

2017 No. 70

SOCIAL SECURITY

**The Housing Benefit and Universal Credit (Size Criteria)
(Miscellaneous Amendments) Regulations (Northern Ireland)
2017**

Made - - - - at 9.00 a.m. on 30th March 2017

Laid before Parliament at 2.00 p.m. on 30th March 2017

Coming into operation in accordance with regulation 1.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 122(1)(d), 129A(2), (3) and (4), 133(1), and 171(1), (3) and (4) and (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), and Articles 5, 16(4) and 48(1) of the Welfare Reform (Northern Ireland) Order 2015(b).

These powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) and (b) of the Welfare Reform (Northern Ireland) Order 2015.

Citation, commencement, interpretation and transitional provision

1.—(1) These Regulations may be cited as the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations (Northern Ireland) 2017.

(2) This regulation and regulations 2 and 3 come onto operation on 20th April 2017.

(3) Regulation 4 comes into operation on the day on which Article 6 of the Welfare Reform (Northern Ireland) Order 2015 (universal credit) comes into operation for all purposes in respect of the whole or any part of Northern Ireland.

(4) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Housing Benefit Regulations (Northern Ireland) 2006

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(d) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

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- (a) 1992 c. 7; section 129A was inserted by section 30(2) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and subsequently amended by Article 75 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21). Section 133(1) is cited for the meaning of “prescribed”
- (b) S.I. 2015/2006 (N.I. 1). Article 5 is an interpretation provision and is cited for the meaning of “prescribed”
- (c) 1954 c. 33 (N.I.)
- (d) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 101, S.R. 2011 No. 51, S.I. 2013/3021, S.R. 2016 No. 228 and S.R. 2016 No. 326

- (a) after the definition of “maximum rent (LHA)”**(a)** insert—
 - ““member of a couple who cannot share a bedroom” means a member of a couple—
 - (a) who is in receipt of—
 - (i) attendance allowance at the higher rate in accordance with section 65(3) of the Act;
 - (ii) the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act;
 - (iii) the daily living component of personal independence payment in accordance with Article 83 of the 2015 Order; or
 - (iv) armed forces independence payment; and
 - (b) whom the relevant authority is satisfied is, by virtue of his or her disability, not reasonably able to share a bedroom with the other member of the couple;”;
 - (b) in the definition of “person who requires overnight care”**(b)**, in paragraph (a)(iii), after “provided” insert “or, where P is a child, the claimant has provided,”;
 - (c) after paragraph (7) insert—
 - “(8) For the purposes of these Regulations, reference to a member of a couple who can share a bedroom is to a member of a couple where the other member of the couple is a member of a couple who cannot share a bedroom.”.
- (3) In regulation B14**(c)** (determination of a maximum rent (social sector))—
- (a) in paragraph (5)—
 - (i) before sub-paragraph (a) insert—
 - “(za) a member of a couple who cannot share a bedroom;
 - (zb) a member of a couple who can share a bedroom;”;
 - (ii) in sub-paragraph (a), omit “(within the meaning of Part VII of the Act)”;
 - (b) in paragraph (6), for sub-paragraph (a) substitute—
 - “(a) one or more relevant persons in paragraph (9)(a), (b) or (e) is a person who requires overnight care;
 - (ab) one or more relevant persons in paragraph (9)(c) or (d) is a person who requires overnight care; or”;
 - (c) in paragraph (7), in sub-paragraph (b), for “a sub-paragraph of paragraph (6)” substitute “paragraph (6)(b)”;
 - (d) in paragraph (9), after sub-paragraph (d) insert—
 - “(e) for the purposes of paragraph (6)(a)—
 - (i) a person (other than the claimant, the claimant’s partner, P or P’s partner) who occupies the claimant’s dwelling as their home;
 - (ii) a child or young person in respect of whom a relevant person under sub-paragraphs (a) to (e)(i) is a qualifying parent or carer.”.
- (4) In regulation 14D**(d)** (determination of maximum rent (LHA))—
- (a) in paragraph (3)**(e)**—
 - (i) before sub-paragraph (a) insert—
 - “(za) a member of couple who cannot share a bedroom;

(a) Definition of “maximum rent (LHA)” was inserted by regulation 2(2)(f) of S.R. 2008 No. 101
 (b) Definition of “person who requires overnight care” was inserted by regulation 2(2)(a) of S.R. 2011 No. 51 and amended by Article 26(2)(c)(ii) of S.I. 2013/3021 and regulation 30(2)(c)(iii) of S.R. 2016 No. 228
 (c) Regulation B14 was inserted by regulation 5(7) of S.R. 2016 No. 326
 (d) Regulations 14 to 14F were substituted for regulation 14 by regulation 2(7) of S.R. 2008 No. 101
 (e) Paragraph (3) was amended regulation 2(5)(b) of S.R. 2011 No. 51 and regulation 3(3)(b) of S.R. 2016 No. 326

- (zb) a member of a couple who can share a bedroom;”;
- (ii) in sub-paragraph (ba)(a) omit “provided that there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom”;
- (iii) after sub-paragraph (e)—

“but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom or a member of a couple who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child or the member of the couple were able to share a bedroom.”;
- (b) in paragraph (3A)(b), for sub-paragraph (a) substitute—

“(a) one or more of the following persons is a person who requires overnight care—

 - (i) the claimant;
 - (ii) the claimant’s partner;
 - (iii) a person (other than the claimant or the claimant’s partner) who occupies the claimant’s dwelling as their home;
 - (iv) a child or young person in respect of whom the claimant or the claimant’s partner is a qualifying parent or carer; or”.
- (5) In Part IV of Schedule 2 (size criteria)—
 - (a) in paragraph 10(c) before sub-paragraph (a) insert—

“(za) a member of a couple who cannot share a bedroom;

(zb) a member of a couple who can share a bedroom;”;
 - (b) in sub-paragraph (ba)(d) omit “provided that there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom”;
 - (c) after sub-paragraph (e)—

“but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom or a member of a couple who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child or the member of the couple were able to share a bedroom.”;
 - (d) for paragraph 10A(e) for sub-paragraph (a) substitute—

“(a) one or more of the following persons is stated as being a person who requires overnight care—

 - (i) the tenant;
 - (ii) the tenant’s partner;
 - (iii) a person (other than the tenant or the tenant’s partner) who occupies the dwelling as their home;
 - (iv) any child or young person in respect of whom the tenant or the tenant’s partner is a qualifying parent or carer; or”
- (6) In Schedule 3 (excluded tenancies), in paragraph 2(3)—
 - (a) for paragraph (f) substitute—

“(f) any person mentioned in paragraph 10A of Schedule 2 becomes or ceases to be a person who requires overnight care where that affects the size criteria, as set out in Schedule 2, applicable in the claimant’s case;”;

(a) Sub-paragraph (ba) was inserted by regulation 3(3)(b)(i) of S.R. 2016 No. 326
 (b) Paragraph (3A) was inserted by regulation 4(3)(c) of S.R. 2016 No.326
 (c) Paragraph 10 was amended by regulation 3(5)(a) of S.R. 2016 No. 326
 (d) Sub-paragraph (ba) was inserted by regulation 3(5)(a) of S.R. 2016 No. 326
 (e) Paragraph 10A of Schedule 2 was substituted by regulation 3(5)(b) of S.R. 2016 No. 326

- (b) in paragraph (h)(a) after “child who cannot share a bedroom” insert “or a member of a couple who cannot share a bedroom”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “maximum rent (LHA)”(c) insert—

““member of a couple who cannot share a bedroom” means a member of a couple—

(a) who is in receipt of —

- (i) attendance allowance at the higher rate in accordance with section 65(3) of the Act;
- (ii) the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act;
- (iii) the daily living component of personal independence payment in accordance with Article 83 of the 2015 Order; or
- (iv) armed forces independence payment; and

(b) whom the relevant authority is satisfied is, by virtue of his or her disability, not reasonably able to share a bedroom with the other member of the couple;”;

(b) in the definition of “person who requires overnight care”(d) in paragraph (a)(iii) after “provided” insert “or, where P is a child, the claimant has provided;”;

(c) after paragraph (8) insert—

“(9) For the purposes of these Regulations, reference to a member of a couple who can share a bedroom is to a member of a couple where the other member of the couple is a member of a couple who cannot share a bedroom.”.

(3) In regulation 14D(e) (determination of maximum rent (LHA))—

(a) in paragraph (3)(f)—

(i) before sub-paragraph (a) insert—

“(za) a member of a couple who cannot share a bedroom;

(zb) a member of a couple who can share a bedroom”;

(ii) in sub-paragraph (ba)(g) omit “provided that there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom”;

(iii) after sub-paragraph (e)—

“but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom or a member of a couple who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child or the member of the couple were able to share a bedroom.”;

(a) Sub-paragraph (h) was inserted by regulation 3(6)(a) of S.R. 2016 No. 326

(b) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 No. 102, S.R. 2011 No. 51, S.I. 2013/3021, S.R. 2016 No. 228 and S.R. 2016 No. 326

(c) Definition of “maximum rent (LHA)” was inserted by regulation 2(2)(f) of S.R. 2008 No. 102

(d) Definition of “person who requires overnight care” was inserted by regulation 3(2) of S.R. 2011 No. 51 and amended by Article 27(2)(c)(ii) of S.I. 2013/3021 and regulation 31(2)(c)(iii) of S.R. 2016 No. 228

(e) Regulations 14 to 14F were substituted for regulation 14 by regulation 2(7) of S.R. 2008 No. 102

(f) Paragraph (3) was regulation 3(5)(b) of S.R. 2011 No. 51 and regulation 4(3)(b) of S.R. 2016 No. 326

(g) Sub-paragraph (ba) was inserted by regulation 4(3)(b)(i) of S.R. 2016 No. 326

- (b) in paragraph (3A)(a) for sub-paragraph (a) substitute—
 - “(a) one or more of the following persons is a person who requires overnight care—
 - (i) the claimant;
 - (ii) the claimant’s partner;
 - (iii) a person (other than the claimant or the claimant’s partner) who occupies the claimant’s dwelling as their home;
 - (iv) a child or young person in respect of whom the claimant or the claimant’s partner is a qualifying parent or carer; or”
- (4) In Part IV of Schedule 2 (size criteria)—
 - (a) in paragraph 10(b) before sub-paragraph (a) insert—
 - “(za) a member of a couple who cannot share a bedroom;
 - (zb) a member of a couple who can share a bedroom;”;
 - (b) in sub-paragraph (ba)(c) omit “provided that there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom”;
 - (c) after sub-paragraph (e)—
 - “but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom or a member of a couple who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child or the member of the couple were able to share a bedroom.”;
 - (d) for paragraph 10A(d) for sub-paragraph (a) substitute—
 - “(a) one or more of the following persons is stated as being a person who requires overnight care—
 - (i) the tenant;
 - (ii) the tenant’s partner;
 - (iii) a person (other than the tenant or the tenant’s partner) who occupies the dwelling as their home;
 - (iv) a child or young person in respect of whom the tenant or the tenant’s partner is a qualifying parent or carer; or”
- (5) In Schedule 3 (excluded tenancies), in paragraph 2(3)
 - (a) for paragraph (f) substitute—
 - “(f) any person mentioned in paragraph 10A of Schedule 2 becomes or ceases to be a person who requires overnight care where that affects the size criteria, as set out in Schedule 2, applicable in the claimant’s case;”;
 - (b) in paragraph (h)(e) after “child who cannot share a bedroom” insert “or a member of a couple who cannot share a bedroom”.

Amendment to the Universal Credit Regulations (Northern Ireland) 2016

4. In paragraph 11 (additional room) of Schedule 4 (housing costs element for renters) to the Universal Credit Regulations (Northern Ireland) 2016(f)—

- (a) before sub-paragraph (1) insert—

(a) Paragraph (3A) was inserted by regulation 3(3)(c) of S.R. 2016 No.326
 (b) Paragraph 10 was amended by regulation 4(5)(a) of S.R. 2016 No. 326
 (c) Sub-paragraph (ba) was inserted by regulation 4(5)(a) of S.R. 2016 No. 326
 (d) Paragraph 10A of Schedule 2 was substituted by regulation 4(5)(b) of S.R. 2016 No. 326
 (e) Sub-paragraph (h) was inserted by regulation 4(6)(a) of S.R. 2016 No. 326
 (f) S.R. 2016 No. 216

- “(A1) A renter is entitled to an additional bedroom if one or more of the following persons satisfies the overnight care condition (see sub-paragraph (3))—
- (a) the renter;
 - (b) a person in the renter’s extended benefit unit;
 - (c) a child in respect of whom the renter satisfies the foster parent condition (see sub-paragraphs (4) and (5)).”;
- (b) in sub-paragraph (1)—
- (i) omit paragraph (a);
 - (ii) in paragraph (b) omit “(see sub-paragraphs (4) and (5))”;
 - (iii) at the end of paragraph (b), omit “or”
 - (iv) at the end of paragraph (c), insert “or”;
 - (v) after paragraph (c) insert—
 - “(d) the disabled person condition (see sub-paragraph (6A)).”;
- (c) for sub-paragraph (2) substitute—
- “(2) Sub-paragraphs (A1) and (1) apply subject to sub-paragraphs (8) and (9).”.
- (d) in sub-paragraph (3)—
- (i) for “A renter satisfies” substitute “A person satisfies”;
 - (ii) in paragraph (b) for “care for the renter” substitute “care for the person”;
- (e) after sub-paragraph (6) insert—
- “(6A) A renter satisfies the disabled person condition if they would (but for the provisions of this paragraph) be expected to share a bedroom with a joint renter and—
- (a) the renter is in receipt of—
 - (i) the care component of disability living allowance at the middle or highest rate;
 - (ii) attendance allowance at the higher rate;
 - (iii) the daily living component of personal independence payment; and
 - (b) the renter is, by virtue of their disability, not reasonably able to share a bedroom with the joint renter.”;
- (f) omit sub-paragraph (7);
- (g) for sub-paragraph (9) substitute—
- “(9) The renter is, or joint renters are, entitled to one additional bedroom for each of the following that apply—
- (a) one or more persons satisfy the overnight care condition;
 - (b) the renter, or one or both of joint renters, satisfies the foster parent condition;
 - (c) the renter, or one or both of joint renters, satisfies the disabled child condition; or
 - (d) the renter, or one or both of joint renters, satisfies the disabled person condition.”.

Signed by authority of the Secretary of State for Work and Pensions

30th March 2017 at 9.00 a.m.

Caroline Nokes
Parliamentary Under-Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations (Northern Ireland) 2006 (“The Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (“The Housing Benefit (State Pension Credit) Regulations”), and the Universal Credit Regulations (Northern Ireland) 2016 (“The Universal Credit Regulations”).

These Regulations give effect to the judgment of the Supreme Court in *R (on the application of Carmichael and Rourke) (formerly known as MA and others) v Secretary of State for Work and Pensions* and *R (on the application of Rutherford and another) v Secretary of State for Work and Pensions* [2016] UKSC 58 (9th November 2016).

Regulation 1 provides for the citation and commencement of these Regulations. Regulation 1(3) provides that the amendments in respect of Universal Credit are not operational until Article 6 of The Welfare Reform (Northern Ireland) Order 2015 is commenced as that benefit is not presently available in Northern Ireland.

Regulation 2 amends provisions in the Housing Benefit Regulations which allow an extra bedroom where the claimant or their partner requires overnight care. The effect is that an extra bedroom will also be provided where any other person who occupies the dwelling as their home needs overnight care, or a child or young person in respect of whom the claimant is a qualifying parent or carer needs overnight care. Where a claimant or their partner and one or more other persons require overnight care only one extra bedroom will be provided. It also makes minor consequential amendments in relation to these amendments.

Regulation 2 also amends provisions in the Housing Benefit Regulations which allow an extra bedroom where a severely disabled child is unable to share a bedroom with another child. The effect is that an extra bedroom will also be provided where a member of a couple is unable to share a bedroom with the other member of the couple.

Regulation 3 makes similar amendments to the Housing Benefit (State Pension Credit) Regulations.

Regulation 4 makes similar amendments to the Universal Credit Regulations.

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.

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