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STATUTORY INSTRUMENTS

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**2013 No. 2828**

**SOCIAL SECURITY**

**The Housing Benefit and Universal Credit (Size Criteria)  
(Miscellaneous Amendments) Regulations 2013**

*Made - - - - 31st October 2013*  
*Laid before Parliament 7th November 2013*  
*Coming into force - - 4th December 2013*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2) to (5), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and sections 11(4), 40 and 42(2) of the Welfare Reform Act 2012(2).

In accordance with section 172(1) of the Social Security Administration Act 1992(3), the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

In accordance with section 176(1) of the Social Security Administration Act 1992(4), the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

**Citation and commencement**

1. These Regulations may be cited as The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 and come into force on 4th December 2013.

**Amendment of the Housing Benefit Regulations 2006**

2.—(1) The Housing Benefit Regulations 2006(5) are amended as follows.

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

(a) after the definition of “child tax credit” insert—

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- (1) 1992 c.4. Section 130A was inserted by section 30(2) of the Welfare Reform Act 2007 (c.5) and amended by section 69 of the Welfare Reform Act 2012 (c.5). Section 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 137(1) is cited for the meaning of “prescribed”.
- (2) 2012 c.5. Section 40 is cited for the meaning of “prescribed”.
- (3) 1992. c.5.
- (4) Section 176(1) was amended by Schedule 9, paragraph 23 to the Local Government Finance Act 1992 (c.14), Schedule 13, paragraph 3(4) to the Housing Act 1996 (c.52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000.
- (5) S.I. 2006/213.

- ““child who cannot share a bedroom” means a child—
- (a) who is entitled to the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (b) who the relevant authority is satisfied is, by virtue of his or her disability, not reasonably able to share a bedroom with another child;”;
- (b) in the definition of “young individual”(6)—
- (i) at the end of paragraph (g) omit “or”;
  - (ii) after paragraph (h) add—
    - “or;
    - (i) who is a qualifying parent or carer;”.
- (3) In regulation B13 (determination of a maximum rent (social sector))(7)—
- (a) in paragraph (5) after sub-paragraph (b) insert—
    - “(ba) a child who cannot share a bedroom;”;
  - (b) in paragraph (6)(a) and (b) for “the claimant or the claimant’s partner is (or each of them is)” substitute “a relevant person is”;
  - (c) for paragraph (7) substitute—
    - “(7) Where—
      - (a) more than one sub-paragraph of paragraph (6) applies the claimant is entitled to an additional bedroom for each sub-paragraph that applies;
      - (b) more than one person falls within a sub-paragraph of paragraph (6) the claimant is entitled to an additional bedroom for each person falling within that sub-paragraph, except that where a person and that person’s partner both fall within the same sub-paragraph the claimant is entitled to only one additional bedroom in respect of that person and that person’s partner.”;
  - (d) after paragraph (8) add—
    - “(9) In this regulation “relevant person” means—
      - (a) the claimant;
      - (b) the claimant’s partner;
      - (c) a person (“P”) other than the claimant or the claimant’s partner who is jointly liable with the claimant or the claimant’s partner (or both) to make payments in respect of the dwelling occupied as the claimant’s home;
      - (d) P’s partner.”.
- (4) In regulation 13D (determination of a maximum rent (LHA))(8) in paragraph (3)—
- (a) after sub-paragraph (b) insert—
    - “(ba) a child who cannot share a bedroom;”;
  - (b) after sub-paragraph (e) add—

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(6) The definition of “young individual” was substituted by [S.I. 2007/2868](#) and amended by [S.I. 2010/3835](#), [2011/1736](#) and [2011/1740](#).

(7) Regulation B13 was inserted by [S.I. 2012/3040](#) and amended by [S.I. 2013/665](#).

(8) Regulation 13D was inserted by [S.I. 2007/2868](#) (as amended by [S.I. 2008/586](#)) and amended by [S.I. 2009/614](#), [2010/2835](#) and [2013/665](#).

“but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom.”.

(5) In regulation 14(8) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance”(9) for “or (g)” substitute “, (g) or (h)”.

(6) In paragraph 2(3) of Schedule 2 (excluded tenancies)(10) after paragraph (g) add—

“(h) an occupier becomes or ceases to be a child who cannot share a bedroom where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

### **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

**3.—**(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(11) are amended as follows.

(2) After the definition of “child tax credit” in regulation 2(1) (interpretation)(12) insert—

““child who cannot share a bedroom” means a child—

- (a) who is entitled to the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
- (b) who the relevant authority is satisfied is, by virtue of his or her disability, not reasonably able to share a bedroom with another child;”.

(3) In regulation 13D (determination of a maximum rent (LHA))(13) in paragraph (3)—

(a) after sub-paragraph (b) insert—

“(ba) a child who cannot share a bedroom;”;

(b) after sub-paragraph (e) add—

“but the claimant is only entitled to a bedroom in respect of a child who cannot share a bedroom if there is a bedroom in the dwelling occupied as the home that is additional to those to which the claimant would be entitled if the child were able to share a bedroom.”.

(4) In regulation 14(8) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance”(14) for “or (f)” substitute “, (f) or (g)”.

(5) In paragraph 2(3) of Schedule 2 (excluded tenancies)(15) after paragraph (f) add—

“(g) an occupier becomes or ceases to be a child who cannot share a bedroom where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”.

### **Amendment of the Universal Credit Regulations 2013**

**4.—**(1) Schedule 4 to the Universal Credit Regulations 2013(16) is amended as follows.

(2) In paragraph 9—

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(9) The definition of “change relating to a rent allowance” was amended by [S.I. 2010/2835](#) and [2013/665](#).

(10) Paragraph 2 was substituted by [S.I. 2007/2868](#) and amended by [S.I. 2010/2835](#) and [2013/665](#).

(11) [S.I. 2006/214](#).

(12) There are amendments not relevant to this instrument.

(13) Regulation 13D was inserted by [S.I. 2007/2869](#) (as amended by [S.I. 2008/586](#)) and amended by [S.I. 2009/614](#), [2010/2835](#) and [2013/665](#).

(14) The definition of “change relating to a rent allowance” was amended by [S.I. 2010/2835](#) and [2013/665](#).

(15) Paragraph 2 was substituted by [S.I. 2007/2869](#) and amended by [S.I. 2010/2835](#) and [2013/665](#).

(16) [S.I. 2013/376](#).

- (a) in sub-paragraph (2) after “if the person” insert “normally”;
- (b) after sub-paragraph (2)(f) insert—
  - “(g) a child or qualifying young person for whom no-one in the renter’s extended benefit unit is responsible.”.
- (3) For paragraph 12(17) substitute—

**“Additional room**

**12.—(1)** A renter is entitled to an additional bedroom if they satisfy any of the following conditions—

- (a) the overnight care condition (see sub-paragraph (3));
- (b) the foster parent condition (see sub-paragraphs (4) and (5)); or
- (c) the disabled child condition (see sub-paragraph (6)).
- (2) Sub-paragraph (1) applies subject to sub-paragraphs (7) to (9).
- (3) A renter satisfies the overnight care condition if—
  - (a) they are in receipt of—
    - (i) the care component of disability living allowance at the middle or highest rate;
    - (ii) attendance allowance; or
    - (iii) the daily living component of personal independence payment;
  - (b) one or more persons who do not live in the renter’s accommodation are engaged to provide overnight care for the renter and to stay overnight in the accommodation on a regular basis; and
  - (c) overnight care is provided under arrangements entered into for that purpose.
- (4) A renter satisfies the foster parent condition if the renter is—
  - (a) a foster parent; or
  - (b) an adopter with whom a child has been placed for adoption.

(5) For the purposes of sub-paragraph (4) “foster parent” includes a person who would be a foster parent, but for the fact that they do not currently have any child placed with them, provided that any period since the date when their last placement ended (or, if they have not yet had a child placed with them, since the date when they were approved to be a foster parent) does not exceed 12 months.

(6) A renter satisfies the disabled child condition if they or another member of their extended benefit unit are responsible for a child who would (but for the provisions of this paragraph) be expected to share a bedroom and that child is—

- (a) in receipt of the care component of disability living allowance at the middle or highest rate; and
- (b) by virtue of their disability, not reasonably able to share a room with another child.
- (7) Where a renter, or one or both of joint renters, satisfy—
  - (a) the overnight care condition; or
  - (b) the foster parent condition,

or both, they are entitled to one additional bedroom by virtue of satisfying each condition.

(8) Where a renter, or one or both of joint renters, satisfy the disabled child condition in relation to one or more children, they are entitled to as many additional bedrooms as are necessary to ensure that each such child has their own bedroom.

(9) Where a renter, or one or both of joint renters, satisfy two or more of—

- (a) the overnight care condition;
- (b) the foster parent condition; or
- (c) the disabled child condition,

the total number of additional bedrooms they are entitled to is determined by adding together the number of additional bedrooms which they are entitled to by virtue of satisfying each of those conditions.”.

Signed by authority of the Secretary of State for Work and Pensions

31st October 2013

*Freud*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 and the Universal Credit Regulations 2013 (“the Universal Credit Regulations”).

Regulation 2(2) inserts 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, and by reason of their disability is not reasonably able to share a bedroom with another child

It also amends the definition of “young individual” so that a person who is a qualifying parent or carer (also defined in regulation 2 of the Housing Benefit Regulations) is not a young individual and so will not be subject to the shared accommodation rate when calculating the amount of rent eligible to be met by housing benefit for claimants in the private sector.

Regulation 2(3) amends regulation B13 of the Housing Benefit Regulations, 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. The amendments do two things. The amendment in regulation 2(3)(a) ensures that where one of the occupiers of the dwelling is a child who cannot share a bedroom, a bedroom is allowed under the size criteria applicable in the claimant’s case.

The amendments in regulation 2(3)(b) to (d) ensure that when determining whether a dwelling is under-occupied for the purposes of applying a reduction, a room is included where a joint tenant (or a joint tenant’s partner) requires overnight care or is a qualifying parent or carer.

Regulation 2(4) makes a similar amendment in respect of a child who cannot share a bedroom to regulation 13D of the Housing Benefit Regulations, 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 local housing allowance applies. However under regulation 13D there is a maximum of four bedrooms and the room must be one that is additional to those that the claimant would be entitled to if the child were able to share a bedroom.

Regulation 2(5) amends regulation 14 of the Housing Benefit Regulations, which applies to private sector claimants not covered by the local housing allowance and to some social sector claimants where the local authority considers the rent to be unreasonably high. Taken in conjunction with the amendment to Schedule 2 made by regulation 2(6), this amendment ensures that a referral to a rent officer will be made if a child becomes, or ceases to be, a child who cannot share a bedroom.

Regulation 3 makes equivalent amendments to regulations 2, 13D and 14 of and Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 in respect of a child who cannot share a bedroom. (These Regulations have no equivalent to regulation B13 of the Housing Benefit Regulations and they do not apply to young individuals).

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. The purpose of the amendments is to ensure that only children for whom the renter is responsible (within the meaning of regulation 4

of the Universal Credit Regulations) are treated as part of the extended benefit unit and allocated a room under the size criteria. They also make clear that only non-dependants who normally live with the renter can be allocated a room under the size criteria.

Regulation 4(3) substitutes a revised version of paragraph 12 of Schedule 4 to the Universal Credit Regulations. The revised wording allows for an additional room to be allocated for a child who is a member of the renter's extended benefit unit and would usually have to share a room, if:

they are entitled to the care component of disability living allowance at the highest or middle rate, and

by reason of their disability, they are not reasonably able to share a bedroom with another child.

The Report of the Social Security Advisory Committee dated 29th October 2013 on the Secretary of State's proposal to make these Regulations, [together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not,] are contained in an Act Paper published by The Stationery Office Ltd.