

Where does the law define “exempt accommodation”?

The Consequential Provisions Regulations

The definition of “exempt accommodation” can be found in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (SI 2006/217) (“the Consequential Provisions Regulations”). The definition says:

- “Exempt accommodation” means accommodation which is -
 - (a) a resettlement place provided by persons to whom the Secretary of State has given assistance by way of grant pursuant to section 30 of the Jobseekers Act 1995 (grants for resettlement places); and for this purpose “resettlement place” shall have the same meaning as it has in that section; or
 - (b) provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision;

How does this definition apply to Housing Benefit and Universal Credit claims?

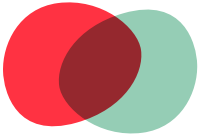
Housing Benefit: Eligible Rent

The calculation of Housing Benefit relies on “eligible rent”. Regulation 2 of both the Housing Benefit Regulations 2006 and the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 says “eligible rent” means an amount determined in accordance with:

- a) ... or
- b) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;

Paragraph 4 of Schedule 3 to the Consequential Provisions Regulations begins as follows:

- 4(1) Subject to the following provisions of this paragraph, the eligible rent of a person -
 - a) who was entitled to housing benefit on both the first date and the second date; or*
 - b) who is liable to make payments in respect of a dwelling occupied by him as his home, which is exempt accommodation, shall be determined in accordance with:
 - i) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit Regulations, or, as the case may be,
 - ii) regulations 12 (rent) and 13 (maximum rent) of the Housing Benefit (State Pension Credit) Regulations, as set out in paragraph 5.



Exempt accommodation is then defined in subparagraph (10) as noted above.

Housing Benefit: Benefit Cap

Part 8A of the Housing Benefit Regulations 2006 provides for Housing Benefit to be reduced where a working age (i.e. under the qualifying age for state pension credit) claimant's total income from "welfare benefits", including Housing Benefit, exceeds or would exceed a cap which is £500 a week in most cases.

But Regulation 75C (calculation of welfare benefit income) says:

- 75C
 - (1) When calculating the total amount of welfare benefits, the relevant authority must use the amount of a welfare benefit to which a person is entitled unless paragraph (2), (3) or (4) applies.
 - (2) Where the welfare benefit is housing benefit, the relevant authority -
 - (a) where the dwelling is accommodation specified in regulation 75H (specified accommodation) must use the amount of nil;*

This means that Housing Benefit for "specified accommodation" does not count towards the cap and the cap will only apply if the claimant receives more than £500 a week of other welfare benefits. "Specified accommodation" is defined in Regulation 75H, and the first category of specified accommodation is "exempt accommodation":

- 75H
 - (1) The accommodation referred to in regulation 75C(2)(a) is accommodation to which one or more of the following paragraphs applies.
 - (2) This paragraph applies to accommodation which is exempt accommodation within the meaning of paragraph 4(10) of Schedule 3 to the Consequential Provisions Regulations.

Universal Credit

Schedule 1 to the Universal Credit Regulations 2013 (SI 2013/376) lists the payments that do and do not attract a housing element as part of the Universal Credit award. Paragraph 3(h) says there is no housing element for any of the payments specified in paragraph 3A. Paragraph 3A begins as follows:

Specified accommodation

- (3A)
 - (1) The accommodation referred to in paragraph 3(h) is accommodation to which one or more of the following sub-paragraphs applies.
 - (2) This sub-paragraph applies to accommodation *which is exempt accommodation*.

"Exempt accommodation" is defined in paragraph 1 of the Schedule:

- "exempt accommodation" has the meaning given in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.

The effect of this is that a claimant occupying exempt accommodation as defined for Housing Benefit purposes does not have a housing element included in his/her Universal Credit and instead claims Housing Benefit.