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How is housing benefit calculated when a person living in exempt accommodation is employed?

Basic info

Housing Benefit for an employed person living in exempt accommodation is calculated in exactly the same way as for someone who is not employed: in particular the favourable rules about eligible rent still apply when the claimant is employed. For general information about the housing benefit calculation see, "How is Housing Benefit calculated for exempt accommodation?".

Of course if the claimant is working the Housing Benefit means test calculation will include the claimant's earnings, unless the work is "exempt work".

Exempt work

If someone living in exempt accommodation is working there is a good chance that the work will be "exempt work". Earnings from "exempt work" are not taken into account in the Housing Benefit means test. Exempt work (often referred to as "permitted earnings" or "therapeutic earnings") means work that a person is allowed to do while being declared officially unfit for work by the Department for Work and Pensions (DWP):

- Since October 2008, people who are officially unfit for work are described as having "limited capability for work" and usually receive Employment and Support (ESA)
- If someone has been unfit for work since before October 2008 he or she might still be covered by older rules in which case s/he will be described as being "incapable of work" and will usually be receiving Incapacity Benefit (IB) or Income Support (IS)

Amount of work allowed as "exempt work" while claiming ESA

There are three ways that work can be exempt:

- **Option 1:** up to £20 a week for any length of time
  - There is no restriction on the type of work or the reasons for taking it
- **Option 2:** up to 16 x the National Minimum Wage each week for any length of time where one of the following further conditions is satisfied:
  - The work is done as part of a medically supervised treatment programme, or
  - The work is supervised by a public authority, voluntary organisation or community interest company that provides or procures work for people with disabilities, or
  - The claimant has "limited capability for work related activity" (which normally means s/he gets ESA including the support component) and s/he works for less than 16 hours a week
- **Option 3:** up to 16 x the National Minimum Wage each week for up to 52 weeks provided:

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- The claimant works less than 16 hours a week, and
- S/he has not previously had exempt work under Option 3, or
- It is at least 52 weeks since s/he last had exempt work under Option 3, or
- Since s/he last had exempt work under Option 3 there has been a break of at least 12 weeks during which the claimant was not entitled to ESA and did not have "credits only"

Amount of work allowed as "exempt work" while claiming IS or IB

The rules are the same as for ESA exempt work except:

- The equivalent of the ESA support component is when the claimant has a "severe condition", including:
  - the claimant is entitled to the highest rate of Disability Living Allowance care component or an equivalent supplement paid with a war pension
  - the claimant is blind
  - the claimant has a severe learning disability
  - the claimant has a terminal illness with death expected within six months
  - the full list can be found in the Regulation 10 of the Social Security (Incapacity for Work) General Regulations 1995 SI 1995/311 (see Where does the law define exempt work?)
- Periods of work under Option 3 can be separated by 8 weeks without entitlement to IB, IS or credits (not 12 weeks)

Universal Credit (UC)

If a Housing Benefit claimant living in exempt accommodation is on Universal Credit all of his/her income and capital is ignored and s/he is automatically entitled to full Housing Benefit. This applies even if the claimant receives earnings from employment. Therefore it is unnecessary for Housing Benefit purposes to know whether the work is exempt or not.

For the purpose of UC itself the rules about working while officially unfit for work are different from the ESA and IB/IS exempt work rules:

- If the claimant is earning more than 16x the national minimum wage when s/he first tells DWP s/he is unfit for work, s/he will automatically be regarded as not unfit for work
  - Unless s/he is also on Disability Living Allowance or Personal Independence Payment
- Once the claimant has been assessed as unfit for work, there is no limit on the amount of work s/he may do
  - Except of course the more work s/he does the less likely it is DWP will continue to regard him/her as having limited capability for work and the more likely it is that his/her fitness for work will be reviewed
- A fixed amount of earnings is disregarded from the monthly means test for a UC claimant who is unfit for work
  - The amount is £397 a month if the claimant has limited capability for work and the UC award does not contain any housing element
  - And since Housing Benefit covers the claimant's housing costs for exempt accommodation, it will normally be the case that there is no UC housing element
  - If there is a UC housing element the amount of earnings disregarded is £192 a month

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- And after three months of being unfit for work the claimant's Universal Credit is increased