



Are you, or a member  
of your family, disabled?

Thinking about

buying  
to rent

to a disabled person?

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Part 1: Renting  
accommodation to relatives

Part 2: Private sector rent  
and Housing Benefit

**OWNERSHIP OPTIONS** is an independent charity which aims to create equal access for disabled people to home ownership as a mainstream housing option.

This leaflet is one of a series of information leaflets about different aspects of home ownership.

When we use the term 'disabled' this includes people with learning difficulties and families who have a disabled person in their household.

Buying a home involves financial and legal transactions which can be quite complex. We provide information and advice, but we are not lawyers or financial advisers. Everyone should seek appropriate professional advice.

**Contact us for more information or advice:**

**OWNERSHIP OPTIONS IN SCOTLAND**

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This information leaflet is available on request in large print or audio cassette. This and other information is posted on our web site.

This leaflet tells you what you need to know if you are on a low income, or receiving State Benefits, and want to rent in the private sector. You may need financial assistance through Housing Benefit to pay your rent, and the rules when renting from a private landlord are different from the rules if you want to rent a council house or housing association flat. There may be barriers put in your way if your landlord is a close relative. It is important to be clear about the rules and about your rights.

Part 1 tells you what the rules are if you rent your home from a relative.

Part 2 of this leaflet describes the basic rules for private tenants applying for Housing Benefit, including those renting from relatives.

# Part 1

## Renting accommodation from relatives

Suppose you are on a low income, would qualify for and need Housing Benefit in order to rent a home and you want to rent a home from your parents?

Parents (or other relatives) may be able to help sons or daughters set up their own home. It is only rarely possible to rent a room in the parent's house to a member of the family and to get help with the costs of this from Housing Benefit. But it is possible for parents to buy another, self-contained, property and rent it to a son or daughter or other close relative, in certain situations, and for the son or daughter to claim and receive Housing Benefit for the rent.

A 'close relative' is defined as a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, stepparent, stepson, stepdaughter, and brother, sister or the spouse or married partner of any of these people. A half brother or half sister sometimes counts as a close relative, but this point is debated. Stepbrothers and stepsisters do not count as close relatives for the purposes of Housing Benefit.

# Commercial arrangements: satisfying the law

If you are planning to rent from a relative, you must meet certain conditions. Before the tenant can be eligible for Housing Benefit, the local authority has to be satisfied not only that the arrangement has not been set up to take advantage of (or abuse) the Housing Benefit system, but also that it is a 'commercial' arrangement. This means that the tenancy agreement has to be arranged so it is enforceable in law. Under the current rules some councils may want evidence of the agreement between the tenant and landlord, and possibly more information, before they will be willing to accept that the tenancy is a 'commercial' one. This is particularly true where it involves letting to a relative.

It is important to understand that while the claimant and/or landlord will need to produce the tenancy agreement if requested, it is still the local authority's responsibility to show that the agreement is not on a commercial basis, if the question arises. If the local authority thinks that the tenancy might be set up to abuse the system, it will be their responsibility to prove this.

If you want advice about tenancy agreements, your solicitor or Ownership Options may be able to help you.

## Where a tenant lives in the same property as a close relative

If the landlord and tenant (or tenant's partner) are close relatives, then the Housing Benefit rules require the local authority to decide whether the landlord is 'residing with' the tenant who is claiming. 'Reside with' means living in the same dwelling and sharing a room with a person, other than a bathroom or lavatory or communal area like a hall or the common room in sheltered housing. If the landlord and tenant are living in the same dwelling but not sharing a room other than these communal areas, they are usually not considered to be residing with each other.

If the tenant and landlord share the kitchen, then the authority will usually decide that they reside together. However this is not always the case. If the tenant does not actually use the kitchen, but simply has food prepared there by another person in the house, then the kitchen should not count as shared accommodation.

If the authority decides that the landlord does reside with the tenant in the same dwelling, and the landlord and tenant (or tenant's partner) are close relatives, then the authority will not pay Housing Benefit towards rent.

## Where a landlord rents another property to a close relative

There is no legal rule that prevents close relatives entering into a legally binding agreement to pay rent and for the tenant to claim Housing Benefit, where they do not occupy the same dwelling. The local authority will however decide whether it is a commercial agreement and whether it was set up to take advantage of the Housing Benefit system. This means they will look at all the relevant facts and circumstances in the case. For example they may look at whether the rent is very high compared to other properties in the area or whether the property is 'too large' for the occupant(s), as described in Part 2 of this leaflet.

It is worth noting that if the landlord and tenant knew that the tenant could not pay the rent without Housing Benefit when the tenancy was set up, this would not necessarily be sufficient reason for the authority to refuse to pay Housing Benefit on grounds of abusing the system.

All lettings to close relatives will be referred to the Rent Officer just as described in Part 2, to set the maximum rent.

# David's story

## **A story may help to make this set of conditions clear.**

David is 35. He had lived in residential care homes but all decided they couldn't cope with his profound difficulties. Two years ago he moved back in with his parents, and since then, David has been very happy, happier than he ever was in residential care.

However, unfortunately David's parents are not as happy as he is. They are in their 60s and find it difficult to care for their son, even though they have substantial assistance with care. The stress is increasing David's dad's heart problems. David's parents would like a situation where they can live near David and take care of him as much as possible, but they do not want to live in the same house with him.

The kind of house that met David's needs would have to contain two bedrooms for staff sleepovers and a secluded garden. Since David can be quite noisy and is easily upset by noise from other people, the house would have to be detached or end terraced and in a quiet location. There are houses like this on the market at a reasonable price, but David's parents, like many, could not afford to buy a second home outright.

They sought advice about what to do. It turned out that though they couldn't afford a second home, they could raise enough funds to buy a house and then rent it to David to cover the costs of buying it. David's parents would therefore be the landlords and David would have a tenancy. David, since he is on Income Support, would need to claim Housing Benefit to pay his rent.

David's right to Housing Benefit had to be clearly established before the house purchase could go ahead. The local authority housing and finance directors helped David's parents clarify the regulations. David's parents made legal provisions to ensure that if they died, David would continue to have the right to live as a tenant in the house. They also set up a trust for David so that on their deaths the ownership of the house would go to the trust, leaving sufficient money to cover the cost of ongoing maintenance so David could continue to live there as usual.

This situation was perfect for all of them. It allowed David to rent from his parents with assistance from Housing Benefit, with assurance that when they died, he would still have the house to live in and money for support and care.

## Refusal of benefit

If you apply for Housing Benefit and it is decided that you are not eligible, you can appeal against this decision. More details about appeals are given in Part 2.

# Part 2

## Who can claim Housing Benefit?

Housing Benefit is a social security benefit that helps people on low incomes pay their rent. Any tenant in any type of accommodation – private, housing association or council – can claim Housing Benefit if they can show their income is low enough. Lodgers or boarders, or people who simply pay for the right of occupying rooms in an accommodation, can also claim Housing Benefit.

But Housing Benefit cannot be paid to people, even those on low incomes, if they have substantial savings. If you have more than £16,000 saved, you cannot get Housing Benefit. However, if you have £3,000 or less in savings, it will be disregarded for the purposes of Housing Benefit. Anything between £3,001 and £16,000 will be taken into account in calculating what you can claim. These capital rules are different if you are over 60, when the first £6000 of savings is ignored.

A person renting from a close relative living in the same house can often be excluded from Housing

Benefit. However, this will depend on the particular circumstances of the case as described in Part 1 of this leaflet.

**Note** People who own their own homes, owner-occupiers, are not eligible for Housing Benefit at all. However, if they are on Income Support or Income Based Job Seekers Allowance (IBJSA), they may be able to get help through the DSS with mortgage interest costs. If this describes you, see leaflet 2 in this series, 'Buying a house while receiving state benefits'.

# Calculating Housing Benefit for private tenants

Before working out how much Housing Benefit you are due, the Council must decide how much of your weekly rent is 'eligible'. In a local authority or housing association house, this will probably be all of the rent. However, in the private sector the rules are more complex.

There are three factors the Council will take into account in calculating Housing Benefit.

The eligible rent is the rent for the house minus any charges you may pay in with your rent, like food or heating and lighting. Some support services are eligible for Housing Benefit. If you are in a private rented property, you will need a community care assessment to ensure you receive Housing Benefit for eligible support charges. The Council may also want to restrict the amount they pay you to a level they consider 'reasonable' for a property of that size and type in that area, and for the size of your household.

When a private tenant applies for Housing Benefit, the Council will refer the claim to a Rent Officer. The Rent Officer will compare your rent to other private sector rents in the area. If your rent is much more than the average market rent for similar homes

nearby, the Rent Officer will decide what amount it would be 'reasonable' for the landlord to charge you. This is called the local reference rent.

The Rent Officer will also decide what size of house it is 'reasonable' for you to occupy, and will decide the reasonable rent for a house of that size. This is called the appropriate rent.

If your rent is higher than the local reference rent, the Council will only pay a portion of your rent when calculating how much Housing Benefit you are due. This portion is known as the maximum rent. Before you decide to move into a tenancy, it is a good idea to ask the Council for a 'pre-tenancy determination'. This will tell you what the maximum rent is likely to be for Housing Benefit purposes, and what Housing Benefit you may be eligible to receive.

# Increasing your entitlement

If you find you are entitled to Housing Benefit, for instance because you are on Income Support, but you find the local authority has restricted your entitlement to help with your rent because of one of the factors described above, you can ask the local authority to exercise its discretion and award a 'Discretionary Housing Payment (DHP) to increase your Housing Benefit. DHPs were introduced in July 2001 and replace 'exceptional hardship' and 'exceptional circumstances' payments. There is no right of appeal against a Discretionary Housing Benefit decision. However there is a review process. Applications should be made to the Housing Benefits Section in writing providing as much factual information as possible relating to your income and the reason you are asking to be considered for a discretionary payment.

The sort of issues the Housing Benefit section consider in deciding whether to make a discretionary payment include:

- **how much is the shortfall between Housing Benefit and rent, and do you have any savings or income to meet the shortfall?**
- **will the landlord reduce the rent? If the landlord provides a statement that the rent cannot be reduced, this may improve your chances of getting an increase;**

- did you get a 'pre-tenancy determination' before moving in? You may have taken on the tenancy knowing there would be a shortfall but also knowing there was simply no other suitable accommodation available to you;
- is there anywhere else you could move to that would cost less?
- do you suffer from any health problems that restrict your choice of housing? If the shortfall in Housing Benefit leads to deterioration in your health or the health of members of your family, you may qualify for a discretionary payment.

Get guidance from the local authority or an adviser before you make an application for an increase in entitlement. Every case is different and will be considered on its own merits. Bear in mind that local authorities have a limited amount of money for discretionary payments and you do not have any automatic right to receive them. They are an extra, and can be reviewed later if your circumstances change.

If you are unsuccessful in your application but still believe you qualify, you can apply for a review (see the next section).

# Appeals and Reviews

You must be given a written notice of a decision about your application. If you disagree with any decision regarding your Housing Benefit entitlement, you can ask for a revision of this decision and you have the right to appeal. You can appeal to an independent tribunal, composed of one legally qualified person and independent of the Benefits authorities, which will hear all evidence and arguments and make the decision on the appeal.

Seek advice about what to do as soon as you receive a decision you disagree with. The time limits for making an appeal are very strict so even if you want to ask for more information or a written explanation of the decision, make sure you ask for a revision or make an appeal within the time limit. You must apply and you have to do this within very strict time limits.

You cannot ask for a revision or appeal against a decision about discretionary housing payments. However you can ask for the decision to be reviewed.

# Ian's story

**It is often easier to understand Benefits and their complexities by studying an example. This example shows how the three factors governing rent calculation for Housing Benefit work in practice by showing how Ian's rent was calculated for Housing Benefit and how he got an increase in his entitlement because of his exceptional circumstances.**

Ian rents a three-bedroom house from a private landlord. It costs him £500 per month. This includes £50 for heating, which he pays to the landlord because it is run from a system serving a nearby house. This makes his eligible rent £450.

But the Rent Officer looks at the case and advises that the average rent for a three-bedroom house in Ian's area is only £400. He therefore advises the Council that the local reference rent is £400.

The Rent Officer also notes that Ian is a single person and tells the Council that for a single person the appropriate rent is £350 per month.

The Council therefore sets Ian's Housing Benefit at £350.

However, Ian has physical and learning disabilities. He needs three bedrooms because one is for him, one is for a sleepover member of staff, and one is for his brother who stays regularly to provide extra support. When the Rent Officer hears this, he decides that the house is not too big for Ian after all and the appropriate rent will therefore be the same as the local reference rent: £400.

This is fine, but Ian is on Income Support. Though he is eligible for non-means tested disability benefits, he needs to use them to pay for the costs of running his large home. He will therefore suffer financial hardship if he has to pay the shortfall of £50 per month – the difference between the actual rent of £450 (not counting heating costs) and the £400 of Housing Benefit he will receive on the current assessment by the Rent Officer.

Ian's advisers ask the local authority to use its discretion to increase the Housing Benefit. The local authority is aware of Ian's difficulties and knows it would be hard for him to find a cheaper house that still meets his needs as a disabled person. They therefore agree a discretionary payment, bringing his Housing Benefit up to £450. Ian is delighted with this decision and does not need to ask for any review.

# Thanks

Thanks to Steven Craig, Welfare Rights Officer for his assistance in the production of this leaflet.

# Getting advice

This guide is intended only as an introduction to the Housing Benefit rules for families and professionals assisting disabled people to acquire suitable housing. The rules are complex and regulations open to interpretation. For more guidance please seek professional advice from the Citizens Advice Bureau or from your local welfare rights officer at the Council. You may also get advice from your local Disabled Persons Housing Service. Or of course if you are thinking about buying a home to rent to a disabled relative and just want to talk it over you may always contact us at Ownership Options.

- **Citizen's Advice Bureau or Rights Office**  
Look in your local telephone directory for your nearest office.
- **Disabled Persons Housing Service (Lothian)**  
12/13 Johnston Terrace, Edinburgh EH1 2PW  
Tel 0131 225 7788
- **Glasgow Disabled Persons Housing Service**  
117 –127 Brook Street, Glasgow G40 3AP  
Tel 0141 550 4455
- **Renfrew Disabled Persons Housing Service**  
8 Collier Street, Johnstone PA5 8AR  
Tel 01505 325 727

- **ENABLE**

(Can advise on Trusts and has a corporate trustee service)

6th floor, 7 Buchanan Street, Glasgow G1 3HL  
Tel 0141 226 4541

Local Law Centres may be able to help with professional representation at appeals tribunals.

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