

No.2 / 2023:

Homes affected by floods / storms – impact on Housing Benefit and Universal Credit



Flooding / storm damage can mean many tenants have to live in temporary accommodation while work is being undertaken on their property.

This briefing looks at how the Housing Benefit (page 2) and Universal Credit (page 8) rules work for these tenants.

Please note that absence from home due to flooding / storm damage is not specifically covered in the HB or UC Regulations – they talk about absence due to ‘essential repairs’ so this document is guidance only.

Key Points:

- 1. Housing Benefit (HB) / UC Housing Costs Element (UCHCE) can only be paid in respect of one property in these circumstances ie there is no provision for HB/UCHCE on two homes.**
- 2. How long HB / UCHCE can be awarded for whilst the tenant is away will depend on whether the work on the property is ‘essential’ (taking account of the claimant’s circumstances), and whether they move back as soon as this work is completed.**
- 3. If the tenant does not intend to return to the flooded / damaged property (even if they are moving to a property in the same area) HB/UCHCE paid in respect of that property will end.**
- 4. If the tenant fails to return to live in the property as soon as all the essential repairs are complete, then HB/UCHCE 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/6 months or more.**

The rules under Housing Benefit

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.'*

Notes on the wording in this regulation

'move into temporary accommodation' assumes that the tenant intends to return to the flooded / damaged property. Note that in this context temporary accommodation means accommodation for a temporary period: it does not refer to Temporary Accommodation under a Local Authority's homelessness duties.

'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 they 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 / damaged property as soon as the 'essential repairs' are complete.

Where the tenant has rental liability on the temporary accommodation, but no rent or mortgage on the flooded / damaged 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).

IMPORTANT: The tenant must intend to return to the flooded / damaged property. If they are in temporary accommodation but looking to be re-housed to a different property then the rules outlined in this briefing will not apply.

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 / storm damaged 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 and habitable, and where the tenant would find it difficult to live in the property whilst the repairs are being done.

In [2023] UKUT 198 (AAC) the Upper Tribunal confirmed that when considering what is an "essential" repair, the HB Office needs to take into account the claimant's individual needs and characteristics including those arising from ill health. So, for example, redecorating, re-carpeting and so on, would not normally be classed as an essential repair, but a tenant might have particular circumstances which would make it essential for them.

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

TOP TIP: When considering what is an "essential" repair, the HB Office needs to take into account the claimant's individual needs and characteristics including those arising from ill health.

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

As soon as the 'essential repairs' are completed ie the flooded / damaged property is habitable (taking into account the 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 under this Regulation will stop as it no longer applies because there are no outstanding essential repairs.

They perhaps could then fall under the temporary absence rules (which would allow the HB to continue) but only where the overall absence, taken from the first day the tenant left the flooded / damaged 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/ damaged property for a few days and found they could not live in the property so moved back out again, this could 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 / damaged property).

EXAMPLE: Sam had to move out from her rented house after flooding. She was placed in temporary accommodation – a local bed and breakfast where she was charged £50 a night. She had been in receipt of HB at her flooded property and the bed and breakfast was within the same local authority. She reported the change in her circumstances to the HB Office who continued her HB award but re-assessed it based on her liability at the bed and breakfast. Seven months later her house was ready for her to move back into. She reported this to the HB Office who re-assessed her HB award and switched it back to her normal home.

Absence but no 'essential repairs'

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 / damaged property because it cannot be lived in, but does not need 'essential repairs', then the temporary absence rules may apply – HB Reg 7(13). HB will only be paid if:

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

EXAMPLE: Clara and her children moved in with her parents before the storm hit. They have decided to stay there for a while as there was some damage to their rented property. There are no 'essential' repairs but some fencing came down and their neighbours roof was badly damaged. As there are no essential repairs needed to Clara's house HB Reg 7(4) will not apply, but as she intends to return home within 13 weeks her HB can continue under the temporary absence rules.

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

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

EXAMPLE: Pete and Becca moved out of their two bedroom rented house before the floods hit. They moved into a nearby cheap motel. Their house wasn't affected, but they are not moving back until the current period of bad weather has finished. As there are no 'essential' repairs needed to their house HB Reg 7(4) will not apply, but as they intend to return home within 13 weeks the HB on their normal home can continue under the temporary absence rules. But HB will not help them with the motel charges.

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 / damaged 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 / damaged property, and so claim HB on that instead if within the same LA area.

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/damage / 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 either the flooded / damaged property or the temporary accommodation – the landlord's insurance should cover one of these liabilities and the tenant will be able to claim HB for the other.

General issues

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

Where the tenant has moved in with friends or family they will generally not be liable for rent at this temporary home.

If the landlord is able to claim the rental loss for the flooded / damaged property from their insurance then there is no need for HB as there is no rental liability on either property. The tenant will retain the tenancy of the flooded / damaged 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 / damaged property and whether the landlord can legally charge a rent on the flooded / damaged property.

There may also be a risk that the HB Office considers 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 or UC, will the tenant be a non-dependant and affect the friends'/family's entitlement to HB/UC?

As long as the tenant intends to return to the flooded / damaged 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.

EXAMPLE: Imaan and her two young sons moved out of their two bedroom rented house before the storms hit. They moved in with Imaan's sister across town. Imaan's sister gets Income-Related ESA and HB. Imaan works full time, however there should be no non-dependant deduction applied to her sister's HB award because Imaan is only staying there on a temporary basis and has a 'normal' home elsewhere.

What if the landlord is still assessing the damage to the flooded / damaged property?

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

If, however, your HB Office argue that initially it is not known whether or not the flooded / damaged property needs essential repairs, then 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 /damaged 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 / damaged 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 / damaged 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 on the caravan, 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 on the caravan, 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 (or UC if in a different LA area / break in HB award) 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 / damaged 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:

- They have not made a claim for Universal Credit, and
- 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
- the tenant has had to terminate their tenancy and could not reasonably have avoided the liability eg sudden moves HB Reg 7 (7).

More information on HB for a notice period on our website [here](#).

Regulations and Guidance

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.'

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 some 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 it's a beneficial change - ie more Universal Credit due as a result of the change - it needs to be notified in time).
- A change might not affect UC if it is reversed before the end of the Monthly Assessment Period in which it occurred. For example, towards the end of a 6 month temporary absence a tenant might want to 'reset the clock' by temporarily moving back in for a few days, and so be granted the Housing Costs Element during a fresh period of 6 months temporary absence. If so, UC may decide that they needed to be occupying at the point when their Assessment Period ends, in order to take any account of that new period of occupation.

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 / damaged will depend on:

- Whether they are liable for rent elsewhere (the Housing Costs Element can only be paid in respect of one property in these circumstances: there is no provision to help with the rent on two homes).
- Whether the landlord can legally charge a rent on the flooded / damaged property (no legal liability means no Housing Costs Element).
- Whether the tenant intends to return to the property (if not, the Housing Costs Element in respect of the flooded / damaged 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).
- 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 / damaged 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 the section on Housing Benefit – and whenever '13 weeks' is mentioned read as 'six months' instead.

EXAMPLE: Audrey has had to move out of her rented house following damage after the storms. She has four children and they have been placed in a rented two bedroom flat nearby. The repairs needed to her house count as 'essential' and so her UC award can include a Housing Costs Element in respect of the rent being charge on the flat. The rent on the flat is cheaper and will affect her UC award from the beginning on the Monthly Assessment Period in which she moved.

The Regulations and Guidance

Claimant living in other accommodation during essential repairs

Schedule 3, 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

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.