STATUTORY RULES OF NORTHERN IRELAND

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(**1**).

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(**2**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 4 (revision of decisions)(**3**) 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)(**4**) 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).".

(**1**) S.I. 2015/2006 (N.I. 1). Article 5 is cited for the meaning of "prescribe" and "regulations".
(**2**) 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.
(**3**) Paragraph 6D was inserted by regulation 10(2) of S.R. 2006 No. 104.
(**4**) 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.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect)(**5**) after paragraph (14) insert—

"(14A) Where a decision is superseded in accordance with regulation 7(2)(m), the superseding decision shall take effect—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(**6**) 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)(**7**) 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)(**8**) 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—

(**5**) Paragraph (14) was added by paragraph 2(4)(b) of Schedule 4 to S.R.2010 No. 312.
(**6**) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 285.
(**7**) Regulations 70, 70A, 70B and 70C were substituted for regulation 70 by regulation 2(4) of S.R. 2008 No. 285.
(**8**) Regulations 71, 71A, 71B and 71C were substituted for regulation 71 by regulation 2(5) of S.R. 2008 No. 285.

"Part VIIIA

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(**9**).

(**9**) 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—