

**2013 No. 665**

**SOCIAL SECURITY**

**The Housing Benefit (Amendment) Regulations 2013**

*Made* - - - - *19th March 2013*

*Laid before Parliament* *21st March 2013*

*Coming into force* - - *1st April 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 (2)(h) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a).

The Secretary of State has not referred proposals in respect of these Regulations to the Social Security Advisory Committee, as it appears to him that by reason of the urgency of the matter it is inexpedient to do so(b).

The Secretary of State has not undertaken consultation with organisations appearing to him to be representative of the authorities concerned, as it appears to him that by reason of the urgency of the matter it is inexpedient to do so(c).

**Citation and commencement**

1. These Regulations may be cited as the Housing Benefit (Amendment) Regulations 2013 and they come into force on 1st April 2013.

**Amendment of the Housing Benefit Regulations 2006**

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

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

(a) after the definition of “maximum rent (LHA)” insert—

““member of the armed forces away on operations” means a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006(f)) who is absent, while on operations, from the dwelling usually occupied as their home;”;

(b) after the definition of “qualifying income-related benefit” insert—

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(a) 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”.  
(b) See section 173(1)(a) of the Social Security Administration Act 1992 (c.5) (“the 1992 Act”).  
(c) See section 176(2)(a) of the 1992 Act. The amendments to section 176 are not relevant to these Regulations.  
(d) S.I. 2006/213.  
(e) The definition of “maximum rent (LHA)” was inserted by S.I. 2007/2868 and the definition of “qualifying income-related benefit” was inserted by S.I. 2008/959.  
(f) 2006 c.52.

““qualifying parent or carer” means a person who has a bedroom in the dwelling they occupy as their home additional to those used by the persons who occupy the dwelling as their home and who—

- (a) has a child or qualifying young person placed with them as mentioned in regulation 21(3) who by virtue of that provision is not treated as occupying their dwelling; or
- (b) has been approved as a foster parent under regulation 27 of the Fostering Services (England) Regulations 2011(a) or regulation 28 of the Fostering Services (Wales) Regulations 2003(b) or as a kinship carer under regulation 10 or a foster carer under regulation 22 of the Looked After Children (Scotland) Regulations 2009(c) but does not have a child or qualifying young person placed with them and has not had a child or qualifying young person placed with them for a period which does not exceed 52 weeks;”.

(3) In regulation B13(d) (determination of a maximum rent (social sector))—

- (a) in paragraph (2)(b) for “paragraph (5)” substitute “paragraphs (5) to (7)”;
- (b) in paragraph (5) omit the words after sub-paragraph (e);
- (c) after paragraph (5) add—

“(6) The claimant is entitled to one additional bedroom in any case where—

- (a) the claimant or the claimant’s partner is (or each of them is) a person who requires overnight care; or
- (b) the claimant or the claimant’s partner is (or each of them is) a qualifying parent or carer.

(7) The claimant is entitled to two additional bedrooms where paragraph (6)(a) and (b) both apply.

(8) For the purposes of determining the number of occupiers of the dwelling under paragraph (5), the relevant authority must include any member of the armed forces away on operations who—

- (a) is the son, daughter, step-son or step-daughter of the claimant or the claimant’s partner;
- (b) was the claimant’s non-dependant before they became a member of the armed forces away on operations; and
- (c) intends to resume occupying the dwelling as their home when they cease to be a member of the armed forces away on operations.”.

(4) In regulation 13D(e) (determination of a maximum rent (LHA))—

- (a) in paragraph (2)(c) for “paragraph (3)” substitute “paragraphs (3) to (3B)”;
- (b) in paragraph (3) omit the words after sub-paragraph (e);
- (c) after paragraph (3) add—

“(3A) The claimant is entitled to one additional bedroom in any case where—

- (a) the claimant or the claimant’s partner is (or each of them is) a person who requires overnight care; or
- (b) the claimant or the claimant’s partner is (or each of them is) a qualifying parent or carer.

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(a) S.I. 2011/581.

(b) S.I. 2003/237.

(c) S.S.I. 2009/210.

(d) Regulation B13 is inserted by S.I. 2012/3040.

(e) Regulation 13D was inserted by S.I. 2007/2868 (as amended by S.I. 2008/586) and amended by S.I. 2009/614 and 2010/2835.

- (3B) The claimant is entitled to two additional bedrooms where paragraph (3A)(a) and (b) both apply.”;
- (d) in paragraph (12) for the definition of “occupiers” substitute—
- ““occupiers” means—
- (a) the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household; and
- (b) any member of the armed forces away on operations who—
- (i) is the son, daughter, step-son or step-daughter of the claimant or the claimant’s partner;
- (ii) was the claimant’s non-dependant before they became a member of the armed forces away on operations; and
- (iii) intends to resume occupying the dwelling as their home when they cease to be a member of the armed forces away on operations;”.
- (5) In regulation 14(8) (requirement to refer to rent officers) in the definition of “change relating to a rent allowance”(a) for “or (f)” substitute “(f) or (g)”.
- (6) In regulation 74(b) (non-dependant deductions) after paragraph (7)(f) add—
- “(g) he is not residing with the claimant because he is a member of the armed forces away on operations.”.
- (7) In paragraph 2 of Schedule 2 (excluded tenancies)(c)—
- (a) in sub-paragraph (3) after paragraph (f) add—
- “(g) the claimant or the claimant’s partner becomes, or ceases to be, a qualifying parent or carer where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”;
- (b) after sub-paragraph (3) add—
- “(4) For the purposes of sub-paragraph (3)(d)(iii) it does not amount to a change in the composition of the household where a son, daughter, step-son or step-daughter of the claimant or the claimant’s partner who is the claimant’s non-dependant ceases to occupy the dwelling as their home because they become a member of the armed forces away on operations, or subsequently resumes occupying the dwelling as their home on ceasing to be a member of the armed forces away on operations.”.

**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(d) are amended as follows.

- (2) In regulation 2(1)(e) (interpretation)—
- (a) after the definition of “maximum rent (LHA)” insert—
- ““member of the armed forces away on operations” means a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006) who is absent, while on operations, from the dwelling usually occupied as their home;”;
- (b) after the definition of “qualifying income-related benefit” insert—

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(a) The definition of “change relating to a rent allowance” was amended by S.I. 2010/2835.  
 (b) Regulation 74 was substituted by S.I. 2007/2868. There are amendments not relevant to this instrument.  
 (c) Paragraph 2 was substituted by S.I. 2007/2868 and amended by S.I. 2010/2835.  
 (d) S.I. 2006/214.  
 (e) The definition of “maximum rent (LHA)” was inserted by S.I. 2007/2869 and the definition of “qualifying income-related benefit” was inserted by S.I. 2008/959.

““qualifying parent or carer” means a person who has a bedroom in the dwelling they occupy as their home additional to those used by the persons who occupy the dwelling as their home and who—

- (a) has a child or qualifying young person placed with them as mentioned in regulation 21(3) who by virtue of that provision is not treated as occupying their dwelling; or
- (b) has been approved as a foster parent under regulation 27 of the Fostering Services (England) Regulations 2011 or regulation 28 of the Fostering Services (Wales) Regulations 2003 or as a kinship carer under regulation 10 or a foster carer under regulation 22 of the Looked After Children (Scotland) Regulations 2009 but does not have a child or qualifying young person placed with them and has not had a child or qualifying young person placed with them for a period which does not exceed 52 weeks;”.

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

- (a) in paragraph (2)(c) for “paragraph (3)” substitute “paragraphs (3) to (3B)”;
- (b) in paragraph (3) omit the words after sub-paragraph (e);
- (c) after paragraph (3) add—

“(3A) The claimant is entitled to one additional bedroom in any case where—

- (a) the claimant or the claimant’s partner is (or each of them is) a person who requires overnight care; or
- (b) the claimant or the claimant’s partner is (or each of them is) a qualifying parent or carer.

(3B) The claimant is entitled to two additional bedrooms where paragraphs (3A)(a) and (b) both apply.”;

(d) in paragraph (12) for the definition of “occupiers” substitute—

““occupiers” means—

- (a) the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household; and
- (b) any member of the armed forces away on operations who—
  - (i) is the son, daughter, step-son or step-daughter of the claimant or the claimant’s partner;
  - (ii) was the claimant’s non-dependant before they became a member of the armed forces away on operations; and
  - (iii) intends to resume occupying the dwelling as their home when they cease to be a member of the armed forces away on operations;”.

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

(5) In regulation 55(c) (non-dependant deductions) after paragraph (7)(f) add—

“(g) he is not residing with the claimant because he is a member of the armed forces away on operations.”.

(6) In paragraph 2 of Schedule 2 (excluded tenancies)(d)—

- (a) in sub-paragraph (3) after paragraph (e) add—

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(a) Regulation 13D was inserted by S.I. 2007/2869 (as amended by S.I. 2008/586) and amended by S.I. 2009/614 and 2010/2835.

(b) The definition of “change relating to a rent allowance” was amended by S.I. 2010/2835.

(c) Regulation 55 was substituted by S.I. 2007/2869. There are amendments not relevant to this instrument.

(d) Paragraph 2 was substituted by S.I. 2007/2869 and amended by S.I. 2010/2835.

“(f) the claimant or the claimant’s partner becomes, or ceases to be, a qualifying parent or carer where that affects the size criteria, as set out in Schedule 2 to the Rent Officers Order, applicable in the claimant’s case.”;

(b) after sub-paragraph (3) add—

“(4) For the purposes of sub-paragraph (3)(d)(iii) it does not amount to a change in the composition of the household where a son, daughter, step-son or step-daughter of the claimant or the claimant’s partner who is the claimant’s non-dependant ceases to occupy the dwelling as their home because they become a member of the armed forces away on operations, or subsequently resumes occupying the dwelling as their home on ceasing to be a member of the armed forces away on operations.”.

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

*Freud*

Parliamentary Under-Secretary of State  
Department for Work and Pensions

19th March 2013

### **EXPLANATORY NOTE**

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

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

Regulation 2(2) inserts a definition of “member of the armed forces away on operations” into regulation 2(1) of the Housing Benefit Regulations (interpretation). This applies to members of the regular forces or reserve forces who are absent, while on operations, from the dwelling they usually occupy as their home.

It also inserts a definition of “qualifying parent or carer”. This applies to a person who is an approved foster parent (or in Scotland an approved foster carer or kinship carer) who has a bedroom in the dwelling they occupy as their home that is additional to those used by other occupiers of the dwelling (a foster child is not treated as occupying the dwelling for housing benefit purposes). It also applies where a foster child has not been placed with the person, but for a period of no more than 52 consecutive weeks. The definition also applies to a person who has a child placed with them prior to an adoption order being made.

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 amendment ensures that an additional bedroom will be included in the determination where the claimant or their partner is a qualifying parent or carer. It also amends regulation B13 to ensure that a member of the armed forces away on operations will continue to be included as an occupier when assessing the number of rooms for which housing benefit may be paid.

Regulation 2(4) makes similar amendments 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.

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(7), this amendment ensures that a referral to a rent officer will be made if a claimant or their partner becomes, or ceases to be, a qualifying parent or carer.

Regulation 2(6) amends regulation 74 of the Housing Benefit Regulations (non-dependant deductions) so that a non-dependant deduction will not be made in respect of a member of the armed forces away on operations.

Regulation 2(7) also amends Schedule 2 to ensure that a case is not referred to a rent officer for a new determination where the only change has been that the claimant's non-dependant has become, or ceased to be, a member of the armed forces away on operations.

Regulation 3 makes equivalent amendments to regulations 2, 13D, 14 and 55 of and Schedule 2 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. (These Regulations have no equivalent to regulation B13 of the Housing Benefit Regulations.)

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

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STATUTORY INSTRUMENTS

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