

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND UNIVERSAL CREDIT (SIZE CRITERIA)
(MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN
IRELAND) 2017

2017 No. 70

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The amount of Housing Benefit, and the amount of the housing costs element in Universal Credit, to which a person is entitled is, in part, dependant on the size and make-up of their household. This is known as the size criteria. The size criteria rules apply to claimants living in both the private and social rented sectors and prescribe the number of bedrooms a claimant would be entitled to.
- 2.2 The purpose of this instrument is to make amendments to the size criteria rules following a judgement in the Supreme Court.
- 2.3 The changes allow an extra bedroom where a couple are unable to share because of severe disability and a disabled child or non-dependant disabled adult requires overnight care from a non-resident carer subject to the qualifying conditions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 87 of the Northern Ireland Act [1998](#) (“the 1998 Act”) places a statutory duty on the Minister for Communities and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 The [Welfare Reform Act 2012](#) (“the 2012 Act”) introduced a number of reforms which included a cap on the amount of benefits working age people can receive. This was to

restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted.

- 4.4 On 17 November 2015 “[A Fresh Start: The Stormont Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The [Northern Ireland \(Welfare Reform\) Act 2015](#) provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The [Welfare Reform \(Northern Ireland\) Order 2015](#) (“the 2015 Order”) was made on 9 December 2015 making provision corresponding to the 2012 Act. [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) (“the 2016 Order”) was made on 12th October 2016 making provision corresponding to the social security provisions of the [Welfare Reform and Work Act 2016](#), and regulations stemming from the 2016 Order are now being brought forward.
- 4.5 In order to maintain parity, these regulations implement for Northern Ireland the changes brought about in the equivalent GB regulations; [the Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017](#) (SI 2017/213).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Northern Ireland only.
- 5.2 The territorial application of this instrument is Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Background

- 7.1 These Regulations amend the Housing Benefit Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 405](#)), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 406](#)), and the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)).
- 7.2 The Social Sector Size Criteria was introduced in Northern Ireland on 20 February 2017, and the amount of housing benefit payable to working-age Housing Executive and Housing Association tenants who are under-occupying their properties will be restricted based on the number of bedrooms their household requires.
- 7.3 Working-age housing benefit claimants will receive housing benefit relevant to the accommodation needs of their household, and where a claimant lives in accommodation which is considered too large for their needs the amount of housing benefit will be reduced, by 14% for one excess bedroom or 25% for two or more excess bedrooms.

- 7.4 One bedroom is currently allowed for each of the following;
- a couple;
 - a person aged 16 or over;
 - two children of the same sex aged under 16;
 - two children aged under 10;
 - any other child (other than a foster child or child whose main home is elsewhere);
 - children who can't share because of a disability or medical condition; and
 - a carer (or team of carers) providing overnight care.
- 7.5 Some households may be allowed an extra bedroom for;
- an approved foster carer who has a child placed with them;
 - an approved foster carer who is between placements but only for up to 52 weeks from the end of the last placement;
 - a newly approved foster carer for up to 52 weeks from the date of approval if no child is placed with them during that time;
 - rooms used by students and members of the armed forces will not be counted as unoccupied if they're away but intend to return home.
- 7.6 In addition to the above a claimant may also be allowed an extra room if they have recently suffered a bereavement in their household.
- 7.7 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).
- 7.8 The Supreme Court ruled that there were unreasonable differences in the way housing benefit regulations treated adults and children, in that there appears to be no reason to distinguish between adult partners who cannot share a bedroom because of disability and children who cannot do so because of disability; or between adults and children in need of an overnight carer.
- 7.9 The Supreme Court held that where there is a clear medical need for an additional bedroom, it is not sufficient for claimants to rely on the discretionary housing payments scheme to alleviate any financial loss, and this is a sufficiently clear class of case that the regulations should have made an exemption.

What the regulations do

- 7.10 These Regulations will allow for an extra bedroom for:
- A disabled child or non-dependant disabled adult requires, and has overnight care from, a non-resident carer. The qualifying test for both Housing Benefit and Universal Credit will be that the child/non-dependant adult is in receipt of middle or higher rate care component of Disability Living Allowance, Attendance Allowance or the daily living component of Personal Independence Payment. For Housing Benefit only, if the qualifying disability benefit criterion is not satisfied, the local authority can still allow an extra bedroom if it has been provided with sufficient evidence that it is satisfied overnight care is required. This effectively

mirrors the current provision in the size criteria for adults who require a non-resident overnight carer.

- A couple cannot share a bedroom because of disability. The qualifying test for this will be that one member of the couple is in receipt of the middle or higher rate care component of Disability Living Allowance, higher rate Attendance Allowance, the daily living component of Personal Independence Payment or armed forces independence payment; and the individual cannot reasonably share a bedroom with the other member of the couple because of his/her disabilities. This will effectively mirror the current provision in the size criteria for children who cannot share a bedroom.

Welfare Supplementary Payments

Housing Benefit

- 7.11 The Northern Ireland Executive sought and agreed transitional protection for those impacted by the reform for a defined period until March 2020. “[A Fresh Start: The Stormont Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland on 17 November 2015. This included agreement on the implementation of welfare reform in Northern Ireland. It also agreed that Professor Eileen Evason should lead a small working group to bring forward proposals for mitigating welfare reforms within an agreed financial envelope. The Executive agreed to implement the findings of the working group.
- 7.12 In its report the Welfare Reform Mitigations Working Group welcomed the Executive’s decision to provide full mitigation for the Social Sector Size Criteria. The Housing Benefit (Welfare Supplementary Payment) Regulations (Northern Ireland) 2017 ([S.R. 2017 No. 35](#)) provide for welfare supplementary payments to mitigate the impact of the criteria on calculations of housing benefit.
- 7.13 Housing Benefit claimants in Northern Ireland remain protected from social sector size criteria changes, until March 2020.

Universal Credit

- 7.14 Article 19 of [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) amends Article 137 of the [Welfare Reform \(Northern Ireland\) Order 2015](#) in order to provide Welfare Supplementary Payments to claimants who may be affected by social sector size criteria in the calculation of Universal Credit. Although the suite of Universal Credit Regulations have been made, they will not be brought into operation until Universal Credit is introduced in Northern Ireland. Welfare Supplementary Payment Regulations specific to Universal Credit will be made by the Department for Communities to give effect to Professor Evason’s report.

Consolidation

- 7.15 This instrument will be informally consolidated in the Law Relating to Social Security Northern Ireland (or “Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security> .

8. Consultation outcome

- 8.1 As the policy change is to comply with a Supreme Court judgment, the Department for Communities has not consulted on this measure.

- 8.2 The equivalent GB regulations, [the Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2017](#) (SI 2017/213), where referred to the Social Security Advisory Committee (SSAC) and the Local Authority Associations but no substantial concerns were raised.

9. Guidance

- 9.1 The appropriate guidance will be amended for staff and Decision Makers in advance of this instrument becoming operational.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector would be estimated as the cost of providing additional room allocations under the Housing Benefit entitlement for the affected households. This reduces the estimated savings from the policy in the Impact Assessment for [the Housing Benefit \(Amendment\) Regulations \(Northern Ireland\) 2016](#).
- 10.3 An Impact Assessment has not been prepared for this instrument. However the estimated caseload of the policy from which this is an easement was published in the Impact Assessment for [the Housing Benefit \(Amendment\) Regulations \(Northern Ireland\) 2016](#) which introduced the social size criteria in Northern Ireland. The proportion of the number of households impacted by this change is those who fit the specific criterion as set out in the judgement. This includes those who are not able to share a room, or need a non-resident carer, so are aimed at providing the additional entitlement to households with disabled occupants.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.
- 12.2 Northern Ireland social security legislation normally retains parity with changes made by the Department for Work and Pensions.

13. Contact

- 13.1 Anne McCleary at the Department for Communities Telephone: 028 9081 9984 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.