs. And for some claimants that accommodation must be available and it is reasonable to expect them to move. NOTE: Can restrict individual service charges if excessive when compared to comparable services.</td>
<td>Can be restricted if rent is unreasonably high when compared to rents on similar properties. What is a ‘similar property’ is a grey area – but would not look at the claimant’s individual circumstances, but perhaps at a ‘type’ of claimant and where they are able to live / what they need from their accommodation. NOTE: Can restrict individual service charges if excessive when compared to comparable services.</td>
<td>Under HB - Same as for ‘specified accommodation’</td>
<td>Can be restricted if rent is unreasonably high when compared to rents on similar properties. What is a ‘similar property’ is a grey area – but would not look at the claimant’s individual circumstances, but perhaps at a ‘type’ of claimant and where they are able to live / what they need from their accommodation. NOTE: Can restrict individual service charges if excessive when compared to comparable services.</td>
</tr>
</tbody>
</table>

Please see [www.housingsystems.co.uk](http://www.housingsystems.co.uk) for more information
Appendix B: Universal Credit Housing Costs Element for 18-21 year olds in Digital/Full Service UC areas

From April 2017, automatic entitlement to the Housing Costs Element of UC will cease for some claimants age 18-21 - this flowchart is based on the limited information available regarding this change as at January 2017 and is subject to change.

Does the 18-21 year old tenant / prospective tenant live in a Digital/Full Service UC area?

YES

NO

They won’t be affected by the changes until they need to make a claim for UC under the Digital/Full Service area.

Do they receive help with their rent via ‘Digital’ UC for their current property?

YES

NO

Then they will not be affected by the changes as long as they are still receiving this help on 1/4/2017 and there’s no break in their UC housing costs claim

Are they looking to claim UC to include help with their rent before 1/4/2017?

YES

NO

Then they might not be able to get the Housing Costs Element for help with their rent included in a UC claim, unless…………………..

Please note:

*This does not have to mean that the young person is estranged from their parents: it could be that the family / parental home is overcrowded or in an area not safe / appropriate for them to live.

** We assume that there will be an earnings threshold linked to this – to be announced.

Correct as at January 2017: Subject to change.

They are claiming as a couple.

They are in work.**

They have been out of work for less than 6 months after having worked** for 6 months or more.

They are a care leaver.

They are a young person whom the DWP deem it inappropriate to live with their parents.*

They don’t fall within the ‘all work requirements’ conditionality group e.g. they

• Are a single parent with child under 3.
• Have a limited capability for work/ work related activities.
• Are a carer.
• Are pregnant and 11 weeks before baby due.

Please see www.housingsystems.co.uk for more information
Appendix C: HB Regulations and Guidance on Excluded Tenancies

Housing Benefit Regulations 2006, para 2 of Regulation 14 and para 3 of Schedule 2:

(2) An application shall not be required under paragraph (1) where a claim, relevant information regarding a claim, notification or request relates to either—

(a) a dwelling in a hostel if, during the period of 12 months ending on the day on which that claim, relevant information regarding a claim, notification or request is received by the relevant authority—

(i) a rent officer has already made a determination in the exercise of the Housing Act functions in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the claim, relevant information regarding a claim, notification or request relates; and

(ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made; or

(b) an “excluded tenancy” within the meaning of Schedule 2 (excluded tenancies).

3.—

(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority considers that—

(a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or

(b) the rent payable for that dwelling is unreasonably high.

HB Circular A28/2002 confirmed that when considering whether a rent is unreasonably high it must be compared to ‘similar properties’, taking into account ‘the circumstances of the case’, with ‘similar or the same accompanying factual circumstances’ and must be done in a ‘reasonably and justifiable way’. Para 10 states:

“When making the decision about what is unreasonably high you need to look at the circumstances of the case, for example by comparing with locally available rents for similar types of accommodation. If you are satisfied the rent is reasonable according to set criteria, there would be no need to refer to the rent officer. Remember, Local Authorities do have discretion regarding referral, see paragraph 3(1) of Schedule 1A. But it must be used in a reasonable and justifiable way, following set procedures designed to ensure some consistency is achieved by an authority over time between individual cases with similar or the same accompanying factual circumstances.”

‘Unreasonably high’ is not defined within the Housing Benefit Regulations but is generally accepted to mean above the top end of a range of rents which a landlord might reasonably charge for similar properties.

Whilst ‘similar’ is not necessarily the same as ‘suitable’ alternative accommodation - and the former concept does not pay as much regard to the individual circumstances of the claimant - the word ‘similar’ implies that there is some similarity with the properties being considered ie they are of a general kind. It can be suggested therefore that supported housing rents of schemes designed for claimants with similar care and support needs may be considered similar, but general let housing would not.
Appendix D: HB Rent Restrictions & Supported Housing Flowchart

Is the accommodation classed as provided by:
- ✓ A housing association, whether registered or unregistered, or
- ✓ A registered charity,
- ✓ A non-profit making voluntary organisation, or
- ✓ or in England only, a non-metropolitan county council?

Is any care or support or supervision provided to the tenant by or on behalf of the landlord?:
- ✓ Either provides care themselves directly to the claimant, or
- ✓ Has contracted an external agency to do so on their behalf, which is more than minimal (3 hrs+ a week may be enough).

Support – more than what a general needs landlord would do.
Complex area – see website for more details and case law.

Is rent unreasonably high or dwelling unreasonably large?
Must compare to suitable alternative accommodation taking the needs of the claimant into account.

Is the claimant in a protected group?
- ✓ Incapable of work, or
- ✓ Pension Credit age, or
- ✓ Responsible for a child or young person?

Is: Suitable alternative accommodation available and Would be reasonable for the tenant to move.

START
Is tenancy a council tenancy or secure tenancy?
Or, has the claimant been on HB continuously since 1st January 1996 at same address

Rent can be restricted to the rent for the size of the property the claimant requires not taking into account their individual needs / circumstances (Local Housing Allowance). If shortfall, advise claimant to request a Discretionary Housing Payment

Rent has to be restricted to a more suitable rent. The HB Office will refer rent to Rent Officer who will notify the Local Reference Rent to use.

Rent can be restricted, but must be appropriate given the circumstances of the claimant.
If restricted, advise claimant to request a Discretionary Housing Payment.

Rent cannot be restricted

Please see www.housingsystems.co.uk for more information