

## **Explanatory Memorandum**

### **Background to the proposed changes**

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 children who could not be expected to share a room due to their severe disabilities.

The size criteria apply to claimants living in both the private and social rented sectors and affects the maximum amount of Housing Benefit (or Universal Credit) which they can receive. Although the Court of Appeal ruling only relates directly to the size criteria as applied in the administration of Housing Benefit, the same principles are used in the calculation of the housing costs element of Universal Credit, hence why we are also proposing to make amendments to the Universal Credit regulations. The size criteria rules require children to share a bedroom in certain circumstances. If children are aged under ten then two children are usually expected to share a bedroom, regardless of gender, and children of the same gender who are between 10 and 16 must also usually share.

The Court of Appeal judgement required a policy response which provides differential treatment under the size criteria where:

- a) A child or children expected to share a room are severely disabled; and
- b) That disability means that they are unable to share a room.

In the recent case of R (on the application of MA& Others), the Department was criticised by the judge for relying on guidance (rather than regulations) to give effect to the abovementioned Court of Appeal ruling. The order issued by the court following judgment in MA& Others specified that, if new Regulations are not made by 31 October 2013 to ensure compliance with the judgment of the Court of Appeal, then the parties will be granted liberty to apply to the court for relief.

The proposed amendments to Regulations are therefore intended to comply with the terms of the court order, by ensuring 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 extra bedroom where a disabled child who would usually be expected to share a room is unable to share due to their disabilities.

### **1. Housing Benefit Regulations 2006 (SI 2006/213)**

#### **Regulation 2(2)**

We propose to insert a definition of “child who requires their own 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

higher or middle rate, by reason of their disability is unable to share a bedroom with another child and for whom there is a bedroom additional to those a claimant would be entitled to were the child able to share a bedroom.

We also propose to amend the definition of “young individual” so that a person who is a qualifying parent or carer (person who is an approved foster parent or in Scotland an approved foster carer or kinship carer) will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by Housing Benefit in the private sector.

### **Regulation 2(3)**

This amends regulation B13 which 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.

We propose to amend regulations to include an additional room for an overnight carer and / or foster child in the overall size criteria calculation for a joint tenant in the property. This is intended to ensure that when determining whether a dwelling is under occupied for purposes of applying a reduction a room is included where a joint tenant or their partner require overnight care or are a qualifying parent or carer. The amendment also ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules.

### **Regulation 2(4)**

This amends regulation 13D which 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.

The amendment ensures that where one of the occupiers of the dwelling is a child who requires their own bedroom one is allowed under the size criteria rules subject to a maximum of four bedrooms.

### **Regulation 2(5) and 2(6)**

These amends regulation 14 of the Housing Benefit Regulations, which applies to private sector claimants not covered by the LHA and to some social sector claimants where the relevant Local authority considers the rent to be unreasonably high. This amendment ensures that a referral to a rent officer will be made if a child becomes or ceases to be a child who requires their own bedroom.

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

We propose to make equivalent amendments to Regulations 2, 13D and 14 of Schedule 2 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. These Regulations have no equivalent to Regulation B13 of the Housing Benefit Regulations 2006 as B13 refers to the social sector size criteria which only apply to claimants of working age.

### **3. Universal Credit Regulations 2013 (SI 2013/376)**

#### **Regulation 4(2)**

We propose to amend 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 only a child or young person for whom the renter is responsible for are treated as part of the extended benefit unit and allocated room under the size criteria rules.

#### **Regulation 4(3)**

We propose to revise paragraph 12 of Schedule 4 to the Universal Credit Regulations. The amendments allow for an additional room to be allocated for a child who would usually have to share a room if:

- a) They are entitled to the care component of Disability Living Allowance at the higher or middle rate, and;
- b) They are unable to share a bedroom with another child by reason of their disability.

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 4 bedroom maximum.

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

These amendments are to Rent Officers (Housing Benefit Functions) Order 1997 and also to the Rent Officers (Housing Benefit Functions) (Scotland Order 1997). We propose to make amendments to 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.