

Mixed age couples and the Maximum Rent (Social Sector)

The working age HB Regulations

1. The *Housing Benefit Regulations 2006* (“the working age regulations”) govern the calculation of Housing Benefit for working age claimants. These Regulations apply to certain “mixed age couples”: couples where one partner has reached state pension credit age but the other has not.
 - If the younger partner is claiming Income Support (IS), income-based Jobseekers Allowance (JSA) or income-related Employment and Support Allowance (ESA), the working age regulations apply
 - Otherwise, mixed age couples are covered by the *Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006*
2. One of the key differences between these two sets of regulations is that the working age regulations contain the “maximum rent (social sector)” rules – better known as the bedroom tax. The bedroom tax reduces HB for local authority and housing association tenants who have spare bedrooms in their home. At first sight, therefore, one might conclude that mixed age couples whose HB is subject to the working age regulations can be affected by the bedroom tax.
3. However, Regulation A13(2)(d) says that the bedroom tax does not apply in a case where either the claimant or partner has reached the qualifying age for state pension credit. This means that mixed age couples are not affected by the bedroom tax even if their HB claim is administered under the working age regulations.

The No 31 Commencement Order

4. The *Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions and Commencement No. 21 and 23 and Transitional and Transitory Provisions (Amendment)) Order 2019* (“the No 31 Order”) makes some changes to the means-tested benefits available to mixed age couples. Article 6 says that HB awards to mixed age couples must terminate when certain events occur.
5. If a mixed age couple’s HB terminates in accordance with Article 6, they have the option (if they wish) of claiming Universal Credit instead. But there is a problem where the couple’s HB, IS, ESA or JSA includes a supplement known as the Severe Disability Premium (SDP). People with an SDP are not allowed to claim Universal Credit. This means that a mixed age couple could lose their

HB under Article 6 of the No 31 Order but be unable to claim UC instead. Article 8 of the No 31 Order addresses this problem as follows:

- The older member of the couple is treated as if s/he were working age for the purpose of remaining personally eligible for HB if s/he would not be allowed to claim UC by virtue of having an SDP¹
- This means that s/he may:
 - Remain on HB under the working age regulations if s/he is already the claimant
 - Claim HB under the working age regulations if s/he is not already the claimant

Circular A9/2019

6. The Department for Work and Pensions issued Adjudication Circular A9/2019 to help local authorities apply the complex provisions of the No 31 Order correctly. Paragraph 13 of the [Circular](#) says that mixed age couples with an SDP who are covered by Article 8 will be affected by the bedroom tax (or the “removal of spare room subsidy” as DWP likes to call it) if they have spare bedrooms. This guidance presumably is based on the view that the deeming fiction in Article 8 (which treats the older partner as if s/he were working age) applies not merely for the purpose of bringing him/her within the scope of the working age regulations, but for all purposes including Reg A13(2)(d): the person is treated as if s/he has not reached pension credit age for the purpose of that regulation, which means that the bedroom tax can still apply.
7. In my view that interpretation is debatable to say the least – but only a tiny handful of HB cases would be affected, if any at all. In order for the bedroom tax to apply to an Article 8 couple, they would need to:
 - Be a couple with an SDP, which is rare enough to start with, and
 - Be social sector tenants, and
 - Have the older partner in the HB claimant role, and
 - Have spare bedrooms according to the size criteria
 - It is likely that a severely disabled couple would qualify for three bedrooms because (i) at least one of them requires overnight care and (ii) they are unable to share a bedroom
8. Unfortunately, it appears that Circular A9/2019 has been widely misinterpreted including by the leading software suppliers to local authorities. There appears to be a prevailing view – completely mistaken – that the bedroom tax now

¹ Incidentally the same applies to European “frontier workers” who live in one member state and work in another – they too are excluded from UC. Frontier workers who claim UK benefits are found mainly in Northern Ireland – there are very few (if any) cross-border workers on means tested benefit in Great Britain

applies to all mixed age couples, not just those covered by Article 8. This is very wrong indeed. The correct position is as follows:

- Mixed age couples generally are exempt from the bedroom tax because either
 - Their HB is not administered under the working age regs at all, in which case the bedroom tax is absent from the HB (persons who ...) regulations; or
 - Regulation A13(2)(d) of the working age regulations prevents the bedroom tax from applying to mixed age couples
9. Subject to the correct interpretation of Article 8, it is possible that the bedroom tax would apply in the following circumstances only:
- The older partner has the claimant role, and
 - The couple has an SDP (or one of them is a frontier worker)
10. Only in those extremely limited circumstances would the bedroom tax affect a mixed-age couple – and even then the interpretation of Article 8 is open to debate.