

# Reclassifying property size to avoid the 'bedroom tax' – Frequently Asked Questions

CIH Scotland, May 2013

Note: This document can be read in conjunction with the DWP's March 2013 Frequently Asked Questions on what the DWP refers to as the 'spare room subsidy': <http://www.dwp.gov.uk/docs/faq-spare-room-subsidy.pdf>

*Is reclassifying property size a way of avoiding the bedroom tax?*

CIH Scotland believes that in practice, reclassification will be a solution only in a limited number of cases, depending on the particular circumstances each landlord faces. Below we explain our view in more detail.

*Is property reclassification entirely up to the landlord?*

Reclassification per se is, and always has been, a matter for the landlord. However, the local authority's revenues and benefits function is not bound by the landlord's decision. It would be good practice for landlords to talk with the local authority about any reclassification plans. CIH Scotland's sense is that generally, local authorities seem likely to accept the bedroom size categorisation a landlord uses.

*Should landlords be reclassifying where a bedroom falls below a particular size?*

With the DWP not having defined a 'bedroom', it has been argued in some quarters that where room size falls below a specified minimum, the landlord should/must declare it not to be a bedroom. CIH Scotland is clear that this is based on an incorrect interpretation of overcrowding law AND the false assumption that overcrowding law overrides benefit regulations.

Some have argued that according to legislation (in Scotland this is Section 137 of the Housing (Scotland) Act 1987), a room is not a bedroom if it is less than 50 square feet. But the Act does not say this - it just says it is not counted for the purposes of calculating overcrowding. And importantly, this argument ignores the fact that the legislation very clearly says that a room is available for sleeping (which is how it is decided whether there is overcrowding) if it is a bedroom *or a living room*. So this argument would only have validity in situations where there were only bedrooms (and one was less than 50 square feet) *and* no other living room.

This seems rather technical, but the end result is that in almost all cases, bedroom size alone is *not* a factor which landlords are under any obligation to take account of in considering any potential reclassification.

Of course, a landlord may *voluntarily* choose to decide that rooms of a certain size are not bedrooms, as we understand at least one Scottish local authority landlord appears to be doing. Such an approach would need to be very carefully thought through, particularly in terms of whether reclassification would lead to a rent reduction (see below).

Also, landlords looking to reclassify particular property types will need to decide whether all such properties are to be reclassified, or just those occupied by tenants affected by the bedroom tax. If the change is to be acceptable to the local authority's revenues and benefits function, the landlord would normally need to be seen to be making the change across all such properties, not just those occupied by affected tenants.

*Are recent cases reported in the housing press significant?*

One case reported in the housing press in February 2013 concerned *Knowsley Housing Trust*, which was said to be reclassifying around 4% of its stock by redesignating some two and three bedroom homes as one and two bedroom homes respectively. Whilst it was unclear from the report whether the local authority had approved the changes, it was clear that the redesignation had led to rent reductions.

In April it was reported that *Leeds City Council* was exploring reclassifying 865 homes, including three-bedroom, low-rise flats which could be re-designated as two-bedroom, five-bedroom houses with a downstairs bedroom which could be reclassified as having four bedrooms, and two-bedroom flats which the Council believed could be classed as one-bedroom. The report stated that the properties in question were in low demand, suggesting that they were more than usually likely to be offered to under occupying households. Additionally, it was suggested that the properties lent themselves to potential redesignation due to their layouts. Again it was not clear whether any changes had yet been approved by the Council's revenues and benefits function. It was also unclear whether redesignation would lead to rent reductions.

*Are there other circumstances in which property size could be reclassified?*

There may well be other circumstances in which landlords are already looking to reclassify or may do so in the near future. One example is a Scottish local authority which may be seeking to reclassify on the basis that a through-floor lift effectively reduces the number of bedrooms (albeit this would not affect a large number of properties). Other circumstances might include lack of external light, ventilation or other standard amenity (one would not expect a large number of properties to be affected by these factors).

*Would reclassification mean a rent reduction?*

There is no straightforward answer to this question, and CIH Scotland believes that landlords may have significant discretion on this. Factors influencing this include:

- The landlord's rent structure/policy, i.e. the criteria for deciding how rent is calculated for properties of different types, size, location etc. (the policy could not normally be changed without wide consultation with tenants)
- What the tenancy agreement says about the property and, in particular, whether it has a designated number of (a) bedrooms, (b) apartments/rooms or (c) both

In any cases where reclassification is undertaken as a result of a lack of – for example – external light or ventilation, it is hard to imagine this not leading to a rent reduction.

Where a rent reduction results, the question then arises of backdating. If a tenant has lived in the property for 10 years and the landlord decides it has fewer bedrooms than originally stated, there is an argument that the reduction should be backdated (although whether the tenants in question are minded to demand this is another issue).

*What about arguing that a 'spare' room can't be used as a bedroom?*

The most commonly quoted example of this is where the room has to be used to store a wheelchair or other disability equipment. Whilst this is to some extent a grey area, CIH Scotland's understanding is that local authorities may have little or no scope for discretion in such cases.

*What exactly is the position on foster carers and armed services personnel?*

In the case of foster carers, one bedroom is added to what they need for themselves, so in some cases they might still be deemed to be under occupying, regardless of how many children they are caring for. In the case of service personnel, where an adult child leaves the family home to serve in the forces, their family can continue to count the bedroom in question. There is no general exemption for armed forces personnel.

*What about disabled households?*

As things stand, only in very limited circumstances will the bedroom tax not be applied. These include cases where an overnight carer is required. Recent test cases indicate that where children need a separate bedroom because one or both has/have a serious disability, the local authority is likely to agree that an 'extra room' is required. Our understanding is that local authority revenues and benefits functions have relatively little scope to allow an extra room in cases where adults say they cannot share because of a disability.

*Could the current cases going to Judicial Review be significant?*

The 10 cases being taken to the High Court in mid-May 2013 all involve a variety of circumstances in which households with one or more disabled adult(s) or child(ren) claim the bedroom tax is discriminating against them as disabled people. At this stage it is difficult to speculate on what the outcome might be and whether any outcome deemed by the UK Government to be unfavourable might be further challenged. Further information on the implications will be posted on the Knowledge Hub at the appropriate time.

*Once Universal Credit comes in, could the DWP take a different view from the local authority?*

This is unlikely in cases where reclassification has taken place. However, in cases where a local authority has allowed an exemption based on the personal circumstances of a particular case, it is possible that the DWP may subsequently disagree with and reverse the decision under Universal Credit.

*Are Discretionary Housing Payments likely to help people affected by the bedroom tax?*

Each local authority will have its own approach to how they distribute this very limited pot. So as manage expectations appropriately, landlords should seek to familiarise themselves with their local authority's DHP policy. We would expect that in most areas, only a very small proportion of people affected by the bedroom tax will be successful in securing help through DHPs, with most councils likely to consider DHPs only in certain defined circumstances.