

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (AMENDMENT) REGULATIONS (NORTHERN
IRELAND) 2016

2016 No. 258

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 instrument makes provision for the introduction of social sector size criteria for working-age housing benefit claimants. 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.
- 2.2 These changes aim to improve support and provide incentives for claimants moving from benefit into paid work, the introduction of which will equalise the policy between the social and private rented sectors. Housing Benefit claimants currently living in the social rented sector generally have no restriction placed on the size of accommodation they occupy, and the amount of Housing Benefit to which they are entitled. The introduction of the size criteria restriction will bring the social rented sector more into line with the approach in the private rented sector. It is hoped that this measure will help encourage movement within the social rented sector so tenants no longer occupy houses which are too large for their needs thereby making better use of the available housing stock.

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](#) 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 introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive. It also reassessed incapacity benefits claims for Employment and Support Allowance (ESA), improved the Work Capability Assessment and made sure housing support is fair.
- 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 relating 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](#) was made on 9 December 2015 and regulations stemming from the Order to implement the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland are now being brought forward.

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.
- 5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain:
- The Housing Benefit (Amendment) Regulations 2012 ([S.I. 2012/3040](#));
 - The Housing Benefit (Amendment) Regulations 2013 ([S.I. 2013/665](#)),
 - The Rent Officers (Housing Benefit Functions) (Amendment Order 2013 ([S.I. 2013/666](#)),
 - The Rent Officers (Housing Benefit Functions) Amendment (no. 2) Order 2013 ([S.I. 2013/2827](#)),
 - The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 ([S.I. 2013/2828](#)), and
 - The Housing Benefit (Transitional Provisions) (Amendment) Regulations 2014 ([S.I. 2014/212](#)).

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 Housing Benefit expenditure in Northern Ireland increased from £371.5 million in 2004/05¹ to £671 million in 2014/15² and left unreformed this will quickly become unsustainable. Limiting the amount of Housing Benefit that working age claimants in the social rented sector are entitled to, based on their household size, will help contain rising expenditure. Tenants in the private sector are already subject to rent controls and this measure will equalise the position between social and private rented sector tenants.
- 7.2 Housing Benefit claimants currently renting in the social rented sector generally have no restriction placed on the size of the accommodation that they occupy, and the amount of Housing Benefit to which they are entitled.
- 7.3 As well as helping to contain Housing Benefit expenditure this change will ensure that all tenants, regardless of their tenure type, are treated consistently. Unlike those in the private rented sector, claimants living in the social rented sector currently receive Housing Benefit for any size accommodation, even where this is too large for the household's needs. In the private rented sector size criteria determine the maximum property size for which Housing Benefit will meet the costs based on household size. Introducing restrictions for working age claimants in the social sector from 2 January 2017 to reflect household size, using the same size criteria as currently used for calculating Housing Benefit for private sector claimants under Local Housing Allowance rules, will ensure parity of treatment. The changes also aim to strengthen work incentives among people of working age living in social rented housing, make better use of available social housing stock and increase mobility in the social rented sector.
- 7.4 Working age claimants are entitled to one bedroom for the following people in their household:
- Every adult couple (married or civil partners or living as married or civil partners);
 - Any other adult aged 16 or over, including non dependants;
 - Any two children of the same sex aged under 16;
 - Any two children aged under 10;
 - Any other child;
 - Any foster child or foster children;
 - A severely disabled child who would normally be expected to share a bedroom;
 - A carer (or team of carers) who do not live at the property but provide overnight care; and
 - Any adult child who is in the armed forces and deployed on operations.

¹ http://www.nihe.gov.uk/annual_report_2004-05.pdf

² http://www.nihe.gov.uk/2015_annual_report.pdf

- 7.5 The Government introduced the exemptions for foster parents and children serving in the armed forces in response to concerns raised by Members of Parliament and the general public.
- 7.6 This rule also ensures that, when calculating the maximum amount of Housing Benefit entitlement, the Northern Ireland Housing Executive's decision-makers can allow for an additional bedroom where a severely disabled child who would otherwise be expected to share is not reasonably able to do so due to their disability.
- 7.7 Where a claimant is deemed to be under-occupying, one of two percentage reduction rates will be applied:
- 14% where under-occupying by one bedroom
 - 25% where under-occupying by two or more bedrooms.
- 7.8 The rule also removes transitional protections that would potentially allow social sector tenants who have been in the same property since 1 January 1996, and who have been in receipt of housing benefit continuously since then to argue that the legislation relating to the removal of the spare room subsidy does not apply.
- 7.9 Until 1996 housing benefit was based on the claimant's actual rent. When the rules were changed in 1996, generous transitional protection was included for anyone in receipt of HB at the time of the change until they moved (subject to a move due to natural disasters, fire etc) or until they ceased to be entitled to HB (subject to exceptions in relation to welfare to work). The protection can also be inherited once on the death of the claimant in respect of the same dwelling (essentially by the same kinds of people who can benefit from protection on death under current rules).
- 7.10 This amendment to the statutory framework restores the policy intention that the transitional protection for pre 1996 cases does not apply to a case where the Northern Ireland Housing Executive is required to determine a maximum rent (social sector).

Consolidation

- 7.11 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 this is a consequence of wider welfare reforms the Department for Communities has not consulted on it specifically. The Department consulted extensively about the implications of those wider reforms as part of the [Welfare Reform Bill](#) (which fell in NI) consultation process.
- 8.2 The [Welfare Reform Section 75](#) update, published alongside the Welfare Reform Bill (NI), indicated that the introduction of the size criteria is likely to affect over 32,000 working age Housing Benefit claimants living in the social rented sector. This consisted of over 26,000 Northern Ireland Housing Executive tenants and over 6,000 Housing Association tenants.
- 8.3 Due to system limitations, data relating to Religious Belief, Political Opinion, Racial Group and Sexual Orientation was not collected as it has no bearing on the eligibility

for claiming housing benefit and as such this information is not stored within the administrative systems.

9. Guidance

- 9.1 Guidance is being developed for staff and Decision Makers and will be available before this instrument comes into force.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is outlined in the Impact Assessment. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive.
- 10.3 The impact on the public sector is outlined in the Impact Assessment. In 2015/16 and prior to the Fresh Start Agreement, these welfare related savings foregone from not implementing the package of measures were estimated to be £114 million. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive.
- 10.4 An Impact Assessment is submitted with this memorandum, and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. It is estimated that 33,720 of the 97,100 households in receipt of Housing Benefit in social housing in Northern Ireland may be affected by this policy as they are working age and reside in a house that is too large for the needs defined by their household size. The average reduction across all households is estimated to be £12.80 per week (2015/16 prices), but would be lower if claimants move to smaller properties.

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.

13. Contact

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