STATUTORY RULES OF NORTHERN IRELAND

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(**1**) and now vested in it(**2**).

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 (**3**).

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(**4**) 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(**5**) 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—

(**1**) 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)
(**2**) *See* Article 8(b) of S.R. 1999 No. 481
(**3**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(**4**) 1954 c. 33 (N.I.)
(**5**) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 101

(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;"; 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(**6**) 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)(**7**) 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—

(**6**) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 101

(**7**) Regulations 14 to14F were substituted for regulation 14 by regulation 2(7) of S.R. 2008 No. 101

(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)(**8**) (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—

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

"**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 (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(**9**) 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)(**10**) (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;

(**9**) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 No. 102
(**10**) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 102