INTRODUCTION

1 This memo gives guidance on changes introduced by the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendment) Regulations 2013 (SI 2013 No. 2828) (see paragraphs 4 – 14 below). The changes take effect on 04.12.13.¹

¹ Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendment) Regulations 2013, reg 1

2 This memo also provides guidance and further clarification of the meaning of “away on operations” for the purposes of ADM F3125. (see paragraph 3 below).

AWAY ON OPERATIONS

3 “Away on operations” does not necessarily mean away from the UK, just away from the home normally occupied. It also covers pre-deployment training and post operation leave (which is described as “normalisation”). Therefore this could apply
1. to Royal Air Force personnel with immediate response duties who are based away from home for a number of months or 

2. where members of the armed forces were deployed to assist with the Olympics.

Example 1
A two bedroom housing association property is occupied by Martin and Sarah and their adult daughter Sam, who is in the armed forces. She is then deployed on operations to assist with the Commonwealth Games. Martin and Sarah will still be entitled to the bedroom for Sam and will not be under-occupying whilst she is away on operations.

Example 2
A four bedroom council property is occupied by Warren and his adult daughter Amelia, who is in the armed forces. Warren also requires frequent overnight care from a non resident carer. Amelia is then deployed on operations in the UK from 1.12.13 to 30.6.14. Warren will still be entitled to the bedroom for Amelia and will continue to be under-occupying by one bedroom whilst she is on operations.

Example 3
Kevin and Tanya rent a two bedroom private property. Their adult son Dave, who is in the armed forces, also lives with them. They make a claim for UC on 1.4.14. Dave is deployed on operations in the UK on 1.3.14 and will not return to the property until 31.8.14. From the start of the new claim, Kevin and Tanya will be entitled to the two bedroom LHA rate.

MEANING OF NON-DEPENDANT
4 From 4/12/13 the meaning of non-dependant is expanded to include a person who normally lives in the home with the renter and does not fall within any of the exceptions at ADM F3034. For the purpose of this provision “normally” means “usually” and should be tested over a period to which usually can relate.

1 UC Regs, Sch 4, para 9(2)

5 The list of exceptions at ADM F3034 is extended to include a child or qualifying young person for whom no one in the renter’s extended benefit unit is responsible.

1 UC Regs, Sch 4, para 9(2)(g)
MEANING OF FOSTER CHILD

6. A foster child is a child in relation to whom the renter (or either joint renter) is a foster parent.\(^1\)

\(^1\) UC Regs, Sch 4, para 9(3)

ADDITIONAL ROOM

7. A renter is entitled to an additional bedroom if they satisfy\(^1\)

1. the overnight care condition (see paragraph 8 below)
2. the foster parent condition (see paragraphs 9 – 10 below)
3. the disabled child condition (see paragraph 11 below).

However this is subject\(^2\) to paragraphs 12 – 14 below.

\(^1\) UC regs, Sch 4, para 12(1), 2 Sch 4, para 12(2)

The overnight care condition

8. A renter satisfies the overnight care condition if

1. they are in receipt of
   
   1.1 the care component of DLA at the middle or highest rate or
   
   1.2 "AA" or
   
   1.3 the daily living component of PIP and

2. one or more persons, who do not live in the renter’s home, are engaged to

   2.1 provide overnight care for the renter and

   2.2 stay overnight in the home on a regular basis and

3. overnight care is provided under arrangements entered into for that purpose\(^1\).

\(^1\) UC reg, Sch 4, para 12(3)

Example 1

Sandra, who is single and living alone, has a spinal injury and is in receipt of the highest rate of the care component of DLA. An assessment by her local authority
found that she requires support for 24 hours a day that would be best provided by employing a team to provide live in care. Overnight, the carer has to regularly turn her in bed to ensure she does not develop bed sores. Sandra is entitled to an extra bedroom to accommodate the carer providing overnight care.

**Example 2**

Philip lives with his wife and is entitled to the daily living component of PIP. At night he needs assistance to get to the toilet. His wife provides this assistance. Philip is not entitled to an extra bedroom as there is no requirement for someone who does not live in the household to provide the overnight care.

**The foster parent condition**

9 A renter, or either joint renter, are entitled to one additional room if they are

1. a foster parent or

2. an adopter with whom a child has been placed for adoption.

**The disabled child condition**

11 A renter satisfies the disabled child condition if

1. they, or another member of their extended benefit unit, are responsible for a child who would otherwise be expected to share a bedroom and

2. the child is in receipt of the care component of DLA at the middle or highest rate and

3. because of their disability the child is not reasonably able to share a bedroom with another child.
Example 1

Joanne and Kevin live with their two daughters and son in a local authority flat. The two girls would normally be expected to share a room as they are aged 10 and 8. The boy is 13 and therefore cannot be expected to share. The girls are both disabled; one has Down’s syndrome the other has Spina Bifida. Both girls are entitled to the highest rate of the care component of DLA. This means they are not reasonably able to share a room as the child with Down’s syndrome can disrupt the sleep of, and may pose a risk to, the other child. As the girls are not reasonably able to share a room Joanne and Kevin are entitled to an additional bedroom.

Example 2

Ankush and Rita live with their three sons aged 7, 9 and 11 in a private rented sector house. Two of the three children would be expected to share a room. The 9 year old is severely autistic and suffers from night terrors and would significantly disturb the sleep of anyone sharing the same room. Because of his disability he would not be reasonably able to share a room. He is entitled to the highest rate of the care component of DLA. However, as it is appropriate for the other two children to share, he is not required to share a bedroom and Ankush and Rita are not entitled to an additional bedroom.

Example 3

Carol and Jason live with their two daughters aged 5 and 7. Their 7 year old daughter is entitled to the middle rate of the care component of DLA for day attention. Carol and Jason claim they require an extra bedroom because their 7 year old is disruptive at night and keeps their 5 year old daughter awake. The disruption occurs intermittently on average once every six months. The DM decides that it is not unreasonable in the circumstances for the two daughters to share a room. Carol and Jason are not therefore entitled to an extra bedroom.

Satisfying one or more conditions

Where a renter, or one or both of joint renters, satisfy

1. the overnight care condition or

2. the foster parent condition

they are entitled to one additional bedroom for each condition they satisfy1.

1 UC regs, Sch 4, para 12(7)
Example 1

Tony and his civil partner Mike are both entitled to the highest rate of the care component of DLA. Due to the severity of their disabilities they both require overnight carers to stay on a regular basis. They are entitled to one additional bedroom between them.

Example 2

Rosie and Jim are foster parents to two children, Rosie also requires overnight care. They are entitled to two additional bedrooms. One for satisfying the overnight care condition and one for satisfying the foster parent condition.

13 Where a renter, or one or both joint renters, satisfy the disabled child condition for one or more children they are entitled to as many bedrooms as are necessary to ensure each child has their own bedroom.

1 UC regs, Sch 4, para 12(8)

14 Where a renter, or one or both joint renters, satisfy two or more of

1. the overnight care condition or

2. the foster parent condition or

3. the disabled child condition

the number of additional bedrooms they are entitled will be determined by adding together the number of additional bedrooms they are entitled to by virtue of satisfying each condition.

1 UC regs, Sch 4, para 12(9)

ANNOTATIONS

Please annotate the number of this memo (Memo ADM 09/13) against ADM paragraphs F3034, F3125 and F3131 (heading).

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 03/13 - Obtaining legal advice and guidance on the Law.