

EXPLANATORY MEMORANDUM TO
THE BENEFIT CAP (HOUSING BENEFIT AND UNIVERSAL CREDIT)
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 375

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 amends the Housing Benefit Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 405](#)) and the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)) to provide for a further cap on the total amount of welfare benefits to which a household in Northern Ireland is entitled from 7 November 2016, as legislated for in the Welfare Reform and Work (Northern Ireland) Order 2016 ([2016 No. 999 \(N.I. 1\)](#)). It also makes consequential amendments to the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 ([S.R. 2001 No. 213](#)) and the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 226](#)).
- 2.2 This instrument also introduces a new exception to the benefit cap under Housing Benefit rules for those households in receipt of guardian's allowance.
- 2.3 The instrument also amends the Discretionary Financial Assistance Regulations (Northern Ireland) 2001 ([S.R. 2001 No. 216](#)) to extend the use of discretionary housing payments to tenants who may be impacted by the lowered cap.

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 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 [Welfare Reform Act 2012](#) (“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](#) (“the 2016 Act”), and regulations stemming from the 2016 Order are now being brought forward.
- 4.4 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.
- 4.5 Section 8 of the 2016 Act amends Section 96 of the 2012 Act to provide for a further reduction in the level of the benefit cap and for a tiered approach for claimants depending on where they reside in Great Britain.
- 4.6 The Welfare Reform and Work (Northern Ireland) Order 2016 introduces equivalent provision for claimants residing in Northern Ireland. Claimants in Northern Ireland will be subject to the £20,000 for couples and lone parents or £13,400 cap for single people. The lowered cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net of support for the most vulnerable.

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 changes replicate for Northern Ireland the legislation that applied to Great Britain: The Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016 ([S.I. 2016/909](#)).

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 Regulations”), the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 ([S.R. 2001 No. 213](#)), the Discretionary Financial Assistance Regulations (Northern Ireland) 2001 ([S.R. 2001 No.](#)

[216](#)), the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)) (“the Universal Credit Regulations”) and the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 226](#)).

- 7.2 These Regulations make amendments in connection with the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1)) (“the 2016 Order”) and introduce a new exemption from the benefit cap.
- 7.3 Article 101 of the 2015 Order allowed for the introduction of a benefit cap, which capped the amount of benefits workless working age households could receive. This was to restrict the total amount of money a non-working household could receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted. From 31 May 2016, the annual level of the cap was set at £26,000 (£2,166.67 monthly, £500 weekly) for a couple (with or without children) and single parent households. It was set at £18,200 (£1,516.67 monthly, £350 weekly), for single adult households without children.
- 7.4 The cap has been applied by the Northern Ireland Housing Executive to reduce a claimant’s Housing Benefit, in cases where the total benefit entitlement would otherwise exceed £500 per week for couple and lone parent households, or £350 per week for single households. Universal Credit has not yet been introduced in Northern Ireland.
- 7.5 These regulations will reduce the level of the cap to £384.62 per week for couples and lone parents (£1,666.67 monthly), and £257.69 per week for single people (£1,116.67 monthly). The reduction in the cap emphasises the objective for fairness for working households and strengthens the rewards of work in the benefit system. The new cap aims to strengthen work incentives, achieve fairness for taxpayers and ensure there is a reasonable safety net for the most vulnerable.
- 7.6 A new exemption applies for those households who are in receipt of housing benefit and are entitled to guardian’s allowance. This exemption from the benefit cap emphasises that the Government both recognises the difficult circumstances these families face and strongly values the role of guardians in helping vulnerable and bereaved children stay with their families. Those households entitled to carer’s allowance are already exempt from the Benefit Cap in Northern Ireland, under the Benefit Cap (Housing Benefit) Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 55](#)) and these regulations make one minor adjustment to that existing exemption.
- 7.7 Claimants who are entitled to carer’s allowance or guardian’s allowance (or are entitled to the carer element of Universal Credit) are already excluded from the benefit cap in Universal Credit in Northern Ireland, under the Universal Credit Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 216](#)).
- 7.8 Unlike Great Britain, where discretionary housing payments are available to housing benefit claimants generally, in Northern Ireland their use has been restricted to those tenants in the private rental sector, who are subject to local housing allowance or local reference rent rules, and face a shortfall between the amount that housing benefit contributes toward rental costs and the rent charged by their landlord. This instrument ensures that those impacted by the reduced benefit cap can apply for a discretionary housing payment in order to meeting additional housing costs.

Consolidation

- 7.9 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](#).

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 The impact on the public sector is outlined in the Impact Assessment. Savings estimated for Northern Ireland and published in the Benefit cap information booklet are £8m per annum, estimated by the Department for Communities Northern Ireland. 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.
- 10.2 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 An Impact Assessment has been prepared for this instrument. It is estimated that 2,240 households could be affected by the cap if they do not make the behavioural change and move into employment. If they do not make a change to move out of the scope of the cap, such as moving into work, these households will see an average reduction of £50 per week, a lower amount than across GB. For many people who will be affected by the cap these reductions are notional changes in entitlement rather than actual cash losses; they will have a lower maximum limit on the benefit they would otherwise have been entitled to.

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.