

# The Spare Room Subsidy (aka The Bedroom Tax)

Information Guide 13: For Residents and Advisers

12<sup>th</sup> June 2023

[www.wolverhampton.gov.uk](http://www.wolverhampton.gov.uk)

## 1. Introduction

The Spare Room Subsidy (aka the bedroom tax) was introduced in April 2013. It is a measure designed to limit the amount of **Housing Benefit** or **Universal Credit** ('housing cost' element) awarded to people of '**working age**' (see page 2) living in social housing tenancies (e.g. Wolverhampton Homes and housing association tenancies) who could be deemed to be living in accommodation with a greater number of bedrooms than actually required.



Prior to the introduction of the Spare Room Subsidy only private landlord tenancies were subject to a form of Spare Room Subsidy. In these cases, the maximum amount of Housing Benefit / Universal Credit ('housing cost' element) has been limited according to a 'local reference rent' set in keeping with the number of bedrooms needed given the size and make-up of the claimant's family.

## 2. The Size Criteria...

The Spare Room Subsidy restricts the amount of Housing Benefit or Universal Credit ('housing cost' element) according to the number of bedrooms the property has and the number of people living in the property. The size criteria formula allows one bedroom for each adult (or adult couple) or child in the property, with the following exceptions:

- children under 16 of the same gender are expected to share - two children per room
- children under 10 of the same or different gender are expected to share - two children per room.

If a child spends time with both parents who live apart then the child will be deemed to live with the parent with whom they spend the majority of time. If an equal amount of time is spent living with each parent, then normally it will be deemed that the child lives with the parent who receives Child Benefit for them.

Any claimant deemed to have more bedrooms than they require under the size criteria formula will lose a proportion of their Housing Benefit or Universal Credit (housing cost element).

The level of reduction is a fixed percentage of the claimant's 'eligible rent' - the amount of rent which is actually eligible for Housing Benefit / Universal Credit.

The level of reduction is:

- 14% where there is one extra bedroom; or
- 25% where there are two or more extra bedrooms

**How it works:** Habib and Sally are a couple. They have a 14-year-old son. Their 'eligible rent' is £100 per week. If the family were living in a two-bedroomed property, then they would not be affected by the Spare Room Subsidy. They are allowed one-bedroom for themselves and one-bedroom for their son. The couple's rent would be met in full. If the family were living in a three-bedroom property, then the amount of help they received with their rent would be reduced to £86.00 per week. This is because they would encounter a 14% penalty because they would be deemed to have a spare bedroom. If the family were living in a four-bedroom property, then the amount of help they received with their rent would be reduced to £75.00 per week. This is because they would encounter a 25% penalty because they would be deemed to have two spare bedrooms.



In November 2018 there were 2,271 households affected by the Spare Room Subsidy in Wolverhampton - Wolverhampton Homes properties 1,907 and 364 housing association/other properties. Of these 1,858 had their Housing Benefit payments reduced by 14% and 413 by 25%.

**Working Age:** A person will be considered to be of 'working age' if they are aged 16 or over but under State Pension Age. The State Pension Age is presently 66 for both men and women. However, there are plans to increase this to 67 between 2026 to 2028 and then 68 between 2037 and 2039.

### 3. Extra Bedroom...

**A. Sharing Couples:** Since 1<sup>st</sup> April 2017 an individual bedroom may be allowed for each member of an adult couple where one member is disabled and due to his/her disability, the couple should not reasonably be expected to share a bedroom. To qualify, the disabled member of the couple must be getting PIP (daily living component), Disability Living Allowance (middle or higher rate care component) or Attendance Allowance (higher rate but not lower rate) or Armed Forces Independence Payment.

R (Carmichael) v SSWP and R (Rutherford) v SSWP [2016] UKSC 58

**B. Sharing Children:** Since 4<sup>th</sup> December 2017 an individual bedroom may be allowed for a disabled child (aged under 16) where due to their disability, it is not reasonable to expect them to share a bedroom with another child (aged under 16). To qualify, the disabled child must be entitled to DLA (middle or higher rate care component).



Burnip v Birmingham City Council and Other [2012] EWCA Civ 629

**C. Overnight Carer:** An individual bedroom may be allowed for a disabled child or adult who requires 'overnight care' and evidence of their overnight care needs has been established.

To qualify, the 'overnight care' must be reasonably required, and the disabled child or adult should be getting PIP (daily living component), Disability Living Allowance (middle or higher rate care component), Attendance Allowance or Armed Forces Independence Payment. Further, arrangements must be in place for a carer(s) to come and provide care and, in doing so, for them to stay overnight at such times and frequency that a bedroom is needed for them.

SD v Eastleigh Borough Council - [2014] UKUT 325 (AAC)

**D. Boarder/Lodger:** If someone rents out a room in the property in which they live to a boarder or lodger then a bedroom will be allowed for that boarder/lodger. However, do note that rent from a boarder/lodger will be taken into account as 'income' (less a certain disregarded amount) for Housing Benefit, Income Support, Income-based JSA and Income-related ESA (but NOT Universal Credit), resulting in a possible reduction in or withdrawal of the amount of benefit being paid. Anyone seeking to rent out a room in their home should seek the approval of their landlord. In some cases, the terms of the tenancy agreement may forbid such arrangements. Do seek further advice and information as necessary.



**E. Parents of Armed Forces Children:** A bedroom may also be allowed for adult children who are serving in the armed forces but who continue to live with parents. The adult child will be treated as continuing to live at home for the purposes of the Spare Room Subsidy threshold.

**F. Students and Others:** A person may be treated as occupying their bedroom if they are away from home temporarily. For example, this could be in the case of **students** who are returning home regularly, **people in hospital** who intend to return within 52 weeks and **prisoners** who are sentenced to 6 months or less.

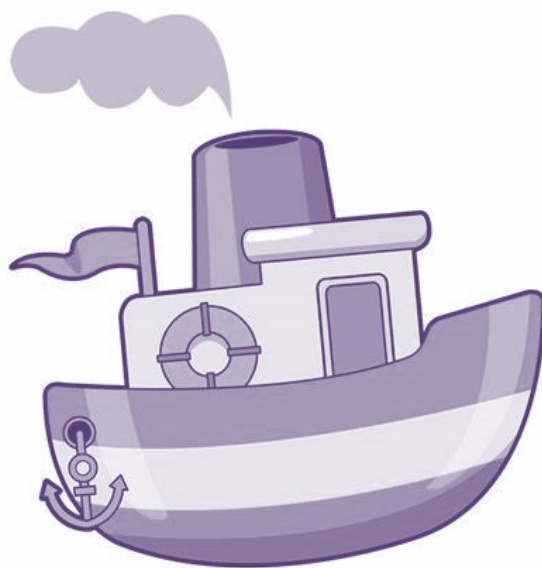
See also 6. Foster Carers on page 4.

## 4. Exempt properties...

**A. Supported Accommodation:** The Spare Room Subsidy should not be applied to those living in '**supported accommodation**' - that is to say accommodation provided by a housing association or charity where the tenant receives care, support or supervision.

**B. Shared Ownership:** The Spare Room Subsidy should not be applied in shared ownership cases, that is to say in cases where the claimant is buying part of their home and renting the other part.

**C. Caravan, Houseboat or Other:** The Spare Room Subsidy should not be applied in cases where the claimant is living on in a caravan, on a houseboat or in a mobile home.



**D. Temporary Accommodation:** The Spare Room Subsidy should not be applied in cases where the claimant is living in temporary accommodation provided for homeless people by a local authority or housing association.

### **Domestic Violence / Sanctuary Scheme:**

In some situations, a property may be exempt from the Spare Room Subsidy where the tenant (or a member of their family) has experienced domestic abuse and/or violence (including threats of domestic abuse and/or violence) by a partner (or former partner or relative) and the property has been adapted by the landlord under the 'sanctuary scheme' to ensure additional safety measures to enable the tenant to continue to live in the property. Do seek further information and advice as necessary.

Where there has been a death in the family, any Spare Room Subsidy penalty arising because of this, would not apply for a period of 12 months (Housing Benefit) or 3 months (Universal Credit).

## **5. What is a Bedroom?**

The rules do not define what actually constitutes a 'bedroom' but case law has said that a 'bedroom' is essentially a room capable of being used as a bedroom. The starting point is that there is a room(s) within the property which may be described as a 'bedroom' and is suitable for sleeping in. It could include a room that was formerly a lounge or living room but is now used as a room for sleeping in / contains a bed for sleeping. Much will turn on the way the property is described by the landlord - one bedroomed, two bedroomed, three bedroomed, etc. A property described as having two bedrooms and a lounge will be two bedroomed. However, a property described as having three bedrooms because the lounge has been turned into a bedroom will be three bedroomed. In any event, the fact that a landlord may only charge a one-bedroom rent for a two-bedroom property is irrelevant.

In deciding whether a room is a 'bedroom' the size of the room may be relevant - can it accommodate a single bed and somewhere to store clothes? Issues of access to the room and whether it has adequate, natural and electric lighting, heating, ventilation and privacy are also relevant.

In a recent Upper Tribunal case, the claimant argued that her spare room was too small to be considered to be a 'bedroom'. In this case the room measured 43 square feet and could not accommodate a single bed, bedside cabinet and clothes storage furniture. In dismissing the appeal, the Upper Tribunal Judge held that a separate bedside table and clothes storage furniture is not required. The Judge held that a bedside cabinet that served both purposes would do.

In this case the shape of the room could accommodate a single bed and bedside cabinet. The outcome of an appeal involving a similar sized room but with a different layout meaning that a single bed and bedside cabinet could not be accommodated could have been different.

M v SSWP - [2017] UKUT 443 (AAC)

## **6. Foster Carers...**

The rules enable Foster Carers to be allowed an extra bedroom if they are:

- looking after a foster child, or
- a Foster Carer and they are between placements (but only for a period of 52 weeks starting from the date of their last placement); or
- a newly approved Foster Carer and they have no placement (but only for a period of up to 52 weeks from the date they were approved).

The maximum allowance is one bedroom. This means that a Foster Carer who is living in a three-bedroom property with one foster child (and no other occupants) will still encounter a 14% penalty.

A Foster Carer who is living in a three-bedroom property who has two foster children each having their own room would also be penalised by a 14% penalty.

Note a person should be allowed an extra bedroom for any child or young person placed with them for adoption.



There is no provision for families who have children actually in care to retain a bedroom for their potential return.

## 7. Options...

The options available to those affected by the Spare Room Subsidy are limited. If a person's Housing Benefit/Universal Credit 'housing cost' payments do not cover a person's rent in full then they are expected to make up any shortfall. A person risks losing their home if they do not pay their rent.

Those affected by the Spare Room Subsidy can seek to:

- move into accommodation with fewer bedrooms - although in cases of those who get benefits because they are disabled/ severely disabled they should seek expert advice first because moving home could trigger the need to claim Universal Credit and this could leave them worse off
- increase their benefit income by making sure that they are claiming all the benefits that they are entitled to
- increase their income by means of finding paid employment or better paid employment
- take in a boarder or a lodger - before doing this the person should seek to obtain their landlord's permission first/get expert advice on what impact (if any) this might have on their existing benefits.

### Discretionary Housing Payment (DHP):

Those affected by the Spare Room Subsidy who get Housing Benefit or receive Universal Credit can apply for a DHP from the City of Wolverhampton Council to help them to make up the gap between their rent and their Housing Benefit/Universal Credit payments.



The budget each Council has for Discretionary Housing Payments is cash limited. Even though the level of the budget has been increased by the government in recent years to assist those affected by particular welfare reform measures (including disabled people living in significantly adapted accommodation who are affected by the Spare Room Subsidy but cannot reasonably be expected to move), there is not sufficient money to help everyone.

Therefore, applicants need to know that any award will most likely be time limited and, in most situations, it will not necessarily cover the whole of the shortfall between a person's rent and the level of Housing Benefit / Universal Credit. In most cases, any award of a DHP will only be paid to enable the person to consider their options and get further advice where needed.



More information about the Discretionary Housing Payment scheme operated by the City of Wolverhampton Council for people living in Wolverhampton may be found on this [LINK](#). A person may also use the link to actually make an online application.

However, please note only people who actually get Housing Benefit or whose Universal Credit calculation includes an amount for rent/eligible service charges may apply for a Discretionary Housing Payment.



See this [LINK](#) for details of the Department for Work and Pensions' statutory guidance to local authorities on Discretionary Housing Payments.

## 8. Information Guides and Fact Sheets

The Welfare Rights Service produces the following Information Guides and Fact Sheets on Social Security benefits and welfare reform.

### Benefits Information Guides:

1. Universal Credit
2. Universal Credit - Claims and Payments
3. Universal Credit - The Claimant Commitment
4. Universal Credit - Sanctions and Hardship Payments
5. Universal Credit and Vulnerable People - Claims and Payments
6. Universal Credit - Unable to Work Due to Ill-health or Disability
7. Universal Credit and The Work Capability Assessment - Toolkit
8. Personal Independence Payment
9. Personal Independence Payment - Toolkit
10. Form Filling: PIP2
11. Form Filling: ESA50 / UC50
12. DWP Social Fund
13. The Spare Room Subsidy
14. The Benefit Cap

15. Disputes and Appeals
16. Going to Appeal: First-tier Tribunals

### Benefits Fact Sheets:

1. Benefits and Work
2. Benefits and Disabled Children
3. Benefits and Young People
4. Benefits and Older People
5. Benefits and People from Abroad
6. Private Tenants and Universal Credit
7. Volunteering and Benefits

The information provided is designed to provide details of the different benefits that may be available to people in a variety of different situations including when they are in work, unable to work due to ill-health, unemployed or retired. It also seeks to inform people of the steps that may be taken should they wish to dispute a decision made surrounding their benefit entitlement.

A copy of the Information Guides and Fact Sheets may, together with other topical benefit information, be obtained from our [Social Security Benefits](#) page on the City of Wolverhampton Council website.

Please also watch out for our periodical **Benefits Bulletins** which provide news on the latest developments surrounding benefits and welfare reform. These are also available on the website.

☎ Telephone: (01902) 555351

✉ Email: [WRS@wolverhampton.gov.uk](mailto:WRS@wolverhampton.gov.uk)

Note: The details provided in this and our other Information Guides and Fact Sheets is meant to provide an overview on important and topical issues relating to Social Security benefits and welfare reform. The details should not be treated as an authoritative statement of the law. The details may be subject to change by new regulation and/or case law. Do seek further information and advice as necessary.

Welfare Rights Service  
Specialist Support Team  
City of Wolverhampton Council