

A3	<i>Liability to make payments and occupying the home</i>	
About this chapter		3.00
Liability to pay for accommodation		3.50
Council Tax liability for students		3.51
Is there a legally enforceable liability?		3.70
Unregistered or unlicensed properties.....		3.80
Claimants who are not liable but are treated as if they are - regulation 8.....		3.90
Landlord waives liability for payment.....		3.120
Paying as if liable.....		3.140
Rent has already been paid for future period		3.160
Backdated revised rent liability		3.180
Claimant is liable but cannot receive HB		3.200
Crown tenants.....		3.210
Occupiers who are entitled to HB		3.212
Irregular occupiers		3.213
Irregular occupiers who may not be entitled to HB		3.215
Properties managed by the Crown Estate Commissioners		3.217
Properties belonging to the Duchies of Cornwall or Lancaster		3.218
Claimants who are liable but are treated as if they are not		3.230
Regulation 9		3.232
Specific cases		3.235
Landlord is a close relative		3.238
Definition of close relative.....		3.239
Half brothers and sisters		3.240
The effect of divorce or death on close relationships created by marriage.....		3.243
Civil partnerships		3.246
Previous non-dependant		3.250
Members of a religious order.....		3.255
Members of a religious community		3.257
Non-commercial arrangements.....		3.258
Claimant rents joint home from ex-partner		3.266
Landlord is the parent of the tenant's child.....		3.269
Landlord is a company		3.271
Landlord is a director of a company employing the claimant		3.275
Landlord is a trustee of a trust.....		3.278
Claimant's child or partner's child is a beneficiary of the trust		3.280
Ex-owners		3.281
Claimant could not continue residing in property without transfer of ownership		3.282

Contents

Joint owners	3.287
Tied accommodation.....	3.289
Arrangements not intended to abuse HB regulation 9.....	3.300
Exemptions under regulation 9.....	3.301
Non-abuse cases	3.303
General provision.....	3.310
Volunteers.....	3.320
Occupying the home.....	3.350
Single or lone parent students or trainees away from normal home.....	3.370
Claimant leaves normal home while essential repairs are done	3.390
Cases involving domestic violence	3.410
Period of Notice.....	3.430
Temporary absence from home.....	3.450
General points.....	3.460
Reviewing the temporary absence	3.470
Standard rule - the 13 weeks limit.....	3.480
Polish Homes.....	P3.500
Sentenced prisoners.....	3.510
Home Detention Curfew - electronic tagging.....	3.512
Likely early release dates for sentenced prisoners.....	3.518
The 52 weeks limit.....	3.530
Temporary absence may be longer than 52 weeks.....	3.532
Remand prisoners.....	3.535
Medically approved care or convalescence	3.541
Training courses in the UK or abroad	3.544
Vulnerable students	3.547
Fear of domestic violence	3.548
Claimants receiving care in residential accommodation, but not on a trial basis.....	3.552
Trial periods in residential accommodation.....	3.570
Qualifying conditions.....	3.571
Reason for temporary absence changes.....	3.590
Overlapping benefit on two homes.....	3.620
Fear of violence.....	3.630
One of a couple is a student or trainee.....	3.650
Large families.....	3.660
Gypsy and traveller site rents and mooring fees	3.670
Renting a caravan on an LA site.....	3.672
Determining the eligible rent.....	3.678

Unavoidable overlap of liability	3.670
Landlord re-lets accommodation before notice period ends.....	3.689
Rent payable for a period before occupation.....	3.700
When to consider payment for a period before occupation	3.702
Landlord relets accommodation before notice period ends	3.690
Date of claim.....	3.730
R v Manchester City Council, ex parte Baragrove Properties	Annex A
Government departments and agencies with residential accommodation let to tenants.....	Annex B
CT liability when students share accommodation: examples.....	Annex C

A3 Liability to make payments and occupying the home

About this chapter

- 3.00 This chapter contains guidance about
- a claimant's liability to make payments for their accommodation and how this affects entitlement to Housing Benefit (HB), see *Liability to pay* later in this chapter
 - considering if the tenancy was created to abuse HB, see *Regulation 9* later in this chapter
 - whether a claimant is occupying, or treated as occupying the home, see *Occupying the home* later in this chapter
 - claimant may be liable to pay rent on two homes, see *Overlapping benefit on two homes* later in this chapter
 - absences from home, see *Temporary absence from home* later in this chapter
 - payments of HB before the claimant moves in to their accommodation, see *Rent payable for a period before occupation* later in this chapter

- 3.01 Chapter A1 *An overview of the HB scheme* explains there is a series of tests to establish a person's entitlement to benefit. This chapter deals with the two tests or conditions of entitlement
- liability to make payments, and
 - occupying the home

Chapters A4 to A6 give guidance on the other applicable tests.

- 3.02 A claimant may be entitled to HB if
- they are legally liable to pay rent or other eligible payments for accommodation occupied as their home, see *Occupying the home* later in this chapter
- HB Reg 8, 9 & (SPC) 8, 9*
- they are legally liable, or treated as liable, to make payments to occupy their home, see *Liability to pay* later in this chapter
 - although not liable to make such payments, they pay them as if they are liable, see *Paying as if liable* later in this chapter

3.03-3.49

3.50-3.54

Liability to pay for accommodation

3.50 The Local Authority (LA) can only pay HB when the agreement under which a claimant occupies their home confers a genuine legally enforceable liability to make payments for their accommodation. There is no need for a formal written agreement to make payments. An informal arrangement or agreement may be enough to create a legal contract between a landlord and tenant provided the accommodation is occupied by virtue of the agreement.

Council Tax liability for students

3.51 Accommodation where all the occupants are full-time students is exempt from CT liability and therefore there can be no entitlement to CTB. Students are not treated as residents when CT liability is calculated. This means if

- a student shares with a non-student, the accommodation is treated as having only one resident and the CT is reduced by 25%
- one or more full-time students share accommodation with one or more non-students, all residents, including the students, become jointly and severally liable for the remaining CT liability on the accommodation

See *Annex C* later in this chapter for examples of how to calculate CT liability.

3.52 When a dwelling is occupied by a student or students and one or more people in receipt of IS, Pension Credit, JSA(IB) or income-related Employment and Support Allowance (ESA(IR)), the alternative maximum CTB will be 100%, which reduces the CT liability to nil.

CTB Reg 3

3.53 If a non-student is a CTB claimant sharing with a full-time student, benefit under the old rules was calculated only on the claimant's portion of the liability. This meant if one student shares with one non-student claimant recipient, after the 25% reduction, the claimant's CTB was calculated on their 37.5% of the liability, leaving 37.5% unpaid.

3.54 An amendment to CTB Reg 51(3) came into force on 1 April 1997. The purpose of the amendment was to ensure a full-time student not eligible for benefit, is ignored when calculating the non-student's CTB entitlement. This means if one student shares with one non-student claimant, after the 25% reduction, the claimant's CTB is now calculated on their 75% liability.

- 3.55 The new rules do not affect the
- apportionment of liability when the student is eligible for benefit
 - actual liability for CT. Most full-time students remain ineligible for CTB
- 3.56 Outstanding CT liability for periods before 1 April 1997 cannot be re-apportioned under the new rules.

CTB Reg 57 & (SPC) 40; SI 1997/65

3.57-3.69

Is there a legally enforceable liability?

- 3.70 There is a legally enforceable liability only when the formal or informal agreement includes a specific amount. So a claimant whose rent is 'whatever HB you get' does not have a legal liability and is not entitled to HB.
- 3.71 You must decide whether a legally enforceable liability exists before considering whether the claimant is to be treated as not liable because
- the tenancy has been created to take advantage of HB, see Regulation 9 later in this chapter
 - they fall into one of the specific cases excluded under regulation 9, see Specific cases later in this chapter
- 3.72 It is not always easy to determine a liability, but it is always difficult to disprove a liability if the claimant has a properly constituted, written and signed tenancy agreement.
- 3.73 For HB purposes, a person is treated as liable to make payments on their home if they are the person, or partner of the person, who is liable to make the payments.

HB Reg 8 & (SPC) 8

3.74-3.79

Unregistered or unlicensed properties

- 3.80 A tenant living in an unregistered or unlicensed property can still be liable to pay rent. Just because a claimant is living in a property that is unregistered or unlicensed, that alone does not mean that the landlord cannot charge rent.
- 3.81 For more information about unregistered or unlicensed property, see *A2 landlord registration or licensing and antisocial behaviour penalties*.

3.82-3.89

3.90-3.139

Claimants who are not liable but are treated as if they are - regulation 8

3.90 Some claimants who are not liable for the payments on their home may be treated as liable for the payments under regulation 8. This could happen when the

- claimant is the partner of
 - a person who is liable, or
 - a student who is treated as not liable under regulation 56
- landlord waives the claimants's liability for payments, see *Landlord waives liability for payments* below
- claimant is making payments as if liable to enable them to stay in the accommodation, see *Paying as if liable* later in this chapter
- claimant has paid rent in advance, see *Rent has already been paid for future period*, later in this chapter
- claimant's rent liability is revised and backdated, see *Backdated revised rent liability* later in this chapter

3.91-3.119

Landlord waives liability for payment

3.120 If the landlord waives liability for payment because the claimant is doing reasonable repair and redecoration work which the landlord would have had to do, treat the claimant as still liable to make the waived payments. In these circumstances, you cannot pay HB for more than eight weeks for any one period.

HB Reg 8 & (SPC) Reg 8

3.121-3.139

Paying as if liable

3.140 If a claimant is not personally liable to make payments but is paying as if they are liable, you may treat the claimant as liable if the

- person who is liable is not making the payment
- claimant has assumed responsibility for the payments
- claimant has to meet the liability in order to stay in the accommodation

3.141 Claimants you can consider paying as if they were liable are

- a former partner of a person liable to make payments, or

HB Reg 8 & (SPC) 8

- a person you consider it reasonable to treat as liable to make payments

HB Reg 8 & (SPC) 8

Example

The legal tenant has left the accommodation, permanently or temporarily, and someone else living in the accommodation takes on the responsibility for paying the rent. This allows you to award HB without having to wait for the formal transfer of the tenancy.

3.142-3.159

Rent has already been paid for future period

3.160 If rent has already been paid for a future period, the claimant

- is regarded as liable to make payments for the duration of the HB claim even though payment has already been made for some or all of the period and the liability is therefore discharged, and
- will receive HB for the benefit weeks covered by the advance payment, even though no actual payments are due in those weeks. An example is when a claimant pays rent monthly in advance

3.161 You must assess HB using the amount that relates to the period of the claim. For example, if the claimant pays £200 per month in advance, you would assess HB using the amount of rent as £46.0274 per week. See A5 *Converting eligible rent into a weekly eligible amount* later in this manual.

HB Reg 8 & (SPC) 8

3.162-3.179

3.180-3.211

Backdated revised rent liability

3.180 If the claimant's rent liability is revised and backdated, reassess HB from the date the revision is treated as taking effect. This means the claimant is treated as liable to pay the revised amount from that date. If the claimant has rent free periods, see *A5 calculating the amount of HB, Rent free periods* later in this manual.

HB Reg 8 & (SPC) 8

3.181-3.199

Claimant is liable but cannot receive HB

3.200 Some claimants who are liable for payment on their home but cannot receive HB because they are a person who

- cannot be paid HB, for example most Crown Tenants, including properties that other agencies manage and collect the rent for the Crown or a Government Department, are not eligible for HB. Other forms of help with their housing costs may be available for Crown tenants, see *Crown tenants and Occupiers who are entitled to HB* later in this chapter

HB Reg 12 & (SPC) 12

- may be treated as not liable for payments on their home, see *Claimants who are liable but are treated as if they are not below*

3.201-3.209

Crown tenants

3.210 Whether a property is a Crown tenancy depends on who holds the landlord's interest rather than to whom rent is paid. The following occupiers are properly Crown tenants even if the tenant pays rent to a third party or agent who manages the property for the landlord - tenants who occupy accommodation under a tenancy or licence where the landlord's interest

- belongs to Her Majesty in right of the Crown, except if the property is managed by the Crown Estate Commissioners
- belongs to a government department, or
- is held in trust for Her Majesty for the purposes of a government department

3.211 A list of government departments and agencies that are known to have residential accommodation which is let to tenants is shown at *Annex B* at the end of this chapter.

Occupiers who are entitled to HB

- 3.212 LAs should accept claims for HB, and assess and award benefit as normal, from
- irregular occupiers, that is former Crown tenants who remain in occupation of their home
 - against the wishes of their landlord, see *Irregular occupiers* below or
 - whilst awaiting rehousing, some of these irregular occupiers may still be classed as Crown tenants and may not be entitled to HB, see *Irregular occupiers who may not be entitled to HB* below
 - tenants or licensees of properties
 - managed by Crown Estate Commissioners, see *Properties managed by the Crown Estate Commission* later in this chapter
 - belonging to the Duchies of Lancaster and Cornwall, see *Properties belonging to the Duchies of Cornwall or Lancaster* later in this chapter

Irregular occupiers

- 3.213 Former Crown tenants may continue to occupy their home after their tenancy has expired and against the wishes of the landlord. If the landlord obtains a Notice to Quit, mesne profits may be awarded. If these are collected from the occupier, the tenant may be entitled to HB as they are no longer a tenant. For more information about mesne profits, see *A4 Mesne profits* later in this part.
- 3.214 LAs receiving claims from such irregular occupiers should check that
- they have to make payments, as sometimes the landlord will not want payments to be made, and
 - a new tenancy or licence has not been granted, even for a limited period

Irregular occupiers who may not be entitled to HB

- 3.215 Some former Crown tenants may continue to occupy a property after the tenancy has ended, such as former wives of servicemen, while waiting to be rehoused. This will be under
- an informal licence arrangement
 - an unwritten tenancy, or
 - a tenancy at sufferance

A3 - Liability to make payments and occupying the home

3.216-3.229

- 3.216 Although no rent will be payable, the tenant is liable to pay for use and occupation of the land. Such tenants **remain** Crown tenants and are not entitled to claim HB.

Properties managed by the Crown Estate Commissioners

- 3.217 Tenants or licensees of properties managed by the Crown Estate Commissioners are not Crown tenants. Treat claims for HB in the normal way.

Properties belonging to the Duchies of Cornwall or Lancaster

- 3.218 Tenants or licensees of properties belonging to the Duchies of Cornwall or Lancaster do not come within the definition of Crown tenants. Treat claims for HB in the normal way.

3.219-3.229

Claimants who are liable but are treated as if they are not

- 3.230 Some claimants who are liable for payments on their home may be treated as **not** liable for the payments. This could arise when
- regulation 9 is applicable, it
 - lists specific circumstances in which payments are excluded, see *Specific cases* later in this chapter
 - contains the basic principle that a liability created to take advantage of the HB scheme is not a liability for HB purpose, see *General provision* later in this chapter
 - the claimant is a volunteer, see *Volunteers* later in this chapter
 - the claimant is a full time student, see *C2 Student claims* later in this manual
- 3.231 **Before** considering whether the nature of the arrangement means it is not eligible for HB, you must decide whether a legal liability to make payments exists, see *Is there a legally enforceable liability* earlier in this chapter. This is an important distinction, although these questions often involve considering the same facts. For example some authorities have incorrectly refused HB on the basis that a liability has been created to take advantage of HB, when in reality no such liability exists. These decisions are vulnerable to challenge.

Regulation 9

- 3.232 Remember before you consider regulation 9 you must be satisfied the claimant is liable to make payments.
- 3.233 Under regulation 9
- the claimant is treated as not liable for payments if they set out to abuse the system by creating or increasing a liability to pay rent with the intention of making HB payable, or payable at a higher rate
 - people maintained by a religious order and most people in residential accommodation are excluded. These are not instances of abuse of the HB scheme, see *Non-abuse cases* later in this chapter
- 3.234 There are two main provisions in regulation 9, they
- list the specific circumstances when claimants are treated as not liable to make payments and cannot qualify for HB, see *Specific cases* below. Also the list indicates the kind of case which should be considered under the basic principle, see *General provision* later in this chapter
 - provide that some claimants liable to make payments are treated as not liable because the arrangement under which the liability arises amounts to an abuse of the HB scheme. This is referred to as the general provision, see *General provision* later in this chapter

3.235

Specific cases

3.235 Treat the following claimants as not liable for payments

- the tenancy or agreement under which they occupy the dwelling is not on a commercial basis
- their liability under the agreement is to a person who also resides in the dwelling and is a close relative of the claimant or the claimant's partner
- those whose liability under the agreement is to
 - a former partner and is in respect of a dwelling which they and their former partner occupied, before they ceased to be partners
 - their partner's former partner, and is in respect of a dwelling which their partner and their partner's former partner occupied before they ceased to be partners
- they are responsible, or their partner is responsible, for a child of the person to whom the claimant is liable under the agreement
- their liability under the agreement is to a trustee of a trust of which their or their partner's child is a beneficiary
- they previously owned, or their partner previously owned, the dwelling in respect of which the liability arises unless

HB Reg 9 & (SPC) 9

- more than five years have elapsed between the date they relinquished ownership of the property and the date on which HB is claimed, or
- they can satisfy the appropriate LA that they or their partner could not have continued to occupy that dwelling without relinquishing ownership

Example

A claim is made on 18 June 2001, after the new regulation came into force. The tenant tells you they previously owned the property they are now renting. He also tells you he sold the property on 10 February 1997, a date within five years of the HB claim. As the property was not relinquished more than five years before the HB claim, HB is not payable unless the claimant can satisfy you they could not have continued to stay in the property without selling it.

- their occupation, or their partner's occupation, of the dwelling is a condition of their or their partner's employment by the landlord
- they are a member of, and are wholly maintained (disregarding any liability they may have to make payments in respect of the dwelling they occupy as their home) by, a religious order
- except where Reg 9(2) applies, they are in residential accommodation
- in any other case if the appropriate LA is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part VII of the Contributions and Benefits Act

- 3.236 Do not automatically treat someone as liable because their circumstances do not appear in the above list. There will still be cases which take advantage of the HB scheme which are not specifically mentioned in the list. Exclude these cases under the provisions of regulation 9(1)(l), see *General provision* later in this chapter.
- 3.237 Treat the following claimants as not liable for payment unless you are satisfied that the liability was not created to take advantage of the HB Scheme
- their liability under the agreement is to a company or a trustee of a trust of which
 - they or their partner
 - their, or their partner's close relative who lives with them, or
 - their or their partner's former partner
- is, in the case of a company, a director or an employee, or in the case of a trust, a trustee or a beneficiary
- before the liability was created, they were a non-dependant of someone who lived, and continues to live, in the dwelling

Landlord is a close relative

- 3.238 A claimant who rents their accommodation from a close relative but does **not** reside with the relative, does not fall foul of this particular provision. However, consider other aspects of the arrangement, as it may seek to take advantage of the HB scheme, and fall foul of regulation 9(1)(l). But remember, it may be a perfectly normal tenancy created without any intention of abusing the HB scheme.

HB Reg 9 & (SPC) 9

Definition of close relative

- 3.239 'Close relative' is defined in the regulations as
- a parent, step-parent or parent-in-law
 - son, step-son or son-in-law
 - daughter, step-daughter or daughter-in-law
 - brother
 - sister
 - a spouse or partner of any of the preceding people

HB Reg 2 & (SPC) 2

3.240-3.254

Half-brothers and sisters

- 3.240 There is no relevant HB caselaw on the question of whether half-brothers or half-sisters are close relatives. However, there is a Commissioners decision with regard to Supplementary Benefit (R(SB) 22/87 refers) which states that the definition of brother and sister includes half-brothers and half-sisters.
- 3.241 This decision is not legally binding for HB, but is strongly persuasive. So it is strongly advised that half-brothers and half-sisters should be considered as close relatives as defined by regulation 2 of the Housing Benefit (General) Regulations.
- 3.242 An adopted child no longer has any relationship to their natural parents and is the son or daughter of the person who adopted them.

The effect of divorce or death on close relationships created by marriage

- 3.243 Marriage creates a legal relationship between the spouses and also the other relationships which result from the marriage such as 'step' or 'in law' relationships.
- 3.244 Divorce ends the legal relationship between the spouses and any other relationships resulting from the marriage.
- 3.245 Death ends the legal relationship between spouses. However, step-children remain step-children after the death of either the mother or father. A step-parent does not stop being closely related to their step-children after the death of their partner.

Civil partnerships

- 3.246 From 5 December 2005, same sex couples who form a civil partnership will acquire the same rights and be subject to the same obligations and duties as married opposite sex couples. Same sex couples who do not form a civil partnership will be treated for benefit purposes, in the same way as unmarried opposite sex couples.

3.247-3.249

Previous non-dependant

- 3.250 Treat a claimant who was previously (ie before the tenancy was created) a non-dependant of someone who lives in the same house as not liable as long as that person still lives there.

HB Reg 9 & (SPC) 9

Note: Regulation 9(3) applies if the claimant can show there was no intention to abuse the HB scheme.

3.251-3.254

Members of a religious order

- 3.255 Treat as not liable for housing payments, members of a religious order who are fully maintained by the order.
- 3.256 A religious order consists of a group of people who have given up all material belongings and have offered their services free for the benefit of the order. The order is committed to providing all their needs and is responsible for their maintenance. Monks and nuns of any religion are the most obvious examples but there may be others.

Members of a religious community

- 3.257 Religious communities are not necessarily the same as religious orders, since they often do paid work or keep their own possessions. In these cases, HB may be payable if they meet the conditions of entitlement.

Non-commercial arrangements

- 3.258 Remember this could arise when the claimant is residing with the landlord, but does not depend on it.

HB Reg 9 & (SPC) 9

- 3.259 A commercial rental agreement, whether a tenancy or a licence, imposes legally enforceable conditions on the parties to the agreement. If one party breaks the agreement, the other party has the right to go to court to seek redress.

- 3.260 You may consider an agreement as non-commercial when it includes terms which are not legally enforceable or which the parties did not intend to be legally enforceable.

HB Reg 9 & (SPC) 9

- 3.261 Such terms may be written into the agreement or may be verbal. For example when a claimant does household chores for their landlord. The chores could be considered as payment 'in kind', and the agreement regarded as a commercial one if when the tenant

- does household chores for their landlord they pay a lower rent
- does not do the chores they have to pay a higher rent

- 3.262 Charging a low rent does not on its own make an agreement non-commercial. Many charities, voluntary bodies, and some individuals, choose to let properties at below market rents or do not want to make a profit from letting, but their tenancies may still be commercial arrangements if that is what the parties to the agreement intended.

- 3.263 This provision could cover some cases when a claimant resides with a relative who is not a close relative. For example, someone who has been brought up by an aunt and is then charged 'rent' for their room, this could be regarded as a non commercial arrangement.

3.264-3.270

3.264 However, someone who left the parental home and went to live with their aunt on a board and lodging basis could be considered to have entered into a commercial arrangement.

3.265 You must decide whether the arrangement is on a commercial or non-commercial basis as a question of fact based on all the evidence. You must deal with each case on its facts. So be careful to establish the facts before considering whether the provision applies.

Claimant rents joint home from ex-partner

3.266 If a couple, married or unmarried, separate and the claimant, or current partner if they have one, remains in the joint home and is charged 'rent' by the partner who left, then treat the claimant as not liable for housing costs.

3.267 If the separated couple are married, the partner remaining in the home is not under an obligation to make payments to live in the home.

3.268 **Remember** the landlord can be the ex-partner of the claimant or their current partner.

HB Reg 9 & (SPC) 9

Example

Mr Brown and Miss White live together as man and wife at 3 Bloom Terrace, which Mr Brown owns. They fall out and agree to separate, and Mr Brown leaves the property and rents a flat. Mr Green, Miss White's new boyfriend, joins her at 3 Bloom Terrace, and Mr Brown agrees to let him the property at a rent of £80 per week. Mr Green claims HB. Mr Green is treated as not liable for his housing costs under regulation 9(1)(c), because his landlord is his partner's ex-partner.

Landlord is the parent of the tenant's child

3.269 If the landlord is the parent of a child for whom the tenant or their partner is responsible, treat the tenant as not liable for housing costs. This reflects the fact that the absent parent has responsibilities towards their child, including providing accommodation. Responsibility for a child means more than 'cares for'. The child must be a member of the claimant's family, and included in their applicable amount.

3.270 This provision would not normally apply when the claimant is a child minder of the landlord's child.

HB Reg 9 & (SPC) 9

continued

(3.270)

Example 1

Miss Pink rents a flat from Mr Green. Mr Green is the father of Miss Pink's son who lives with her and for whom she is responsible. HB should be refused under this provision because the landlord is the father of her child.

Example 2

Mr and Mrs Black rent their home from Mrs Black's parents, Mr and Mrs Grey. Mrs Black is killed in a traffic accident, leaving Mr Black with their two children, aged 3 and 7. While Mr Black is at work, Mr and Mrs Grey look after the children. Mr Black drops them off at 8:30 and picks them up at 6:00 each working day. However, in order to be able to spend more time with his children, he has had to take lower paid work and claims HB. Although Mr and Mrs Grey look after these children during the day, they are not 'responsible' for them, and Mr Black should not be refused HB under this provision.

Landlord is a company

3.271

A company

- in this situation is one that is registered, that is, incorporated under the Companies Acts
- can be limited by shares or guarantee
- is regarded by the law as a person, so that it has a legal identity separate to that of its directors and shareholders. So, a company can own property, enter into contracts and incur debts

3.272

A registered company is bound by the Companies Acts and must display details of the registration on its headed paper. So if you are doubtful about the identity of a landlord, you can easily check with Companies House whether or not a company is incorporated.

3.273

Treat the claimant as not liable for housing costs, if the claimant, or their partner, ex-partner, partner's ex-partner, or a close relative living with the claimant

HB Reg 9(1) & (SPC) 9

- is a director or an employee of the company who is the landlord and
- cannot show the arrangement between the company as landlord and the employee as tenant was not a means of abusing the HB scheme

3.274

Regulation 9(3) exempts a claimant who can show the arrangement between the company as landlord and the employee as tenant was not intended to be a means of abusing the HB scheme. Reg 9(3) see *Arrangements not intended to abuse HB regulation 9* later in this chapter.

(3.274)-3.278

(3.274)

Example 1

Miss Red rents a flat that has been advertised on the open market through a letting agent. After living there for some time, she gets a part-time job in a local shop. The company that runs the shop also owns the flat. It is clear the liability for the flat was not created to abuse HB and the fact that the claimant's landlord is also her employer is accidental.

Landlord is a director of a company employing the claimant

3.275 A claimant's liability to pay housing costs is not affected by Regulation 9(1)(e), if

- the claimant, or their partner, ex-partner, partner's ex-partner or a close relative living with the claimant
 - is employed by a company, and
 - pays rent to a landlord who is a **director** of the same company

3.276 The claimant's liability is **not** to the company but to the director.

Also a claimant's liability to pay housing costs is not affected by Regulation 9(1)(e), if

- two companies registered to the same address have a director in common, and
- an employee working for one of the companies rents accommodation from the other company

3.277 Remember though that other aspects of the arrangement may mean the liability has been created to abuse the HB scheme.

Landlord is a trustee of a trust

3.278 Treat the claimant as not liable for housing costs if

- a claimant rents a property from a trust (strictly speaking from the trustee(s) of a trust), and
- the claimant, or their partner, ex-partner, or a close relative living with the claimant is either a
 - trustee, or
 - beneficiary Reg 9(1)(e), and
- they cannot show the arrangement was not intended to abuse the HB scheme

- 3.279 A trustee is required to act for the benefit of the trust and its beneficiaries. So a trustee who was also a tenant of the trust would have a foot in both camps as tenant and, in effect, landlord.

Example

Mr Brown lives with his elderly mother, Mrs Brown, who is an owner-occupier. A trust is set up naming Mrs Brown as beneficiary, and the home is transferred to it. The trust rents the home to Mr Brown who claims HB. Such an arrangement clearly takes advantage of the HB scheme, since without setting up the trust Mr Brown would have no entitlement to that benefit.

Claimant's child or partner's child is a beneficiary of the trust

- 3.280 Treat the claimant as not liable for housing costs if
- a claimant rents a property from a trust (strictly speaking from the trustee(s) of a trust), and
 - the claimant's child, or partner's child is a beneficiary of the trust regulation 9(1)(b).
Note: the exemption in regulation 9(1)(b) does not apply

Ex-owners

- 3.281 Treat a person who is liable to pay rent as **not** liable to pay rent for HB purposes if they
- once owned the dwelling (as a freeholder or leaseholder) that they now rent, and
 - sold the dwelling less than five years before, and
 - did not need to sell the dwelling to remain living in it

Claimant could not continue residing in property without transfer of ownership

- 3.282 This could happen for example when
- a housing association agrees to take over ownership of the property and take on the ex-owner as a tenant
 - in cases of shared-ownership, a tenant cannot afford the payments on the percentage owned, and the housing organisation agree to take back a part of the ownership and enable the tenant to rent a larger share

HB Reg 12 & (SPC) 12

- a claimant was so far in arrears with a mortgage, the lender was on the point of seeking legal possession

HB Reg 9 & (SPC) 9

3.283-3.289

- 3.283 While a claimant does not have to show the lender or housing organisation was about to seek possession, they must show
- there was no way they could reasonably retain ownership, and
 - that other means were explored
- 3.284 If the claimant states this is the case and they could not continue residing in the property without the transfer of ownership, the claimant
- must provide you with the reasons for giving up ownership
 - is responsible for showing that this is the case and they would otherwise have had to leave the property
 - should be able to provide written evidence such as letters from the lender about action to be taken over arrears
- 3.285 You must examine the reasons for transfer of ownership and evidence carefully to decide if the claimant's actions are reasonable in the circumstances. Consider each case on its merits.
- 3.286 The transfer could be through a mortgage rescue scheme, or through a private arrangement. Take care when
- the original lender is a relative of the claimant. When the property has been transferred to a relative, did they consider lending the money to the claimant (at interest, and with a charge on the property) so that they could remain the owner?
 - the claimant, on transferring the property, received less than the market value. It is unlikely that the courts would award an order for possession in a case where the claimant retained equity in the property. This means when the outstanding debt, including any arrears, was less than the market value of the home

Joint owners

- 3.287 For joint owners, when one of them wishes to give up ownership and the other wishes to remain in the property, it would be reasonable to ask whether the claimant could have taken over the full mortgage as a sole borrower.
- 3.288 You may receive a claim for HB from a joint-owner who says they have to pay rent to the other joint owner(s) for their part of the accommodation. Payments of this kind are not met by HB, and are covered in regulation 12(2)(c) payments by an owner, rather than regulation 9(1).

Tied accommodation

- 3.289 Treat a claimant as not liable for housing costs if they have to occupy specific accommodation as a condition of their, or their partner's employment by the landlord.

- 3.290 In this situation it is reasonable to assume their pay takes account of the fact the employee is living rent free.

HB Reg 9 & (SPC) 9

Example

The owner of a riding school offers employment to a stable boy at a wage of £50 per week. He is required to live in a bed-sit over the stables. After he takes up the employment, he finds he has to pay £55 per week for the bed-sit. Such an arrangement seeks to abuse HB since

- the stable boy has no choice about where he lives, and
- his wages, which are paid by his landlord, are not enough to meet the cost

- 3.291 Provision 9(1)(i)

- applies to a claimant
 - who's employer is their landlord
 - who is required to live in specific accommodation to carry out their employment, or
 - when their residence in the accommodation is written into their contract of employment
- must not be taken to mean 'as a result of their employment'. So, a tenant of tied accommodation who continues to live in that accommodation after retirement should **not** be treated as occupying the accommodation as a condition of their employment by the landlord, and this provision would not apply

3.292-3.299

Arrangements not intended to abuse HB regulation 9

- 3.300 Regulation 9(3) does not apply to a claimant who can show the arrangement was not intended to abuse the HB scheme. However it does not apply if the beneficiary of a trust is the claimant's child or partner's child.

Example

The Goodfellow Trust is a charitable institution set up under the will of Robin Goodfellow to relieve hardship for widows of employees of the travel industry. The trust raises funds from large property holdings throughout the country. Mr Brown is one of their tenants. His mother, Mrs Brown, is the widow of a travel agent and has a small annuity from the Goodfellow Trust. She is becoming increasingly frail and comes to live with Mr Brown. There is no connection between Mr Brown's tenancy and Mrs Brown's annuity from the Trust. Regulation 9(3) applies, and HB should not be refused.

3.301-3.314

Exemptions under regulation 9

3.301 Arrangements referred to above apply only in the following cases

- previous non-dependants
- cases where the landlord is a company
- cases when the landlord is a trust

3.302 Remember it is the claimant's responsibility to show the arrangement is not taking advantage of the HB scheme for any exemption to apply.

Non-abuse cases

3.303 Regulation 9(1) covers two groups of people who are to be treated as not liable even though there is no intention to abuse the scheme. These two groups are

HB Reg 9 & (SPC) 9

- a person who is a member of, and wholly maintained by, a religious order
- a person who lives in residential accommodation

3.304-3.309

General provision

3.310 Regulation 9(1)(l) states that HB is not payable when the LA is satisfied the liability was created to abuse the HB scheme.

3.311 **Remember** that such an abuse can be on the part of the claimant, the landlord, or both acting together. Only use this provision when no other provision in regulation 9(1) applies, see *Specific cases* earlier in this chapter.

3.312 There must be something about the arrangements relating to the liability that indicates it seeks to abuse the HB scheme. It is the LAs responsibility to show such arrangements exist before deciding that abuse is involved. This means you must establish the facts before deciding to treat that person as not liable to make the payment.

3.313 You must take account of **all** the available evidence when making a decision that a liability has been created to abuse the HB scheme. Generally speaking, you will be looking for an improper or incorrect use of the rules which govern HB.

3.314 A liability for a very high rent would not itself amount to an abuse of the HB scheme for the purposes of this regulation, because the maximum rent rules would prevent the payment of large amounts of HB. However, a landlord who targets high rents at specific groups of claimants who are excluded from the maximum rent rules might be creating liabilities which abuse the HB scheme.

- 3.315 A tenancy agreement has not necessarily been created to abuse HB simply because the tenant requires HB at the start of their tenancy.
- 3.316 Also it is not necessary for there to have been agreement between landlord and tenant for there to be contrivance; a tenancy agreement may have been intended to abuse the HB scheme by either party, see *Annex A* at the end of this chapter for the case of *R v. Manchester City Council, ex parte Baragrove Properties*. The Court of Appeal has
- held that the contrived tenancy provisions should only be applied when taking advantage of the HB scheme is a primary or dominant purpose in its creation (*R v Solihull MBC ex parte Simpson*)
 - pointed out that abuse at which the Regulation is aimed must not be equated with bad faith on the part of the claimant. In other words, it is not necessary for the claimant to have acted in bad faith for an LA to make a finding that there has been contrivance
- 3.317 When considering this question, the issue is not whether a liability exists, but whether an existing liability was created to abuse the HB scheme. You must decide whether a liability exists before considering whether or not a tenancy is contrived. Although the two questions often involve considering the same facts.
- 3.318 You should also look for arrangements the claimant has entered into
- which create a liability they cannot meet without HB, and
 - when they could have avoided the situation and still been adequately accommodated
- 3.319 This would not normally be the case when, for example, even though they rely on HB to help meet the rent
- a person previously had no accommodation
 - a person has moved home
 - to take up work because they could not travel to work from their previous address
 - because their family was overcrowded at their previous address
 - a young person leaves the parental home to live independently. You should not generally take account of accommodation in the parental home as evidence that the person could still have been adequately accommodated

Volunteers

- 3.320 There are a number of schemes under which
- people volunteer to help with community projects, usually for a specific period on a full-time basis
 - placements are frequently away from the volunteer's home area
 - the literature promises the volunteer a weekly allowance plus food, bills, travel expenses and free accommodation

3.321-3.369

- 3.321 The accommodation is arranged, and paid for, by the receiving organisation, but the volunteer is asked to claim housing benefit to 'pay back' the organisation. In such circumstances, the liability rests with the receiving organisation **not** with the volunteer. Refuse these claims as these volunteers are not entitled to HB under regulation 8.

3.322-3.349

Occupying the home

- 3.350 HB is normally paid for only one home at any one time. This is the home normally occupied by the claimant and any member of their family. This includes partners of a polygamous marriage and any children who are the responsibility of the claimant or their partner(s).

HB Reg 7 & (SPC) 7

- 3.351 For accommodation to be classed as occupied, there must be signs of somebody living there. For example enough furniture and fittings to enable someone to live in the accommodation and where personal items are usually kept.

- 3.352 Accommodation occupied only for a holiday or business purposes is not a home.

- 3.353 If you think that accommodation at the address provided by the claimant may be unoccupied, you must make a judgement about paying HB taking into account the claimant's circumstances whilst away from the alleged home. For instance the claimant may be treated as occupying the home while temporarily absent from it, see *Temporary absence from home* later in this chapter.

- 3.354 A deceased person cannot be treated as still occupying accommodation.

- 3.355 There is no minimum period a person must live in accommodation before it is regarded as a home.

- 3.356 If a claimant has more than one home, HB is payable on the main home only, unless the circumstances when benefit on two homes is allowable applies, see *Overlapping benefit on two homes* later in this chapter. The reference in Regulations 7(2) to homes outside Great Britain is intended to prevent simultaneous HB payments under both the Great Britain and Northern Ireland schemes. It does not exclude from benefit someone who has set up home in this country but whose family is no longer part of their household and remains abroad.

HB Reg 7 & (SPC) 7

3.357-2.369

Single or lone parent students or trainees away from normal home

- 3.370 If a single or lone parent claimant is living away from their normal home because they are a student, see *C2 Students* later in this manual or on a training course, and they are liable to pay rent or mortgage interest on one or both of the properties, HB is normally only available for one of the properties.
- 3.371 If the claimant is liable to pay rent or mortgage interest on
- one but not both of the properties, treat the claimant as occupying as their home the accommodation for which they pay rent or mortgage interest
 - both properties, you must decide which of the properties should be treated as the home, and decide HB accordingly
- 3.372 HB can only be paid to meet a liability for housing costs on two homes in certain circumstances, see *Overlapping benefit on two homes* later in this chapter. It cannot be used to meet mortgage payments. Social Security Contributions and Benefits Act 1992.

HB Reg 7 & (SPC) 7

Example

A disabled student who normally lives with their parents but rents accommodation during the term time should be treated as occupying the term time accommodation as their home, despite the fact that they have another residence. But, when there is a liability to make payments on both homes, you will have to decide which accommodation should be treated as the one normally occupied as the home, and decide HB accordingly.

3.373-3.389

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.

HB Reg 7

3.392-3.413

- 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.

3.394-3.409

Cases involving domestic violence

- 3.410 When dealing with cases involving domestic violence always act with care and compassion within the regulations.
- 3.411 The fear of violence must be reasonably held. Violence or threatened violence will often have been reported to the police or another reputable supportive organisation. You should be satisfied that the claim is genuine by obtaining the necessary evidence.
- 3.412 Violence in the street because of, for example, racial violence which does not involve a former member of the claimant's family does not satisfy the provisions for payment of HB when absent from home. However violence in the home does not need to involve a person who was, or is, a member of the claimant's family.
- 3.413 When considering occupation of the home for victims of domestic violence, consider if the claimant

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- intends to return to the former home. If they do, consider under provision 7, see *Standard rule - the 13 week limit, or The 52 week limit* later in this chapter. Regulations less specifically targeted to help victims of domestic violence may also be relevant. For example provision in HB regulation 7(8) for arrears when a move is delayed pending the outcome of a social fund application, or in regulation 7(13) for the standard rule on temporary absence
- does not know if they will return to the former home, consider under HB regulation 7(10). This differs from regulations 7(6)(a) (HB on two homes) and 7(16) (temporary absence) because it does not depend on any intention to return to the former home. It offers the victim of violence a 'breathing space' of up to four weeks in which to make plans for the future. If this rule applies, you can only allow benefit for the normal home even when the claimant also has a new rent liability

- 3.414 Treat a claimant as occupying the former dwelling as their home for a maximum of four benefit weeks if the claimant
- left their previous home due to violence or fear of violence occurring
 - in the home by another person, for example, a former partner, non-dependant or a neighbour, or racial violence, or
 - outside the home by a former member of the claimant's family, and
 - has an unavoidable liability to make payments on the normal home
- 3.415 Many refuges for victims of domestic violence make a daily charge for accommodation and you may receive short-term claims for less than a week. Under the HB regulation 80 payment may be made for part weeks. You should also be aware this may mean the same accommodation may be occupied by more than one person or family in a week.

3.416-3.429

Period of notice

- 3.430 We are aware that in some circumstances HB is not payable, even though liability during the period of notice is unavoidable. This has led to problems for various groups of people who have moved **unexpectedly** to a new dwelling where they do not have a liability to make payments, have had to give up their tenancy on their home but still have a rent liability on that former home to cover the period of notice. For example such cases could be
- people in hospital, who initially expected to return home within 52 weeks but whose condition deteriorates and either their stay becomes permanent or they are discharged to a care home
 - people suddenly taken into hospital on a permanent basis
 - prisoners sentenced to a custodial term of more than 13 weeks
- 3.431 Regulations have been made to allow HB to be payable for the period of notice of up to four weeks if the liability on the former home could not reasonably have been **avoided, and the customer was otherwise entitled to HB for that period.**

HB Reg 7 & (SPC) 7

- 3.432 When a prisoner has been sentenced there is no reference in this regulation to any requirement to have terminated the tenancy or to the period of four weeks being linked to termination. The four-week period during which a person is to be treated as occupying a dwelling as their home in the circumstances set out in this new provision starts from the date the claimant is admitted to prison or from the date they terminate the tenancy, whichever is earlier.

3.435-3.449

3.450-3.459

Temporary absence from home

3.450 There are circumstances when a person may be treated as occupying their home while they are temporarily absent from it. The period benefit is payable for during a temporary absence depends on the reason for absence

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- up to 13 weeks for most types of absence (the standard rule)
- up to 52 weeks in prescribed cases, and
- special rules for trial periods in residential accommodation

3.451 Under certain circumstances even though a claimant has never resided in a property they can be treated as occupying the dwelling from the start of the tenancy while being temporarily absent from it, *Commissioner's decision CH/2957/2004* refers.

Example

The claimant is in hospital and decides to take on a new tenancy with the intention of moving in when discharged. The claimant is still being treated and is unable to occupy the dwelling, but does not intend to occupy it from the start of the tenancy as the likely date of discharge from hospital is not known. Even though the claimant's belongings have been moved in and the claimant intends to move in to the dwelling eventually, the claimant did not need to take on the liability while still an in-patient with no discharge date set, and could not, unlike the claimant in CH/2957/04, have had the intention of occupying the dwelling in person from the start of the tenancy. We would not advise the payment of HB in this case.

A claimant in hospital is given a date of discharge within the next four weeks. The claimant takes on a new tenancy to start when discharged from hospital with the intention to move in then and the claimant's belongings are moved in to the new dwelling. However, just before discharge the claimant suffers a relapse and is unable to move in to the new home. We would advise the payment of HB in this case as the claimant intended to move in from the start of the tenancy, has no other home and would have moved in had it not been for the relapse.

3.452-3.459

General points

- 3.460 When considering entitlement to HB during a period of temporary absence from the home, remember
- couples are not affected when one partner is absent, and the other remains at home as the benefit claimant
 - count the likely length of absence from the first day of absence, even if the claim for benefit is made after that date, but note the special rules for trial periods in residential accommodation, see *Trial period in residential accommodation* later in this chapter
 - establish the reason for and likely length of the absence from home at the start. The reason for the absence will determine the limit (13 or 52 weeks) on the benefit payments. The date the absence from the home begins will fix the start of the 13 or 52 week period
 - any return to the normal home which is a genuine re-occupation of the home will end a period of temporary absence. If the period of the return is short, you will need evidence to prove the stay was genuine. Whether the stay is genuine is a question of judgement. For example, a stay lasting only a few hours may not be acceptable but one that lasts at least 24 hours may be acceptable. It all depends on the facts of the case. If the stay is not considered genuine, the temporary absence will not have stopped. Note: Do not treat a prisoner's temporary release from prison as a break in absence, see *Sentenced prisoners* later in this chapter
 - benefit is not payable if, and for as long as, the part of the dwelling normally occupied by the claimant is let or sub-let during a temporary absence. Payment may be resumed, subject to satisfying the normal qualifying conditions, including the temporary absence rules, if the tenancy or sub-tenancy (the one for the person occupying the accommodation in the claimant's absence) is ended

3.461-3.469

Reviewing the temporary absence

- 3.470 Review the benefit award for temporary absences periodically to ensure the qualifying conditions are still satisfied. If the reason for absence changes, see *Reason for absence* changes later in this chapter.

3.471-3.479

Standard rule - the 13 weeks limit

- 3.480 Claimants who are temporarily absent from home, and who satisfy the qualifying condition, can receive HB for up to 13 weeks for their former homes, unless they are
- one of the specified cases that may qualify for up to 52 weeks, see *The 52 week limit* later in this chapter
 - have entered residential accommodation on a trial basis, see *Trial periods in residential accommodation* later in this chapter

3.481-3.P3.509

- 3.481 HB may be payable only if all the following conditions are satisfied, the
- 1 claimant intends to return to occupy their home
 - 2 part of the accommodation normally occupied as the home is not let or sub-let
 - 3 period of absence is unlikely to last longer than 13 weeks
- 3.482 The 1st and 3rd conditions must be satisfied throughout the absence. If the accommodation is let or sub-let, there is no entitlement for the period of letting and the claimant will have to make a new HB claim at the end of the sub-lease.
- 3.483 There is no discretion attached to the 13 weeks rule. If an absence is likely to last longer than 13 weeks from the start benefit cannot be paid from the first day of absence or relevant payday.
- 3.484 Similarly, if during the course of an absence it becomes clear that it will probably last longer than 13 weeks, stop the benefit immediately, unless the reason for absence changes to one covered by the 52 weeks rule, see *The 52 week limit* later in this chapter.
- 3.485 The standard 13 weeks rule may cover
- sentenced prisoners serving a custodial sentence of less than 13 weeks in total or after deducting likely remission. For more information, see *Sentenced prisoners* later in this chapter
 - claimants absent from home, in the UK or abroad, for holidays, domestic or religious reasons
 - claimants working away from home in the UK or abroad
 - voluntary workers in the UK or abroad
- 3.486 These are just some examples. Absence under this rule may be for any reason.

3.487-3.499

Polish Homes

- P3.500 When the claimant is in accommodation under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation) and requires personal care, treat them as living permanently in the accommodation if they are absent from that accommodation. But, that absence must not exceed 13 weeks, and the claimant must have agreed with the manager of the accommodation that the claimant may return to the accommodation.

P3.501-P3.509

Sentenced prisoners

3.510 If you are dealing with a claim from a sentenced prisoner serving a prison term, or an existing claimant who is sentenced to a term in prison, remember

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- for the purposes of the temporary absence rules only, a 'prisoner' is a person who has been **tried, convicted and sentenced to a custodial term**. Someone detained by a Court Order made under the Mental Health Act 1983 has not been sentenced and is **not** a prisoner. For the treatment of other persons held in custody, see *Remand prisoners* later in this chapter
- when dealing with claims from prisoners, you should take account of the expected date of release. The term a prisoner is sentenced to is not actually what they serve
- prisoners sentenced to less than four years are normally released after serving half of their sentence. When calculating the likely period of absence, take the expected early release date into account. However, this early release date may be delayed by additional days imposed for breaches of prison discipline or if a prisoner is returned to prison convicted of another offence. If there is any doubt, check with the prison. Do not end benefit entitlement if benefit is payable to a prisoner who will be released at or before the end of the 13 weeks. However, if at the start the length of absence is likely to last longer 13 weeks, no benefit at all will be payable
- treat all periods of **temporary** release (home leave) from prison as part of the custodial sentence and **not** a break in an absence from home. Do not treat the prisoner as having returned to their home. Entitlement to benefit will exhaust in the normal way under the temporary absence rules

3.511 As a matter of good practice always consider liaison with the following

- local Probation staff and Prison staff
- colleagues who are local Housing Managers. They may not be aware of a prisoner's whereabouts despite HB continuing under the temporary absence rule

Home Detention Curfew - electronic tagging

3.512 Since 28 January 1999 the Prison Service has operated a discretionary Home Detention Curfew (HDC) scheme that enables many prisoners to serve part of their sentence from their home. Short-term prisoners sentenced to between three months and up to but not including four years may be released up to 60 days before the halfway point of their sentences, provided they spend a minimum of 30 days in prison.

3.513 The prisoners are electronically tagged and their movements to and from their home monitored. Only certain categories of prisoner are eligible for the scheme after assessment of the prisoner's suitability by the probation service. People under 18 are excluded from the scheme but become eligible on their 18th birthday.

A3 - Liability to make payments and occupying the home

3.514-3.529

- 3.514 As this scheme is discretionary it is unlikely that you will know at the start of a sentence whether or not a prisoner sentenced to more than 26 weeks will return home within 13 weeks. If it is expected at the start of a sentence that the prisoner will serve only 13 weeks or less of their sentence, consider treating them as temporarily absent under the 13 weeks rule.
- 3.515 Prisoners should be advised to make a claim for HB/CTB at the start of their sentence if they
- have been sentenced to more than 26 weeks, and
 - may be eligible for HDC
- 3.516 If a prisoner later qualifies for the HDC scheme **and** returns home within 13 weeks their claim may be reviewed and benefit may be awarded under the standard (13 week) temporary absence rule.
- 3.517 Do not treat HDC as a temporary release or home leave from prison. Prisoners released under the scheme will be eligible for the same benefits as any released prisoner.

Likely early release dates for sentenced prisoners

3.518 This table shows the likely early release dates for prisoners.

Sentence	With HDC	Without HDC
Under 6 months	Normally released after half of sentence, so will serve less than 13 weeks	
6 months	1.5 months in prison, then 1.5 months HDC	3 months in prison
7 months	1.75 months in prison, then 1.75 months HDC	More than 13 weeks in prison
8 months	2 months in prison, then 2 months HDC	
9 months	2.5 months in prison, then 2 months HDC	
10 months	3 months in prison, then 2 months HDC	
Over 10 months	More than 13 weeks in prison	

3.519-3.529

The 52 weeks limit

3.530 In prescribed circumstances, HB may be payable for a period of temporary absence, up to a maximum of 52 weeks. Only consider the 52 week limit for the following circumstances

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- remand prisoners, people who are required to live in approved bail hostels or elsewhere as a condition of bail and people detained pending sentence following a conviction
- in-patients in hospital or similar institution
- persons receiving medical treatment or medically approved convalescence for themselves, partner or a dependent child in the UK or abroad, but not in residential accommodation
- persons undertaking approved training courses in the UK or abroad
- persons providing medically approved care in the UK or abroad
- persons providing care for a child whose parent or guardian is receiving medical treatment or medically approved care
- persons receiving medically approved care in the UK or abroad, but not in residential accommodation
- vulnerable students
- persons in fear of violence
- persons receiving care in residential accommodation, other than those residing there on a 'trial' basis

3.531 There are three qualifying conditions that must be satisfied in all cases

- the claimant intends to return to occupy the accommodation as their home, and
- the part of the accommodation normally occupied as the home is not let or sub-let, and
- the period of absence is unlikely to last longer than 52 weeks or, in exceptional circumstances, is unlikely substantially to last longer than 52 weeks

Temporary absence may be longer than 52 weeks

3.532 A person whose absence that is 'unlikely to substantially exceed 52 weeks*' also qualifies. This may be considered **only in exceptional circumstances**. It should **not** be interpreted as the normal rule for all or any particular groups of claimant.

* Unlikely to substantially exceed 52 weeks' should be interpreted as a total absence of up to about 15 months.

3.533 Although the absence may be longer than 52 weeks, benefit may **only be paid for a maximum of 52 weeks** while the claimant is absent.

3.534-3.540

- 3.534 Take account of all the circumstances before deciding whether to allow benefit for an absence that is likely to last longer than 52 weeks and consider each case on its facts. For example, an absence of more than 52 weeks may be considered temporary when a claimant has been prevented from returning home by an unanticipated event, or their discharge from hospital has been delayed by a relapse.

Remand prisoners

- 3.535 For the purposes of the temporary absence rules only, 'remand prisoners' includes people
HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- held on remand awaiting trial
- residing in a bail hostel or from 4 April 2005, in similar accommodation
- who have been convicted and are awaiting sentence

- 3.536 For prisoners who have been sentenced see *Sentenced prisoners* earlier in this chapter.

- 3.537 Consider claimants living in bail hostels or from 4 April 2005, in accommodation other than their normal place of residence as a condition of their bail under this provision.

- 3.538 If the period of absence began before 4 April 2005, pay HB, subject to the conditions of entitlement, from 4 April 2005 to the earlier of

- the end of the 52 week period starting from the first day of absence
- the sentencing taking place

- 3.539 If a custodial sentence immediately follows a period on remand, consider the total absence from home against the 13 weeks limit applicable to a sentenced prisoner.

Example 1

A claimant is remanded in custody (*52 weeks rule*). Three weeks later they are given a custodial sentence (*13 weeks rule*). They are eligible to retain HB/CTB for a further 10 weeks (13 weeks less the 3 already received) provided that the conditions of entitlement are satisfied - see *Standard rule - the 13 week limit* earlier in this chapter. Benefit should end immediately if the remaining length of absence is likely to exceed 10 weeks.

Example 2

A claimant is remanded in custody for 13 weeks (*52 week limit*). They are then given a custodial sentence (*13 weeks limit*). Despite the length of the sentence, HB should stop immediately as the person has already been absent from home for 13 weeks.

- 3.540 Decide claims from remand prisoners in the normal way. Do not delay payment until the sentence is known.

Medically approved care or convalescence

- 3.541 Several categories on the prescribed list are for people who are receiving or providing 'medically approved care' or undergoing a period of 'medically approved convalescence'. The regulations define 'medically approved' as certified by a medical practitioner, usually a GP or nurse. The approval does not have to be on a medical certificate. If it is not on a medical certificate, alternative corroborating evidence must be provided.
- 3.542 There is no restriction on who
- can provide the necessary care to the claimant, for example, a relative or friend
 - the claimant may look after
- 3.543 Also, a claimant may convalesce at a relative or friend's address, but remember the care or convalescence must be medically approved.

Training courses in the UK or abroad

- 3.544 Courses come within the definition of a training course if
- 1 they are approved by
 - a a Government Department
 - b any Secretary of State
 - c the Scottish Enterprise
 - d Highlands and Islands Enterprise, or
 - 2 an LA has made the training arrangements for any of these organisations
- 3.545 The Department for Innovation, Universities and Skills (DIUS) provided a wide range of employment training courses. These may
- include courses under various EU initiatives, and
 - involve periods abroad
- 3.546 Both the DIUS and the Department of Health (DH) also offer courses for occupational, vocational or social rehabilitation skills. LAs may act as 'agents' for DH by placing disabled persons on these courses which may be
- provided by the LA itself, or the LA may contract with external organisations such as the Royal National Institute for the Blind
 - residential and require participants to live away from home

3.547-3.553

Vulnerable students

3.547 For information about which students are entitled to benefit, see *C2 Student claims* later in this manual. Benefit is available to these students under the temporary absence rules provided they are not eligible for help under the provisions in regulation 7(3), see *Single or lone parent students or trainees away from normal home* earlier in this chapter. See also *C2 Vulnerable students* later in this manual.

Fear of domestic violence

3.548 When dealing with cases involving domestic violence always act with care and compassion within the regulations.

3.549 The fear of violence must be reasonably held. Violence or threatened violence will often have been reported to the police or another reputable supportive organisation. You should be satisfied that the claim is genuine by obtaining the necessary evidence.

Note: Violence in the street because of, for example, racial violence which does not involve a former member of the claimant's family does not satisfy the provisions for payment of HB when absent from home.

3.550 If because of domestic violence

- the claimant is not sure they will return to the former home, or
- has liability to pay housing costs on two homes see, *Overlapping benefit on two homes* later in this chapter

3.551 If payment is not appropriate under any of those circumstances, consider payment under the temporary absence rule.

Claimants receiving care in residential accommodation, but not on a trial basis

3.552 Residential accommodation is defined in regulation 7(18) and includes a variety of establishments that provide a range of care and support services.

3.553 A claimant may enter residential accommodation

- for a temporary period with the clear intention of returning home, in which case they may be entitled to HB for up to 52 weeks if they satisfy the qualifying conditions. They may enter residential accommodation for a temporary period if they are in need of care or nursing, for example, when they normally live alone and are unable to look after themselves during an illness, or to give their full-time carer an opportunity to have a break. It will be necessary to estimate the period of care/nursing likely to be needed, and there should be a definite intention to return to the normal home. It will not be necessary to seek medical evidence that care or nursing is needed in these cases, or

continued

- (3.553) • for a trial period to see if they wish to live there or return home, see *Trial period in residential accommodation* later in this chapter, or
- on a permanent basis, in which case **no** benefit is payable

3.554 You must establish from the start the reason for entering residential accommodation to decide whether the 52 weeks limit is appropriate. You may have to ask the claimant, or a person acting for the claimant, or, for example, the Social Services Department if they are in receipt of HB for any other accommodation.

3.555 All the circumstances will need to be considered but essentially whether the person is in residential accommodation temporarily, for a trial period or permanently is a question of fact.

3.556-3.569

Trial periods in residential accommodation

3.570 A 'trial period' is when a person goes temporarily into residential accommodation to find out whether it would suit, physically, emotionally or both, as a permanent home, with the intention of returning home if it does not.

Qualifying conditions

3.571 These differ from the standard 13 week limit rules. Claimants entering residential accommodation for a trial period may claim HB for up to 13 weeks if

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- they enter residential accommodation to find out whether it suits their needs, **and**
- they intend to return to the accommodation normally occupied as their home if residential accommodation does not suit them, **and**
- the part of the accommodation normally occupied by them as their home is not let or sub-let

3.572 As soon as it is known the claimant is remaining

- treat the absence as permanent, and
- end HB entitlement but
- if the claimant has spent less than 13 weeks in the home and has to pay rent in lieu of notice, HB can be paid for the shortest of
 - 4 weeks
 - end of 13 week period
 - notice period

Remember that HB can only be paid on the former home for the period of notice of up to 4 weeks if, at the outset of the period of temporary absence, the person intended to return home if the accommodation did not suit them.

3.573-3.589

- 3.573 HB may be paid for up to 13 weeks from the date of entry into residential accommodation but there is an overall limit for this absence and any absence that links with it immediately before or after entry into residential accommodation. The total absence from home must not last longer than 52 weeks.
- 3.574 Most claimants entering residential accommodation on a trial period are able to decide whether they wish to stay after a fairly short length of time. Some may decide to try two or more homes.

Example 1

A claimant enters residential accommodation for a trial period and receives HB under the 13 weeks rule. After 3 weeks they decide that the home is not suitable, and go to another home. The claimant can claim benefit for a maximum of 10 weeks at the second home. After 6 weeks at the second home they decide they want to stay permanently and gives up their tenancy. A total of 9 weeks has been paid in this example, up to this point. The claimant is required to serve notice for a period of 2 weeks. HB will be payable for this 2 week period as it is still within the 13 week trial period.

Example 2

A claimant has been in hospital for 45 weeks. On discharge he goes straight into residential accommodation on a trial basis. HB may be paid for up to 7 weeks (52 weeks less the 45 already spent in hospital).

Note: HB would be payable for the same period if the person entered residential accommodation for a period of convalescence, and the qualifying conditions were satisfied.

Example 3

A claimant has been in hospital for 23 weeks. On discharge they go straight into residential accommodation on a trial basis. HB may be paid for up to 13 weeks because the overall maximum of 52 weeks will not be broken.

3.575-3.589

Reason for temporary absence changes

3.590 Occasionally, the reason for a temporary absence will change. The latest reason for absence will determine whether the 13 weeks or 52 weeks rule then applies. In either case the period of absence is still counted from the first day of absence. Remember the special rules for trial periods. If the reason for absence changes

- find out the current reason for absence
- calculate how long the absence has lasted so far
- decide which limit applies to the new reason for absence, and
- decide whether the claimant satisfies the qualifying conditions, see *Standard rule - the 13 week limit*, or *The 52 week limit*, or *Trial period in residential accommodation* as appropriate, earlier in this chapter

Example 1

A remand prisoner is held in custody for 8 weeks (*52 week limit*). He is then convicted but sentence is deferred (*52 week limit*). Three weeks later he is sentenced to one year in prison (*13 week limit*). He is eligible for HB for the 11 weeks of remand and pre-sentence custody, but benefit is withdrawn on sentencing because the overall absence is now expected to last longer than the maximum 13 weeks allowed for sentenced prisoners.

Example 2

A claimant goes on holiday for 16 weeks. Under the 13 weeks rule applicable to holidays, HB is refused because it is known the absence will last longer than the maximum period. When the claimant returns they are admitted to hospital without first going home, and are expected to be there for about 6 months (*52 week limit*). HB is payable for the period in hospital as total absence is likely to be 42 weeks, and is within the 52 weeks limit.

Example 3

A claimant enters residential accommodation for a trial period (*13 week limit*) but after 5 weeks decides to return home. Before they can return home their condition worsens and they stay in residential accommodation for temporary care (*52 week limit*) for another 15 weeks. HB is payable for the full 20 weeks, because of the new reason for absence.

3.591-3.619

3.620-3.631

Overlapping benefit on two homes

3.620 HB should normally be paid for a rent liability on one home **only** at any time. There are, however, a few exceptions to this rule, which are set out below. Do not pay HB on two homes under any circumstances other than these and never where the claimant pays rent for more than two homes.

HB Reg 7 & (SPC) 7

3.621 A claimant who receives HB, moves to a new home within the same LA and is entitled to HB on both homes, does not need to make a new claim in advance of moving as the change is regarded as a change of circumstances.

3.622 For persons required to reside in approved probation and bail hostels as a condition of bail HB may only be paid for the normal home. Before 1 April 2000 HB could only be paid for either the bail hostel **or** the normal home, but not both. From 1 April 2000 charges made for these hostels do not attract HB at all.

3.623-3.629

Fear of violence

3.630 Pay HB for both rental liability on the claimant's former and current home if all the following apply

HB Reg 7 & (SPC) 7; CTB Reg 8 & (SPC) 8

- the claimant left their former home because of fear of violence and is not going back yet because of violence or the fear of violence happening, either
 - in the home by another person, for example a former partner, non dependant or a neighbour, or racial violence, or
 - outside the home by a former member of the claimant's family
- the claimant intends to return to and live in the former home
- you consider it reasonable to pay HB for both rental liabilities

3.631 Payment for the claimant's former home in these circumstances is subject to an absolute limit of 52 weeks. Check regularly, and certainly after 26 weeks, that the claimant intends to return to the former home.

- 3.632 Stop payment for the former home immediately if the claimant subsequently later decides not to return. Do not treat as an overpayment any benefit paid for the former home for a period when the claimant intended to return.

Example

An injunction has been granted against a claimant's former partner because of violence in the marital home. The claimant has moved temporarily into a women's refuge. She is afraid to return to her home at present because of the threat of attack but intends to do so soon. HB can continue for up to 52 weeks unless the claimant decides not to return to the former home when HB stops immediately.

- 3.633 If the claimant cannot decide whether to return to the former home see *Cases involving domestic violence* earlier in this chapter.

3.634-3.649

One of a couple is a student or trainee

- 3.650 Couples who are living in separate accommodation when one partner is student or away on a training course can receive benefit for both properties only when you consider that

HB Reg 7

- separate accommodation is **unavoidable**, and
- it is **reasonable** to pay HB on both homes

- 3.651 There is no maximum time limit to this provision. See *C2 Student claims* for provisions for couples when one member is a student.

3.652-3.659

Large families

- 3.660 You may pay HB for two homes when the LA housing department has housed a family in two separate homes because the family is too large for the LA to accommodate in any one available home. **Both** homes must be provided, but not necessarily owned by, the LA and would normally be next to each other or within a few streets of each other.

- 3.661 There is no time limit to this provision.

HB Reg 7 & (SPC) 7

- 3.662 This provision does **not** apply when a family

- is partly housed in private rented accommodation or owner occupied accommodation unless the LA placed them there, or
- has been placed in the accommodation by anyone other than the LA housing department

3.663-3.669

3.670-3.677

Gypsy and Traveller site rents and mooring fees

- 3.670 The eligible rent for Gypsy and Traveller sites is subject to different rules depending on the type of organisation that is the landlord for the site
- **private Gypsy and Traveller site rents attract rent allowances** and are referred to the rent officer (RO) and their eligible rents decided by the maximum rent
 - **county council site rents attract rent allowances** and are not automatically referred to the RO and their rents are usually met in full
 - **registered housing association site rents** attract rent allowance and are not automatically referred to the RO and their rents are usually met in full
 - **district and unitary council site rents** attract rent rebates and are not referred to the RO and their rents are usually met in full
- 3.671 Only refer county council and registered housing association Gypsy and Traveller sites to the RO when the rent is considered to be unreasonably high or the pitch too large. These will have their eligible rent decided by the maximum rent.

Renting a caravan, mobile home or houseboat on an LA site or mooring

- 3.672 When a person is liable for rent on a caravan, mobile home or houseboat HB would take the form of rent allowance, but they could also be liable for the rent on their pitch to a district or unitary council for which HB would take the form of a rent rebate.
- 3.673 If the landlord for the site or mooring is either private sector or a county council there is not an issue as both liabilities are rent allowance and therefore HB can be awarded on both.
- 3.674 As HB cannot be paid as both a rent rebate and rent allowance a person's district or unitary authority site rent or mooring fee must be changed into a rent allowance so help can be given with both liabilities. This change is only appropriate in situations where the person rents a caravan, mobile home or houseboat privately.
- 3.675 Only refer district or unitary council site rents and moorings to the RO when you consider the rent to be unreasonably high or the pitch too large.
- 3.676 The site rents on district or unitary council sites or moorings, when the person does not rent a caravan, mobile home or houseboat privately, continue to have HB paid as a rent rebate and are not be subject to RO referral.
- 3.677 The liability on a caravan, mobile home or houseboat on any type of site or mooring that would be rent allowance should be referred to the RO.

Determining the eligible rent

- 3.678 This potential for different treatment of two liabilities that a person may have when they live in a caravan, mobile home or houseboat means that their eligible rent could be determined through both
- HB regulation 12B, for county council, district and unitary site rents or mooring fees, and
 - HB regulation 12C (maximum rent) which would apply to the rent on the caravan, mobile home or houseboat
- 3.679 If an eligible rent is determined through both HB regulation 12B and 12C, the two elements can be brought together through HB regulation 11 where the 'or' at the end of paragraph (1) (c) can be read as 'and/or' where the context requires.
- 3.680 If your software does not allow for the HB award to be paid to two landlords then you should set these cases up as two overlapping claims allowing you to establish a single case with two claims, one for the pitch rental and one for the caravan rental. The two claims will then be assessed together for combined liabilities and the benefit will be split (according to the rent liability) and paid to each landlord.
- 3.681 When these circumstances apply and a rent rebate is treated as a rent allowance it does not alter the nature of it being a rent rebate case. Therefore, when it comes to paying the HB the site or mooring fee can revert to being a rent rebate.

Unavoidable overlap of liability

- 3.682 This provision
- only applies when the claimant makes a permanent move from one home to another, and
- HB Reg 7 & (SPC) 7*
- **must** only be used in exceptional circumstances; people generally plan their move in advance and will normally be able to avoid having dual liabilities
 - **must** be considered before making a decision on entitlement to benefit

See Commissioner Jacobs' decision, CH4546/2002, 29 October 2003

- 3.683 When a claimant has moved into a new home before giving up the tenancy on the old home (not a temporary home as in Temporary absence from home earlier in this chapter) you may consider that liability for payments on both the old and new homes could not reasonably have been avoided. In this instance, HB can be paid for both homes, but for the **former home** can be paid for a maximum period of four weeks only, even if dual liability exceeds that period. If the four weeks ends before that liability stops, there will be no entitlement to benefit for the remainder of the liability.

3.684-3.688

- 3.684 You must consider whether the claimant could have **reasonably** avoided taking on two liabilities at the same time. This means considering
- why the claimant needed to move
 - why dual liability could not have been avoided
 - the period of notice required to terminate the tenancy on the old home
- 3.685 Such a situation might arise where an overcrowded family is allocated a property of suitable size. It would probably not arise when a tenant decided to move for personal reasons, but could arise if they started work and were required to move closer to the new job.
- 3.686 Unless otherwise specified and for the purposes of reg 7 only, 'a liability to make a payment on a dwelling' means an actual liability even if the liability is not deemed to be one under reg 9, see *Commissioner Jacobs' decision, CH4546/2002, 29 October 2003*. The liability must be a genuine liability, ie one that if not met would mean the person would lose their right to occupy the dwelling. Having established liability, reg 7(6) entitles the LA to treat that person as occupying both dwellings as their home.
- 3.687 This provision does not apply when a claimant has simply failed to give notice, despite having the opportunity to do so. Also if a claimant often moves from one property to another for no good reason the liability might reasonably be considered to have been avoidable.
- 3.688 Always consider each case individually.

Example 1

An inadequately housed family needed to move quickly to secure more suitable accommodation. The dual liability could not reasonably have been avoided.

Example 2

A disabled woman living in a privately rented flat inadequate for her needs is offered the tenancy of an LA flat more suitable for her needs. To be secured the tenancy must be accepted immediately. The dual liability could not reasonably have been avoided.

Example 3

A person moves into a residential care home on a permanent basis because they can no longer look after themselves. They have to pay rent on their previous accommodation until the period of notice is complete. They also have to pay fees to the residential care home. This is treated as two liabilities. The dual liability could not reasonably have been avoided. Even though HB will not be payable on the second liability, it can be considered for the first one.

Example 4

A single claimant has moved for no particular reason and simply failed to give the required notice to his landlord. The continuing liability on the former home could reasonably have been avoided.

Landlord re-lets accommodation before notice period ends

- 3.689 There may be no eligibility for benefit on the former home if a landlord re-lets the accommodation before the notice period ends. When a person is paid HB for two homes under regulation 7(6)(d), payment for the former home is made on the understanding that the claimant has a continuing liability to make payments for it after having moved to their new home. The liability must be a genuine, **legally enforceable** liability to pay rent, one that a court would recognise and enforce. The claimant must occupy a property or be treated as occupying it if there is to be eligibility for benefit. It is also implicit in regulations that benefit should not be paid to more than one claimant for a property at any one time.
- 3.690 If a property is re-let while payments of HB are still being made under regulation 7(6)(d), you must consider
- whether the claimant's liability had ended, for example would payment no longer be enforced
 - recovery of an overpayment, see *HB/CTB Overpayment Guide*
- 3.691 Do not use this provision
- as a way to reduce any HB overpayment that has been paid direct to a landlord
 - when the claimant dies and there is a four week period of notice to discharge
 - when the claimant moves into temporary accommodation and then goes back to the former home, see *Temporary absence* from home earlier in this chapter

3.692-3.699

Rent payable for a period before occupation

- 3.700 HB is not payable for accommodation the claimant does not yet occupy as their home, even if they are liable to make payments. This means that even when a new tenancy agreement has started, HB cannot be paid until the claimant has actually moved into the property. However, in certain circumstances, a claimant can be treated as having occupied the accommodation as their home for up to four benefit weeks before they move in, see *When to consider payment for a period before occupation* later in this chapter.

HB Reg 7 & (SPC) 7

- 3.701 Only make payments under this provision
- if a claim to benefit has been made, or treated as made, for the period of the payment, see *Date of claim* later in this chapter
 - **after** the claimant has moved in
 - for the weeks, not exceeding four, for which there is a legal liability to make payments

3.702-3.730

When to consider payment for a period before occupation

3.702 Only when the delay in moving was reasonable and the claimant meets one of the following criteria, can HB be payable for not more than four weeks before they move into a new home

HB Reg 7 & (SPC) 7

1 the move was delayed while necessary adaptations were made to the home to meet the particular disablement needs of a disabled claimant or a member of their family

HB Reg 7 & (SPC) 7

2 the move was delayed pending the outcome of a Social Fund application for a payment connected with the move and the claimant's applicable amount includes a Disability Premium

HB Reg 7 & (SPC) 7

3 the claimant became liable to make payments for the accommodation while they were a patient or in residential care or a nursing home, or Part III accommodation (or similar), provided by the LA under its powers under Sections 21 to 24 of the National Assistance Act 1948

HB Reg 7 & (SPC) 7,

Note: For the purposes of Regulation 7, 'residential accommodation' is widely defined to include registered nursing homes or mental nursing homes, Part III accommodation, Abbeyfield.

3.703 Claimants who satisfy the conditions of 2-3 in paragraph 3.702 are only eligible for HB in respect of rent payable for a period before occupation if they are not receiving HB for any other accommodation.

3.704 In each case, you must be satisfied that it was reasonable for the claimant to delay the move. Do not consider it reasonable for a move to be delayed while waiting for a decision on a Social Fund application if the claimant could have managed adequately without the item in question. For example, if the application was for carpets or items of furniture such as wardrobes, or a heating appliance in the summer which, while desirable, are not essential in the short term.

3.705-3.729

Date of claim

3.730 A claim must have been made, or treated as made, for the period the claimant is treated as occupying the accommodation as their home.

3.731 If the claim has been decided and benefit refused because the claimant was not occupying the home, treat a repeat claim made within four weeks after moving in as being made on the later of the

HB Reg 7 & (SPC) 7

- same date as the earlier claim, or
- date from which the claimant is treated as occupying their home

3.732 A claimant who receives HB, moves to a new home within the same LA and is entitled to HB on both homes, does not need to make a new claim in advance of moving as the change is regarded as a change of circumstances. See *Overlapping benefit on two homes* earlier in this chapter.

3.733-3.999

R v. Manchester City Council, ex parte Baragrove Properties

3A.00 The Baragrove case concerned Housing Benefit claims made by tenants of a letting agency in Manchester (Baragrove Properties). It was argued that the agency specifically advertised for tenants on Housing Benefit who were members of vulnerable groups and charged them excessive rents in the knowledge that Housing Benefit would be difficult to restrict. Manchester City Council felt that the tenancies were created to take advantage of the Housing Benefit scheme and refused Housing Benefit. This decision was challenged in the Divisional Court, who found that Manchester City Council had adequate grounds to treat the tenancies as being created to take advantage of the Housing Benefit scheme. It has broader implications than its own facts and can be applied in other situations. **English authorities can rely on this caselaw when considering tenancies created in the knowledge that it is difficult for you to restrict excessive rents (eg targeted at members of vulnerable groups). Scottish authorities would find it helpful and persuasive.**

3A.01-3A.99

Government departments and agencies with residential accommodation let to tenants

The following government departments and agencies have residential properties for which LAs may receive requests for HB assessments

- Cabinet Office - Civil Service College
- Department of Culture, Media and Sport - The Royal Parks
- Department for Transport - Highways Agency
- Department of Health
- Department of Social Security
- Foreign and Commonwealth Office
- HM Revenue and Customs
- HM Treasury
- Home Office
 - Prison Service
 - Metropolitan Police Service
 - Emergency Planning and Police Training Colleges
- Department for Constitutional Affairs - Court Service
- Department for Environment, Food and Rural Affairs
- Ministry of Defence
 - Defence Housing Executive
 - Defence Estate Organisation
 - Greenwich Hospital Estate
- NHS Executive
- Scottish Office
 - Historic Scotland
 - Health Boards and Special Health Boards
- Welsh Office
 - Transport and Highways Directorate
 - CADW

Note: This is not a complete list, there may be other properties.

CT liability when students share accommodation: examples

Example 1

One full-time student (not eligible for CTB) sharing with one non-student benefit recipient

The 25 per cent reduction is applied, leaving 75 per cent of the total liability to be paid. The presence of the full-time student is ignored, so the non-student's CTB entitlement will be calculated based on the remaining 75 per cent of the liability, subject to normal rules on income and capital, as if he lived alone. However, both residents will remain liable for any outstanding amount not covered by CTB, ie: when the claimant is not entitled to 100 per cent maximum CTB.

Example 2

Three full-time students (none of whom is eligible for CTB) sharing with one non-student benefit recipient

The 25 per cent reduction is applied, leaving 75 per cent of the total liability to be paid. The presence of all three full-time students will be ignored, so the non-student's benefit entitlement will be calculated based on the remaining 75 per cent of the total liability, subject to income and capital, as if he lived alone. However, all residents will remain jointly liable for any outstanding amount not covered by CTB.

Example 3

Two full-time students (neither of whom is eligible for CTB) sharing with one non-student in full-time employment and one non-student benefit recipient

The 25 per cent reduction will not apply. The presence of the two full-time students will be ignored but that of the non-student in full-time employment will not. Therefore the non-student claimant's CTB entitlement will be calculated based on 50 per cent of the liability (as if he were sharing with the full-time employee only). All four residents will remain jointly liable for any of the remaining 50 per cent liability which is not paid.