

2016 No. 55

HOUSING

**The Benefit Cap (Housing Benefit) Regulations (Northern
Ireland) 2016**

Made - - - - - *22nd February 2016*

Laid before Parliament *29th February 2016*

Coming into operation - *31st May 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by Articles 5 and 101(1), (3), (4)(a), (b), (c) and (g), (5) and (7) of the Welfare Reform (Northern Ireland) Order 2015(a).

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

Citation and commencement

1. These Regulations may be cited as the Benefit Cap (Housing Benefit) Regulations (Northern Ireland) 2016 and come into operation on 31st May 2016.

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

2.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 4 (revision of decisions)(c) after paragraph (6D) insert—

“(6E) Where a relevant authority has reduced housing benefit as a consequence of regulation 73D of the Housing Benefit Regulations (reduction of housing benefit), that decision may be revised at any time.”.

(3) In regulation 7(2) (decisions superseding earlier decisions)(d) after sub-paragraph (l) add—

“(m)which as a consequence of regulation 73D of the Housing Benefit Regulations (reduction of housing benefit) reduces housing benefit to apply the benefit cap or increases or decreases such a reduction (including a decrease to nil).”.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect)(e) after paragraph (14) insert—

(a) S.I. 2015/2006 (N.I. 1). Article 5 is cited for the meaning of “prescribe” and “regulations”.

(b) S.R. 2001 No. 213; relevant amending Regulations are S.R. 2006 No. 104, S.R. 2010 Nos. 312 and 347 and S.R. 2013 No. 282.

(c) Paragraph 6D was inserted by regulation 10(2) of S.R. 2006 No. 104.

(d) Sub-paragraph (l) was added by paragraph 2(3)(b) of Schedule 4 to S.R. 2010 No. 312 and amended by regulation 5 of S.R. 2010 No. 347.

(e) Paragraph (14) was added by paragraph 2(4)(b) of Schedule 4 to S.R.2010 No. 312.

“(14A) Where a decision is superseded in accordance with regulation 7(2)(m), the superseding decision shall take effect—

- (a) on the date the superseding decision is made where the decision results in the application of the benefit cap or an increase in a reduction, and
- (b) where the decision results in the benefit cap ceasing to apply or a decrease in a reduction, on the date from which the welfare benefit (within the meaning of regulation 73G of the Housing Benefit Regulations (interpretation)) is reduced.”.

Amendment of the Housing Benefit Regulations

3.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(a) are amended in accordance with paragraphs (2) to (5).

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

(a) after the definition of “employed earner” insert—

““employment and support allowance” means an employment and support allowance within the meaning of Part 1 of the Welfare Reform Act;” and

(b) after the definition of “invalid carriage or other vehicle” insert—

““jobseeker’s allowance” means a jobseeker’s allowance within the meaning of Part II of the Jobseekers Order;”.

(3) After regulation 70C (relationship between extended payment and entitlement to housing benefit under the general conditions of entitlement)(b) insert—

“Calculation of an extended payment where the benefit cap applies

70D. Where a claimant’s housing benefit in the benefit week with respect to which the extended payment is to be calculated is reduced in accordance with regulation 73D, the extended payment must be calculated using the amount of housing benefit before any such reduction is made.”.

(4) After regulation 71C(relationship between extended payment (qualifying contributory benefits) and entitlement to housing benefit under the general conditions of entitlement)(c) insert—

“Calculation of an extended payment (qualifying contributory benefits) where the benefit cap applies

71D. Where a claimant’s housing benefit in the benefit week with respect to which the extended payment (qualifying contributory benefits) is to be calculated is reduced in accordance with regulation 73D, the extended payment (qualifying contributory benefits) must be calculated using the amount of housing benefit before any such reduction is made.”.

(5) After Part VIII (amount of benefit) insert—

(a) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 285.

(b) Regulations 70, 70A, 70B and 70C were substituted for regulation 70 by regulation 2(4) of S.R. 2008 No. 285.

(c) Regulations 71, 71A, 71B and 71C were substituted for regulation 71 by regulation 2(5) of S.R. 2008 No. 285.

“Part VIII A

Benefit cap

Circumstances in which a benefit cap will apply

73A. Unless regulation 73E or 73F applies, a benefit cap applies where the relevant authority makes a determination that during the reference period the total amount of welfare benefits to which—

- (a) where the claimant is a member of a couple, each member of the couple is or jointly are entitled, or
 - (b) in any other case, the claimant is entitled,
- exceeds the relevant amount.

Determination of whether a benefit cap applies

73B. The relevant authority need not determine whether the benefit cap applies, or whether to change the amount of any reduction made in accordance with regulation 73D, unless it receives notification from the Department that the benefit cap may apply or that there has been a change in the amount of a welfare benefit to which the claimant is entitled (but nothing shall prevent the relevant authority making a determination as to whether the benefit cap applies, or the amount of any reduction, if it has information or evidence suggesting that it should do so).

Manner of calculating the amount of welfare benefits

73C.—(1) When calculating the total amount of welfare benefits, the relevant authority must use the amount of a welfare benefit to which a person is entitled unless paragraph (2), (3) or (4) applies.

(2) Where the welfare benefit is housing benefit, the relevant authority—

- (a) where the dwelling is accommodation specified in regulation 73H (specified accommodation) must use the amount of nil, and
- (b) in any other case, must not take account of any reduction under regulation 73D and must use the amount to which the claimant would be entitled by virtue of section 129 of the Act.

(3) Where the welfare benefit is an employment and support allowance, the relevant authority must disregard that benefit where a person is disqualified for receiving it by virtue of section 18 of the Welfare Reform Act.

(4) Where an amount of a welfare benefit other than jobseeker’s allowance or employment and support allowance is taken into account as income in accordance with Part VI (income and capital), or would be so taken into account if the relevant authority were required to calculate the claimant’s income, the relevant authority must use that amount.

(5) The amount of a welfare benefit for the purpose of paragraph (4) includes any amount of that benefit which would have been payable but for any loss of benefit under, or by virtue of, section 5B, 6 or 8 of the Social Security Fraud Act (Northern Ireland) 2001(a).

(a) 2001 c. 17; section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13); Section 6 was amended by paragraph 33(a) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14), section 45(1) of, and paragraph 14(2) of Schedule 3 to, of the Welfare Reform Act (Northern Ireland) 2007 (c. 2) and paragraph 1(2)(a) and (b), (3) and (4) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010; Section 8 was amended by paragraph 34(a) and (b) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and paragraph 3(2) and (3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010.

Reduction of housing benefit

73D.—(1) Subject to paragraph (2), where the benefit cap applies, the relevant authority must reduce the amount of housing benefit to which the claimant is entitled by virtue of section 129 of the Act by the amount by which the total amount of welfare benefits exceeds the relevant amount.

(2) Where the reduction would reduce the claimant's housing benefit to less than the minimum amount of housing benefit provided for in regulation 73 (minimum housing benefit), the relevant authority must reduce the claimant's housing benefit by such amount as will leave the claimant entitled to that minimum amount.

Exception to the benefit cap: current or recent work

73E.—(1) The benefit cap does not apply where paragraph (2) applies or during the period specified in paragraph (3).

(2) This paragraph applies where the claimant is, or the claimant and the claimant's partner are jointly, entitled to working tax credit.

(3) The specified period is, where paragraph (4) applies, the consecutive period of 39 consecutive weeks starting on the day specified in paragraph (5).

(4) This paragraph applies where the relevant authority is satisfied that, for at least 50 weeks out of the 52 weeks immediately preceding their last day of work, the claimant or the claimant's partner ("P")—

- (a) was employed or engaged in work for payment, or in the expectation of payment, and
- (b) was not entitled to income support, a jobseeker's allowance or an employment and support allowance,

and, for the purposes of sub-paragraph (a), P is employed or engaged in work for any day on which P is on maternity leave, paternity leave, adoption leave or shared parental leave or is in receipt of statutory sick pay.

(5) The specified day is the day after the last day on which P was employed or engaged in the work referred to in paragraph (4).

Exception to the benefit cap: receipt of specified benefit

73F.—(1) The benefit cap does not apply where—

- (a) the claimant or the claimant's partner is receiving an employment and support allowance under Part 1 of the Welfare Reform Act which includes a support component;
- (b) the claimant or the claimant's partner is receiving an industrial injuries benefit by virtue of Part 5 of the Act;
- (c) the claimant or the claimant's partner is receiving an attendance allowance;
- (d) the claimant or the claimant's partner is receiving a war pension;
- (e) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible, is receiving a disability living allowance;
- (f) the claimant, the claimant's partner or a young person for whom the claimant or the claimant's partner is responsible, is receiving an armed forces independence payment;
- (g) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible is entitled to a payment listed in sub-paragraph (b), (c), (d), (e) or (f) but—

- (i) that person is not receiving it under regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(a);
 - (ii) it is withheld under article 53 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (maintenance in hospital or an institution)(b);
 - (iii) that person is not receiving it under regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1992(c);
- (h) the claimant or the claimant's partner is entitled to a carer's allowance.

(2) In this regulation "war pension" has the meaning in regulation 2(1) (interpretation) and includes—

- (a) a guaranteed income payment;
- (b) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (c) a payment which is made under any of—
 - (i) the Order in Council of 19th December 1881;
 - (ii) the Royal Warrant of 27th October 1884;
 - (iii) the Order by His Majesty of 14th January 1922,
 to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973.
- (d) a pension paid by the government of a country outside Great Britain which is analogous to a war pension or any of the pensions or payments mentioned in subparagraphs (a) to (c).

Interpretation

73G. For the purposes of Article 101 of the Welfare Reform (Northern Ireland) Order 2015 and this Part—

"couple" has the meaning in regulation 2(1) unless the claimant is a member of a polygamous marriage, in which case it means the claimant and the member of the polygamous marriage to whom the claimant was first married and references to the claimant's partner are to that member of that marriage;

"reference period" means a benefit week;

"relevant amount" is—

- (a) for a single claimant, £350, and
- (b) for all other claimants, £500;

"welfare benefit" means—

- (a) bereavement allowance;

(a) S.R. 1992 No. 20; regulation 6 was amended by regulation 2(2)(a) and (b) of S.R. 1992 No.481, regulation 3 of S.R. 1999 No.221, regulation 2(3) of S.R. 2000 No. 195, regulation 2(2)(c) of S.R. 1992 No. 481 and regulation 7 was substituted by regulation 2(2) of S.R. 2007 No. 431

(b) S.I. 2006/606

(c) S.R. 1992 No. 32; regulation 8 was amended by regulation 3(2)(a), (b) and (c) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1999 No. 221 and regulation 3(2) of S.R. 2000 No.195 and regulation 9 was substituted by regulation 3(2) of S.R. 2007 No. 431

- (b) child benefit;
- (d) child tax credit;
- (e) an employment and support allowance;
- (f) guardian's allowance;
- (g) housing benefit;
- (h) incapacity benefit;
- (i) income support;
- (j) a jobseeker's allowance;
- (k) maternity allowance;
- (l) severe disablement allowance;
- (m) widowed mother's allowance;
- (n) widowed parent's allowance;
- (o) widow's pension.

Specified accommodation

73H.—(1) The accommodation referred to in regulation 73C(2)(a) is accommodation to which one or more of the following paragraphs applies.

(2) This paragraph applies to accommodation which is exempt accommodation within the meaning of paragraph 4(9) of Schedule 3 to the Consequential Provisions Regulations.

(3) This paragraph applies to accommodation—

- (a) which is provided by a relevant body;
- (b) into which the claimant has been admitted in order to meet a need for care, support or supervision, and
- (c) where the claimant receives care, support or supervision.

(4) This paragraph applies to accommodation which—

- (a) is provided by a relevant authority or a relevant body to the claimant because the claimant has left the home as a result of domestic violence, and
- (b) consists of a building, or part of a building, which is used wholly or mainly for the non-permanent accommodation of persons who have left their homes as a result of domestic violence.

(5) This paragraph applies to accommodation—

- (a) which would be a hostel within the meaning of regulation 2(1) (interpretation) but for it being owned or managed by a relevant authority, and
- (b) where the claimant receives care, support or supervision.

(6) In this regulation—

“coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;

- (d) emotional abuse;
 - (e) financial abuse;
- regardless of the gender or sexuality of the victim;
- “relevant body” means a—
- (a) housing association;
 - (b) registered charity;
 - (c) voluntary organisation.”.

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

22nd February 2016

Freud
Minister 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”) to make provision for a cap on the total amount of welfare benefits to which a person is entitled. They also make consequential amendments to the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 (“the Decisions and Appeals Regulations”).

Regulation 2 amends the Decisions and Appeals Regulations to allow the relevant authority to revise or supersede decisions applying the benefit cap or relating to the benefit cap, any change in the amount of a reduction and the effective date of superseding decisions.

Regulation 3 amends the Housing Benefit Regulations inserting a new Part VIIIA with new regulations 73A to 73H. These new regulations make provision for the benefit cap and other consequential amendments including rules in relation to extended payments of housing benefit which specify that the amount of an extended payment is not to be reduced due to the application of the benefit cap.

Regulation 73A provides that a benefit cap applies when the amount of welfare benefits to which a claimant or a claimant and claimant’s partner are entitled in a week exceeds the relevant amount. The relevant amount is defined in regulation 73G as £350 for a single claimant who is not responsible for a child or young person and £500 in any other case. Regulation 73G also prescribes the welfare benefits to be taken into account.

Regulation 73B makes provision relating to when the relevant authority determines whether a benefit cap applies. Although the local authority may continue to act on any information or evidence it receives, it need not make a determination relating to the benefit cap (including whether any reduction should be increased or decreased) unless it receives a notification from the Department for Social Development.

Regulation 73C makes provision as to the manner in which entitlement to welfare benefits is to be calculated where the amount of the welfare benefit paid to the claimant is not the same as the amount to which the claimant is entitled. It also makes specific provision in relation to claimants who are in receipt of housing benefit and are living in specified accommodation (as defined in regulation 73H: current exempt accommodation, managed properties, refuges and hostels). In such cases, when calculating the total amount of welfare benefits received by the claimant for the purposes of determining whether their total entitlement exceeds the relevant amount, the amount of housing benefit received should be deemed to be nil.

Regulation 73D provides that where the benefit cap applies, the relevant authority must reduce a claimant’s housing benefit by the amount by which welfare benefits exceed the relevant amount. Where such a reduction would reduce the claimant’s housing benefit below the minimum amount payable, the local authority must reduce housing benefit by such amount as would leave entitlement of that minimum amount.

Regulation 73E provides for exceptions to the benefit cap, both where the claimant is, or where the claimant and their partner are jointly entitled to working tax credit and where the claimant or the claimant’s partner was in work for 50 out of the 52 weeks before that work ended and was not entitled to income support, jobseeker’s allowance or an employment and support allowance. This applies for 39 weeks from the day after the last day in respect of which that person received payment for that work.

Regulation 73F provides for exceptions to the benefit cap where the claimant or their partner is in receipt of an employment and support allowance with a support component, attendance allowance, industrial injuries benefit, carer’s allowance or a war pension or where the claimant, their partner or a child or young person they are responsible for is in receipt of disability living allowance. It also provides for an exception to the benefit cap where the claimant, their partner or a young person they are responsible for is in receipt of an armed forces independence payment.

Where a person is otherwise entitled but is not receiving disability living allowance, attendance allowance or a war disablement pension because they are in hospital or a care home, the exception will also apply.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London, SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on www.legislation.gov.uk.

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