

2011 No. 51

HOUSING

The Housing Benefit (Amendment) Regulations (Northern Ireland) 2011

Made - - - - 25th February 2011

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129A(2) to (4) and 171(1) and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and now vested in it(b).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 2(7), 3(7) and 4 should not be referred to it (c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Amendment) Regulations (Northern Ireland) 2011 and, subject to paragraph (2), shall come into operation on 18th March 2011.

(2) Regulations 2 and 3 come into operation on 1st April 2011.

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

Amendment of the Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(e) are amended in accordance with paragraphs (2) to (8).

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

(a) after the definition of “person on income support” insert—

“person who requires overnight care” means a person (“P”)—

(a) who—

(i) is in receipt of attendance allowance;

(ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, or

(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 section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(b) See Article 8(b) of S.R. 1999 No. 481
(c) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(d) 1954 c. 33 (N.I.)
(e) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 101

- (iii) although not satisfying either sub-paragraph (i) or (ii) has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and
- (b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—
 - (i) be engaged in providing overnight care for P;
 - (ii) regularly stay overnight at the dwelling for that purpose, and
 - (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,
 but, in a case where P is treated as occupying a dwelling which P does not actually occupy, sub-paragraphs (ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange at such time as P actually occupied or occupies the dwelling;” and
- (b) in the definition of “young individual”—
 - (i) at the end of paragraph (b) omit “or”, and
 - (ii) after paragraph (c) add—
 - “or
 - (d) who is a person who requires overnight care;”.
- (3) In regulation 13C(1) (eligible rent and maximum rent (LHA)) at the beginning insert “Except where regulation 13D applies,”.
- (4) After regulation 13C(a) insert—

“Transitional protection–reduction in LHA

- 13D.**—(1) This regulation applies where—
- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;
 - (b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 14C(2)(d)(i)(b) because the claimant has become entitled to a larger category of dwelling, or
 - (ii) regulation 14C(3); and
 - (c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.
- (2) Where this regulation applies, the claimant’s eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or
 - (b) in any other case, the lower of—
 - (i) the amount of the eligible rent which applied immediately before 1st April 2011, or
 - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(a) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 101
 (b) Regulations 14 to 14F were substituted for regulation 14 by regulation 2(7) of S.R. 2008 No. 101

(3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

- (a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;
- (b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 14C(2)(d)(i) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);
- (c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 14C(2)(d)(i) because the claimant has become entitled to a smaller category of dwelling;
- (d) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (e) the relevant authority is required to determine an eligible rent in accordance with regulation 13C(3).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 13C(2)(a) and shall apply according to the provisions of regulation 13C.”.

(5) In regulation 14D (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c) after “with paragraph (3)” insert “up to a maximum of 4 bedrooms”;
- (b) in paragraph (3) at the end add—
“and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where both of them are).”;
- (c) for paragraph (5) substitute—
“(5) Where the applicable local housing allowance exceeds the cap rent, the maximum rent (LHA) shall be the cap rent.”; and
- (d) omit paragraphs (6) to (9).

(6) In regulation 16(5)(a) (pre-tenancy decisions) in the definition of “change relating to a rent allowance” for “or (d)” substitute “, (d) or (f)”.

(7) In Schedule 2 (decisions of rent payable)—

- (a) in paragraph 4(2)(b) (local reference rents) after “room suitable for living in” where it first occurs insert “and neither the tenant nor the tenant's partner is a person who requires overnight care”; and
- (b) after paragraph 10 (size criteria) insert—

“**10A.** Where the tenant or the tenant's partner is a person who is stated on the application for the determination as being a person who requires overnight care (or in any case where both of them are so stated), one additional bedroom is allowed.”.

(8) In paragraph 2(3) of Schedule 3 (excluded tenancies) after head (e) add—

- “(f) the claimant or the claimant's partner becomes or ceases to be a person who requires overnight care where that effects the size criteria, as set out in Schedule 2, applicable in the claimant's case.”.

(a) Regulation 16(5) was amended by regulation 2(9)(b) of S.R. 2008 No. 101

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

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(a) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation) after the definition of “person on state pension credit” insert—

“person who requires overnight care” means a person (“P”)—

- (a) who—
 - (i) is in receipt of attendance allowance;
 - (ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, or
 - (iii) although not satisfying either sub-paragraph (i) or (ii) has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and
- (b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—
 - (i) be engaged in providing overnight care for P;
 - (ii) regularly stay overnight at the dwelling for that purpose, and
 - (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,but, in a case where P is treated as occupying a dwelling which P does not actually occupy, sub-paragraphs (ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange at such time as P actually occupied or occupies the dwelling;”.

(3) In regulation 13C(1)(b) (eligible rent and maximum rent (LHA)) at the beginning insert “Except where regulation 13D applies,”.

(4) After regulation 13C insert—

“Transitional protection–reduction in LHA

13D.—(1) This regulation applies where—

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;
- (b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—
 - (i) regulation 14C(2)(d)(i)(c) because the claimant has become entitled to a larger category of dwelling, or
 - (ii) regulation 14C(3); and
- (c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.

(2) Where this regulation applies, the claimant’s eligible rent is—

(a) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 No. 102

(b) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 102

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

- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or
- (b) in any other case, the lower of—
 - (i) the amount of the eligible rent which applied immediately before 1st April 2011, or
 - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

- (a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;
- (b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 14C(2)(d)(i) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);
- (c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 14C(2)(d)(i) because the claimant has become entitled to a smaller category of dwelling;
- (d) the relevant authority is required to determine an eligible rent following a change of dwelling; or
- (e) the relevant authority is required to determine an eligible rent in accordance with regulation 13C(3).

(4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 13C(2)(a) and shall apply according to the provisions of regulation 13C.”.

(5) In regulation 14D (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c) after “with paragraph (3)” insert “up to a maximum of 4 bedrooms”;
- (b) in paragraph (3) at the end add—

“and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where both of them are).”;
- (c) for paragraph (5) substitute—

“(5) Where the applicable local housing allowance exceeds the cap rent, the maximum rent (LHA) shall be the cap rent.”; and
- (d) omit paragraphs (6) to (9).

(6) In regulation 16(5)(a) (pre-tenancy decisions) in the definition of “change relating to a rent allowance” for “or (d)” substitute “, (d) or (f)”.

(7) In Schedule 2 (decisions of rent payable)—

- (a) in paragraph 4(2)(b) (local reference rents) after “room suitable for living in” where it first occurs insert “and neither the tenant nor the tenant's partner is a person who requires overnight care”; and
- (b) after paragraph 10 (size criteria) insert—

(a) Regulation 16(5) was amended by regulation 2(9)(b) of S.R. 2008 No. 102

“10A. Where the tenant or the tenant’s partner is a person who is stated on the application for the determination as being a person who requires overnight care (or in any case where both of them are so stated), one additional bedroom is allowed.”.

(8) In paragraph 2(3) of Schedule 3 (excluded tenancies) after head (e) add—

“(f) the claimant or the claimant’s partner becomes or ceases to be a person who requires overnight care where that effects the size criteria, as set out in Schedule 2, applicable in the claimant’s case.”.

Amendment of the Housing Benefit (Executive Determinations) Regulations

4.—(1) The Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3 (broad rental market area determinations and local housing allowance determinations) omit paragraphs (2)(b), (4) and (5).

(3) In the Schedule (broad rental market area determinations and local housing allowance determinations)—

(a) in paragraph 1 (categories of dwelling)—

(i) omit sub-paragraph (1)(f), and

(ii) in sub-paragraph (2)(b) for “to (f)” substitute “to (e)”;

(b) in paragraph 2 (local housing allowance for category of dwelling in paragraph 1)—

(i) for sub-paragraphs (9) and (10) substitute—

“(9) Subject to sub-paragraph (12), the local housing allowance for each category of dwelling specified in paragraph 1 is the amount of the rent at the 30th percentile in the list of rents for that category of dwelling.

(10) The rent at the 30th percentile in the list of rents (“R”) is determined as follows—

(a) where the number of rents on the list is a multiple of 10, the formula is—

$$R = \frac{\text{the amount of the rent at P} + \text{the amount of the rent at P1}}{2}$$

where—

(i) P is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10, and

(ii) P1 is the following position on the list;

(b) where the number of rents on the list is not a multiple of 10, the formula is—

$$R = \text{the amount of the rent at P2}$$

where P2 is the position on the list found by multiplying the number of rents on the list by 3 and dividing by 10 and rounding the result upwards to the nearest whole number.”;

(ii) in sub-paragraph (11) for “median rent” substitute “rent at the 30th percentile”, and

(iii) after sub-paragraph (11) add—

“(12) Where the rent at the 30th percentile for the category of dwelling specified in the paragraph of this Schedule listed in column (1) of the following table exceeds the figure in column (2), the local housing allowance for that category of dwelling is the figure in column (2)—

(a) S.R. 2008 No. 100, to which there are amendments not relevant to these Regulations

<i>Column (1)</i> <i>Paragraph of this Schedule defining the category of dwelling</i>	<i>Column (2)</i> <i>Maximum local housing allowance for that category of dwelling</i>
paragraph 1(1)(a) (one bedroom, shared accommodation)	£250
paragraph 1(1)(b) (one bedroom, exclusive use)	£250
paragraph 1(1)(c) (2 bedrooms)	£290
paragraph 1(1)(d) (3 bedrooms)	£340
paragraph 1(1)(e) (4 bedrooms)	£400"; and

(c) in paragraph 3(b) (anomalous local housing allowances) for “to (f)” substitute “to (e)”.

Sealed with the Official Seal of the Department for Social Development on 25th February 2011

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 and the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008.

Regulation 2 amends the Housing Benefit Regulations (Northern Ireland) 2006 so as to:

- reduce the maximum size of dwelling for which local housing allowance is calculated to 4 bedrooms;
- remove provision that allows claimants to receive up to £15 more than their actual rent;
- require account to be taken of an additional bedroom for a non-resident carer in any case where the claimant or claimant's partner is a person who requires overnight care;
- provide for transitional protection for up to 9 months where the Northern Ireland Housing Executive determines a new maximum rent (LHA) because it is the anniversary of the last determination, or there is a new rate of local housing allowance applicable because the claimant has become entitled to a larger category of dwelling.

Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006.

Regulation 4 amends the Housing Benefit (Executive Determinations) Regulations (Northern Ireland) 2008 so as to:

- remove provision requiring the Northern Ireland Housing Executive to determine a local housing allowance for properties with more than 4 bedrooms;
- introduce a maximum local housing allowance for each category of dwelling;
- change the method of calculating local housing allowance from the median rent to the rent at the 30th percentile in the list of rents for the category of dwelling.

In so far as these Regulations are required, for the purposes of regulations 2(7), 3(7) and 4, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

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