
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 319

The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

PART 1

General

Occupation of a dwelling as a home

5.—(1) Subject to the following provisions of this regulation, a person is to be treated as occupying as that person's home the dwelling normally occupied as a home—

- (a) by the person or, if the person is a member of a family, by the person and that family; or
- (b) if the person is polygamously married, by the person, the person's partners and any child or young person for whom the person or any of the partners is responsible and who is a member of that same household,

and is not to be treated as occupying any other dwelling as the person's home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person's home for the purpose of paragraph (1) regard must be had to any other dwelling occupied by the person or any other person referred to in that paragraph whether or not that dwelling is in Scotland.

(3) Where a single person or a lone parent is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations applies (persons not entitled to council tax reduction: students), or is on a training course, and is liable to make payments in respect of either—

- (a) the dwelling which that person occupies for the purpose of attending a course of study or a training course; or
- (b) the dwelling which the person occupies when not attending the course,

the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make those payments.

(4) Where a person has required to move into temporary accommodation because of the carrying out of essential repairs to the dwelling normally occupied as that person's home, and the person is liable to make payments in respect of either the dwelling which the person normally occupies as a home or the temporary accommodation, the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make payments.

(5) Where a person is required to reside in a dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 13 of the Offender Management Act 2007(1), that person is not to be treated as occupying that dwelling as a home.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, that person is to be treated as occupying both dwellings as a home—

- (a) for a period not exceeding 52 weeks, where the person left and remains absent from the former dwelling occupied as a home and for which the person is liable to make payments through fear of violence in that dwelling or by a former member of the person's family and—
 - (i) the relevant authority is satisfied that it is reasonable that the person should be entitled to council tax reduction in respect of the former dwelling and the present dwelling occupied as a home, and
 - (ii) the person intends to return to occupy the former dwelling as a home;
- (b) in the case of a person who is a member of a couple or a member of a polygamous marriage, where the person or one partner is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations (persons not entitled to council tax reduction: students) applies, or is on a training course, and it is—
 - (i) unavoidable that the partners should occupy two separate dwellings; and
 - (ii) reasonable that the person should be entitled to council tax reduction in respect of both dwellings;
- (c) where, because of the number of persons in a family referred to in paragraph (1)(a) or (b), those persons have been housed by a housing authority in two separate dwellings;
- (d) where a person has moved and occupies the second dwelling as a home, except where paragraph (4) applies, for a period not exceeding 4 reduction weeks from the date on which that person moved if the person could not reasonably have avoided liability in respect of two dwellings; or
- (e) where a person—
 - (i) is treated by virtue of paragraph (8) as occupying a dwelling as that person's home and paragraph (8)(c)(i) applies; and
 - (ii) the person has occupied another dwelling as a home on any day within the period of 4 weeks immediately preceding the date the person moved to the new dwelling,
 for a period not exceeding 4 reduction weeks immediately preceding the date on which the person moved.

(7) Where—

- (a) a person moves into a dwelling for which that person is not liable to make payments ("the new dwelling");
- (b) immediately before that move, the person was liable to make payments for the dwelling previously occupied as a home ("the former dwelling"); and
- (c) that liability continues after the person moves into the new dwelling,

the person is to be treated as occupying the former dwelling as a home for a period not exceeding 4 reduction weeks if the person could not reasonably have avoided liability in respect of the former dwelling.

(8) Where—

- (a) a person moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) either—
 - (i) that person applied for council tax reduction before moving in and no decision has been made or it was refused but a further application was made or treated as made within 4 weeks of the date on which the person moved into the new dwelling to occupy it as a home; or

- (ii) the person notified the move to the new dwelling as a change of circumstances under regulation 69 (duty to notify changes of circumstances) before the move;
- (c) the delay in moving into the dwelling was reasonable and—
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the person or any member of the person's family;
 - (ii) the move was delayed pending the outcome of an application—
 - (aa) under Part 8 of the 1992 Act⁽²⁾ for a social fund payment;
 - (bb) to a local authority for a payment made in exercise of the power in section 20 of the Local Government in Scotland Act 2003⁽³⁾ (power to advance well-being) using funds provided by the Scottish Ministers from the Scottish Welfare Fund;
 - (cc) to a local authority in exercise of the power in section 1 of the Localism Act 2011⁽⁴⁾ (local authority's general power of competence) using funds provided by the Secretary of State, and in this sub-head local authority means a local authority within the meaning of section 8 of that Act;
 - (dd) to the Welsh Ministers, or to a person acting on their behalf, for a payment made in exercise of the power in section 60 of the Government of Wales Act 2006⁽⁵⁾ (promotion etc. of well-being),
to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the applicant's family is aged 5 or under or the applicant's applicable amount includes a premium under paragraph 7 (severe disability premium) or 9 (disabled child premium) of Schedule 1 (applicable amounts); or
 - (iii) the applicant became liable to make payments in respect of the dwelling while a patient or in residential accommodation,

the person is to be treated as occupying the dwelling as a home for any period not exceeding 4 weeks immediately prior to the date on which the person moved into the dwelling.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as a home in respect of the period before moving in, the person's application for council tax reduction in respect of that dwelling is to be treated as having been made on the latest of—

- (a) in the case of an application in respect of which a decision has not yet been made, the date that application is or is treated as made in accordance with regulation 65 (date on which an application is made);
 - (b) in the case of an application which was refused and a further application was or was treated as made in accordance with regulation 65 within 4 weeks of the date on which the person moved into the dwelling, the date on which the application was refused or was treated as made; or
 - (c) the date from which the person is treated as occupying the dwelling as a home by virtue of paragraph (8).
- (10) Where a person to whom neither paragraph (6)(a) or (16)(c)(x) applies—

(2) Part 8 was amended by sections 70 and 71 of, and paragraphs 72 and 73 of Schedule 7 and paragraph 1 of Schedule 8 to, the Social Security Act 1998 (c.14) and section 54 of, paragraph 2 of Schedule 7 and paragraph 1 of Schedule 8 to, the Welfare Reform Act 2007 (c.5) and sections 71 and 72 of the Welfare Reform Act 2012 (c.5).

(3) 2003 asp 1.

(4) 2011 c.20.

(5) 2006 c.32.

(a) formerly occupied a dwelling but left and remains absent from it through fear of violence in the dwelling, or by a person who was formerly a member of the family of the person; and
 (b) has a liability to make payments in respect of that dwelling which is unavoidable,
 the person is to be treated as occupying the dwelling as a home for a period not exceeding 4 reduction weeks.

(11) This paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits that person's needs;
- (b) with the intention of returning to the dwelling which is normally occupied by the person as a home should the residential accommodation prove not to suit the person's needs; and
- (c) while the part of the dwelling which is normally occupied by the person as a home is not let, or as the case may be, sublet.

(12) A person to whom paragraph (11) applies is to be treated as occupying the dwelling normally occupied as the person's home for a period not exceeding 13 weeks beginning from the first day the person enters residential accommodation, but a person is not to be treated as occupying that dwelling as a home if the total of all periods in residential accommodation exceeds 52 weeks.

(13) Subject to paragraph (17), a person is to be treated as occupying a dwelling as a home while that person is temporarily absent from the dwelling for a period not exceeding 13 weeks beginning from the first day of that absence from the home if—

- (a) the person intends to return to occupy the dwelling as a home;
- (b) the part of the dwelling normally occupied by the person has not been let or, as the case may be, sublet; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(14) This paragraph applies to a person who is—

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁶⁾, the Criminal Procedure (Scotland) Act 1995⁽⁷⁾, the Mental Health Act 1983⁽⁸⁾ or the Mental Health (Northern Ireland) Order 1986⁽⁹⁾; and
- (b) on temporary release from a detention referred to in sub-paragraph (a) in accordance with rules made under the provisions of the Prisons (Scotland) Act 1989⁽¹⁰⁾, the Prison Act 1952⁽¹¹⁾ or the Prison Act (Northern Ireland) 1953⁽¹²⁾.

(15) Where paragraph (14) applies to a person, for any day when the person is on temporary release—

- (a) if the temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), the person is to be treated as if continuing to be absent from the dwelling, despite any occupation of the dwelling;
- (b) for the purposes of paragraph (16)(c)(i), the person is to be treated as if remaining in detention; and
- (c) if the person does not fall within sub-paragraph (a), the person is to be treated as if not occupying a dwelling as a home despite any occupation of the dwelling.

⁽⁶⁾ 2003 asp 13.

⁽⁷⁾ 1995 c.46.

⁽⁸⁾ 1983 c.20.

⁽⁹⁾ S.I. 1986/595 (N.I. 4).

⁽¹⁰⁾ 1989 c.45.

⁽¹¹⁾ 1952 c.52.

⁽¹²⁾ 1953 c.18.

(16) This paragraph applies to a person who is temporarily absent from the dwelling normally occupied by that person as a home and—

- (a) that person intends to return to occupy the dwelling as a home;
- (b) the part of the dwelling which is normally occupied by the person has not been let or, as the case may be, sublet;
- (c) the person is—
 - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside—
 - (aa) in a dwelling, other than the dwelling the person occupies as a home;
 - (bb) in premises approved under section 13 of the Offender Management Act 2007(13); or
 - (cc) detained pending sentence upon conviction;
 - (ii) resident in a hospital or similar institution as a patient;
 - (iii) or any partner of the person or the person's dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
 - (iv) following, in the United Kingdom or elsewhere, a training course;
 - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
 - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (vii) in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
 - (viii) a student to whom paragraph (3) or (6)(b) does not apply;
 - (ix) receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
 - (x) a person to whom paragraph (6)(a) does not apply and who has left the dwelling occupied as the person's home through fear of violence in that dwelling or by a former member of the person's family; and
- (d) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(17) A person to whom paragraph (16) applies is to be treated as occupying the dwelling normally occupied as a home during any period of temporary absence, but the period during which the person is treated as occupying the dwelling must not exceed 52 weeks beginning from the first day of temporary absence.