EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND UNIVERSAL CREDIT (SIZE CRITERIA) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 2828

THE RENT OFFICERS (HOUSING BENEFIT FUNCTIONS) AMENDMENT (NO. 2) ORDER 2013

2013 No. 2827

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These instruments make amendments to The Housing Benefit Regulations 2006, The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Universal Credit Regulations 2013, the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997.

2.2 They have the effect of allowing an additional bedroom to be allocated under the size criteria where a severely disabled child who would normally be expected to share a bedroom is not reasonably able to do so due to their disability.

2.3 The Regulations also amend the Housing Benefit Regulations 2006 to allow for an additional room to be allocated under the size criteria where a joint tenant who occupies the same property as the claimant, but is not their partner or a member of their household, has an overnight carer or is a foster carer. This aligns with the position in Universal Credit.

2.4 In Universal Credit, the housing costs assessment is structured so as to effectively factor out joint tenants and they are not taken into account in the size criteria assessment.

2.5 There is also an amendment to the definition of “young individual” in the Housing Benefit Regulations 2006 to exclude approved foster carers, preventing the shared accommodation rate from being applied when a claimant is a single person under 35 who is also an approved foster carer.

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3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 In May 2012 the Court of Appeal ruled that the Local Housing Allowance (LHA) size criteria were in breach of Article 14 of the European Convention on Human Rights (ECHR) and unlawfully discriminated against severely disabled children where the nature of their disability made it unreasonable for them to share a room (case of Gorry). The court also ruled that the size criteria unlawfully discriminated against adult claimants (cases of Burnip, Trengrove) that required an additional room for a non-resident overnight carer. However, the Housing Benefit regulations had already been amended in 2010 to allow for an additional room in these circumstances.

4.2 The amendments to Regulations are intended to comply with the terms of this Court order. They are designed to ensure that, when applying the size criteria to calculate the maximum amount of Housing Benefit or housing costs under Universal Credit, the relevant authority can allow for an additional bedroom where a child who would usually be expected to share a room cannot reasonably be expected to do so due to disability.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As these instruments are subject to the negative resolution procedure, and do not amend primary legislation, no statements are required.

7. Policy background

7.1 Housing benefit and the housing costs element of Universal Credit are both awarded to people in and out of work who require financial support in order to pay their rent.

7.2 The amount of housing benefit (or the amount of the housing costs element in Universal Credit) to which a person is entitled is, in part, dependant on the size and make-up of their household (size criteria).

7.3 The size criteria applies to claimants living in both the private and social rented sectors and prescribe the number of bedrooms a claimant would be entitled to. For private rented sector cases, the maximum amount payable in respect of housing costs is calculated based on the appropriate Local Housing Allowance limit. This is a figure determined by a rent officer as being appropriate to cover the cost of the number of bedrooms which the claimant and their household are deemed to need. This is subject to the proviso that the

maximum LHA figure which can be applied is a figure appropriate to a 4 bedroom property.

7.4 Under the Housing Benefit Regulations, the claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home —

(a) a couple

(b) a person who is not a child (16 years of age and over)

(c) two children between the ages of 10 and 15 of the same sex;

(d) two children who are less than 10 years old;

(e) a child.

The claimant is also entitled to an additional bedroom if -

(f)The claimant or their partner is a person who requires overnight care

(g)The claimant or their partner is a qualifying parent or carer (Approved foster carers or kinship carers who have fostered a child, or become an approved carer in the last 12 months or are in between placements for a maximum of 52 weeks from the date of the last placement).

The size criteria rules which apply in Universal Credit are the same, save that a room is only allocated for an adult who is not the claimant's partner if they are part of the claimant's Extended Benefit Unit.

Provisions for disabled children who cannot reasonably share a bedroom.

7.5 The amended regulations will ensure that, when calculating the maximum amount of Housing Benefit or Universal Credit housing costs entitlement, Local Authorities and Universal Credit decision-makers can allow for an additional bedroom where a severely disabled child who would otherwise be expected to share is not reasonably able to do so due to their disability.

7.6 In Housing Benefit, provided that the property includes the necessary spare room or rooms, this additional entitlement will apply to any child who meets the qualifying criteria and is occupying the dwelling as their primary residence. In Universal Credit, the additional entitlement will apply to any child who meets the qualifying criteria regardless of whether the property actually contains the necessary spare room or rooms, but only if either the claimant or their partner, or a non-dependant who is part of the claimant's Extended Benefit Unit is responsible for the child in question. It will not apply to the children of joint tenants, as joint tenants and their families are not taken into account for the purposes of the size criteria assessment in Universal Credit.

7.7 The amendments will apply to both social and private sector tenants who are affected by either the removal of the spare room subsidy or who have

their eligible rent limited by Local Housing Allowance (LHA) or Local Reference Rent rules. The four bedroom maximum for LHA cases however cannot be exceeded.

7.8 The policy intention of these amendments is to safeguard the wellbeing of children, in particular to:

A. prevent either child being put at risk from physical harm or
B. prevent a child having their sleep frequently and significantly disrupted by virtue of sharing a bedroom with a disabled child.

7.9 There will be two conditions introduced to define a disabled child who cannot reasonably be expected to share a bedroom, and these are set out in regulations:

- The child is entitled to Disability Living Allowance (DLA) care component at the higher or middle rate; **and**
- The local authority or Universal Credit decision maker is satisfied that the child is not reasonably able to share a room; **and**

For Housing Benefit cases the dwelling must also include the necessary additional bedroom or bedrooms, on top of the number of bedrooms the claimant would normally be entitled to.

7.10 Receipt of the middle or higher rate care component of DLA will be sufficient to establish that the child meets the minimum criteria for consideration (severe disability). This will provide clear criteria for the relevant authority to determine if a child is severely disabled. However, the Local Authority or Universal Credit decision maker will also need to assess the individual circumstances of the claimant and their family and decide whether their situation is such that their children cannot reasonably be expected to share a room. Decision-makers guidance is being issued, and we do not envisage that this process will routinely require significant additional evidence e.g. additional medical evidence.

Joint tenants affected by the Removal of the Spare Room Subsidy

7.11 Following the introduction of the removal of the spare room subsidy for social sector claimants in April 2013, in Housing Benefit, there has arisen a disparity in the treatment of claimants who live with a joint tenant who is not their partner or a member of their household, where that joint tenant has an overnight carer or is a foster carer. . At present, a claimant in this position is deemed to be under occupying if the spare room in their property is occupied by a person providing overnight care to their joint tenant, or if the spare room is occupied by a foster child whom the joint tenant is caring for, or left empty in anticipation of the arrival of such a foster child,

7.12 We are amending the Housing Benefit Regulations 2006 to allow an additional room to be allocated under the size criteria for an overnight carer and / or foster child in relation to any such joint tenant in the property, so that the disparity in treatment is removed.

Definition of a young individual

7.13 We are amending the definition in the Housing Benefit Regulations of a young individual to exclude approved foster carers (or in Scotland, approved foster carers or kinship carers). This is to prevent the shared accommodation rate applying where a claimant is a single person under 35 and is an approved foster carer. This aligns with the position in Universal Credit.

Housing Benefit Regulations 2006 (SI 2006/213)

7.14 Regulation 2(2) We have inserted a definition of "child who cannot share a bedroom" into regulation 2(1) of the housing benefit regulations. This applies to a child who is entitled to the care component of Disability Living Allowance at the highest or middle rate, who, by reason of their disability is not reasonably able to share a bedroom with another child and where the property contains a spare bedroom additional to those the claimant would otherwise be entitled to.

7.15 The Regulation also amends the definition of "young individual" as described in paragraph 7.13 above.

7.16 Regulation 2(3) This Regulation makes provision for the determination of the amount of rent eligible to be met by way of Housing Benefit for claimants renting in the social sector.

7.17 We are amending the regulations as described in paragraph 7.12 above, to ensure that, when determining whether a dwelling is under occupied for the purposes of applying a reduction to benefit, an additional room is allowed for where a joint tenant or their partner have an overnight carer or are a qualifying parent or carer. The amendment also ensures that, where one of the occupiers of the dwelling is a severely disabled child who cannot reasonably share a bedroom in accordance with the qualifying conditions in paragraph 7.9 above, provided that the property contains the necessary additional room, one is allowed under the size criteria rules, regardless of whether the claimant, a non-dependant or a joint tenant who lives in the property but is not part of the claimant's household, is responsible for the child.

7.18 Regulation 2(4) This makes provision for the determination of the amount of rent eligible to be met by way of Housing Benefit for claimants renting in the private sector to whom the LHA applies.

7.19 The amendment again ensures that where one of the occupiers of the dwelling is a severely disabled child who is not reasonably able to share a bedroom, if there is a spare bedroom in the property, an additional bedroom is allowed under the size criteria rules. This is subject to the LHA maximum of four bedrooms.

7.20 Regulation 2(5) and 2(6) These amendments ensure that a referral to a rent officer will be made in private sector cases where claimants are not covered by the LHA and also in certain social sector cases where the relevant

Local authority considers the rent to be unreasonably high if a child becomes or ceases to be a child who requires their own bedroom.

Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)

7.21 We have also made equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) (Size Criteria) Regulations 2006 in respect of a child who requires their own bedroom in Private sector cases. The social sector size criteria is not relevant here as it only applies to claimants of working age.

Universal Credit Regulations 2013 (SI 2013/376)

7.22 Regulation 4(2) amends paragraph 9 of Schedule 4 to the Universal Credit Regulations, which specifies who should be treated as part of a renter's extended benefit unit for the purposes of the housing costs calculation. This amendment is to ensure that, in Universal Credit, only a child or young person for whom the renter or someone in their Extended Benefit Unit is responsible, is treated as part of the extended benefit unit and allocated a room under the size criteria rules.

7.23 Regulation 4(3) revises paragraph 12 of Schedule 4 to the Universal Credit Regulations. The amendments allow for an additional room to be allocated for a child for whom the renter or someone else in their Extended Benefit Unit is responsible if that child would usually have to share a room and:

a) They are entitled to the care component of Disability Living Allowance at the highest or middle rate, and;
b) They are not reasonably able to share a bedroom with another child because of their disability.

7.24 Consistent with Universal Credit design, a claimant in the private sector who qualifies for an extra bedroom will be entitled to the corresponding award of LHA, regardless of whether or not the room exists in their dwelling, subject to the LHA 4 bedroom maximum.

Rent Officers (Housing Benefit Functions) Order 1997 (SI 1997/1984) and The Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 (SI 1997/1995)

7.25 These Orders require the rent officer to apply size criteria when making Housing Benefit determinations in relation to certain private sector tenants. We have amended Schedule 2 requiring the rent officer to allow an additional bedroom for a child who would normally be expected to share a room under the size criteria rules but is unable to do so due to his or her disability. As with the LHA provisions for Housing Benefit, there must be the necessary additional bedroom or bedrooms present in the dwelling for this to apply.

8. Consultation outcome

8.1 The Department held a 2 week consultation with the local authority associations on draft regulations ending 18 September 2013. None of the associations raised any issues.

8.2 The Department also referred the draft instruments to the Social Security Advisory Committee at its meeting on 2 October.

8.3 The Committee carried out a public consultation exercise between 4-18 October 2013 seeking evidence and views from a range of organisations and individuals on the initial benefit gateway, which requires a disabled child who would normally be expected to share a room, to be eligible for the middle or highest rate care component of Disability Living Allowance in order to be considered for their own bedroom. Additionally the Committee held a workshop for stakeholders on 11 October. There were 18 responses to these consultations.

8.4 Respondents almost unanimously agreed that the proposed gateway was too narrowly defined. The 2 main views were that either;

- The DLA gateway should be expanded; or
- The decision should be left to the discretion of the individual decision-maker.

8.5 In its report to the Secretary of State, the Committee recommended that the Department extend the benefit gateway to include entitlement to the lower rate of the DLA care component and both rates of the mobility component. There was an additional recommendation that legislation include an exceptions process for those who do not satisfy this gateway but who nevertheless are able to satisfy the relevant authority that a child is disabled and that it would be inappropriate for them to share a bedroom.
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8.6 The Department considered the recommendations put forward by the Committee and recognises their concerns. However, the findings of the court in the Gorry case applied only to severely disabled children, and the Government view is that a DLA gateway based on entitlement to the middle or highest rate of DLA care is a clear and consistent test of severe disability.

8.7 The Department acknowledges that there will be some children (both disabled and non-disabled) who will not satisfy the gateway criteria but who require their own bedroom for reasons other than that of severe disability. For these individuals the Department recommends application to the relevant Local Authority for a Discretionary Housing Payment (DHP).

8.8 The Government's response to the Social Security Advisory Committee's report and recommendations is being published alongside the instruments.

9. Guidance

Comprehensive guidance will be made available prior to the regulations coming into force to provide effective support for advisers and decision makers in administering both Housing Benefit and Universal Credit. Initial drafts of the Housing Benefit guidance has been issued to local authority representatives, welfare rights groups and disability stakeholders for comment.

10. Impact

10.1 There is no impact on business or civil society organisations

10.2 It is anticipated that there will be no extra impact to Local Authorities administering Housing Benefit.

10.3 The data we have access to indicates that there are in the region of 10,000 households claiming Housing Benefit who would stand to gain from the changes relating to disabled children. With the average cost of under occupation in the social rented sector and private rented sector at £14 and £33 per week respectively, this equates to an increase in AME costs of approximately £10 million per annum. This is likely to be an upper estimate as we are not able to accurately assess how many of these households might qualify for an additional bedroom due to small sample sizes.

10.4 An Impact Assessment has not been produced for this instrument. An equalities impact assessment was published as part of the SSAC consultation.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences of and outcomes for claimants.

12.2 We will use administrative datasets, including the Single Housing Benefit Extract (SHBE), to monitor trends in the benefit caseloads for protected groups and in the level and distribution of benefit entitlements. We expect to start collecting administrative information on the households that benefit from this policy in 2014.

12.3 We will use qualitative research and feedback from stakeholder groups to assess how the policy is impacting on claimants, particularly in the context of the removal of the spare room subsidy.

12.4 We will draw on broader DWP research where appropriate, including the independent monitoring and evaluation of the removal of the Spare Room Subsidy, which is being taken forward by a consortium led by Ipsos-Mori

13. Contact

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