
STATUTORY INSTRUMENTS

2006 No. 213

The Housing Benefit Regulations 2006

PART 2 **E+W+S**

Provisions affecting entitlement to housing benefit

Circumstances in which a person is or is not to be treated as occupying a dwelling as his home **E+W+S**

7.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home—

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

and shall not be treated as occupying any other dwelling as his home.

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

(3) Where a single claimant or a lone parent is a student, other than one to whom regulation 56(1) applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or, his training course, or as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make such payments.

(4) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home, and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he 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 [F1section 13 of the Offender Management Act 2007]M1, he shall not be treated as occupying that dwelling as his home.

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

- (a) for a period not exceeding 52 weeks in the case where he has left and remains absent from the former dwelling occupied as his home through fear of violence in that dwelling or by a former member of his family and—

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- (i) it is reasonable that [^{F2}payments should be made (whether by way of housing benefit or universal credit)] in respect of both his former dwelling and his present dwelling occupied as the home; and
- (ii) he intends to return to occupy the former dwelling as his home; or
- (b) in the case of a couple or a member of a polygamous marriage, where he or one partner is a student, other than one to whom regulation 56(1) applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), or is on a training course and it is unavoidable that the partners should occupy two separate dwellings and reasonable that housing benefit should be paid in respect of both dwellings; or
- (c) in the case where, because of the number of persons referred to in paragraph (1), they have been housed by a housing authority in two separate dwellings; or
- (d) in the case where a person has moved into a new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding 4 benefit weeks [^{F3}from the date on which he moved] if he could not reasonably have avoided liability in respect of two dwellings; or
- (e) in the case where a person—
 - (i) is treated by virtue of paragraph (8) as occupying a dwelling as his home (“the new dwelling”) and sub-paragraph (c)(i) of that paragraph applies; and
 - (ii) he has occupied another dwelling as his home on any day within the period of 4 weeks immediately preceding the date he moved to the new dwelling,
 for a period not exceeding 4 benefit weeks immediately preceding the date on which he moved.
- (7) Where—
 - (a) a person has moved into a dwelling for which he is not liable to make payments (“the new dwelling”); and
 - (b) immediately before that move, he was liable to make payments for the dwelling he previously occupied as his home (“the former dwelling”); and
 - (c) that liability continues after he has moved into the new dwelling,
 he shall be treated as occupying the former dwelling as his home for a period not exceeding 4 benefit weeks if he could not reasonably have avoided liability in respect of that former dwelling.
- (8) [^{F4}Where]—
 - (a) [^{F5}a person] has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
 - [^{F6}(b) either—
 - (i) that person had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further claim has been made or treated as made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; or
 - (ii) that person notified the move to the new dwelling as a change of circumstances under regulation 88 (duty to notify changes of circumstances) before the move, or the move to the new dwelling was otherwise notified before the move under that regulation; and]
 - (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—

- (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of that person or any member of his family; or
- (ii) the move was delayed pending [^{F7}local welfare provision or] the outcome of an application under [^{F8}Part 8] of the Act for a social fund payment 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 claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph ^{F9}...12, 14 or 16 of Schedule 3 [^{F10}or a component under paragraph ^{F11}... 24 of that Schedule [^{F12}or the claimant or the claimant's partner is a member of the work-related activity group]]; or
- (iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

[^{F13}the person shall be treated] as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as his home in respect of the period before moving in, his claim for housing benefit in respect of that dwelling shall be treated as having been made on either—

- (a) in the case of a claim in respect of which a decision has not yet been made the date that claim was or was treated as made in accordance with regulation 83 (time and manner in which claims are to be made); or
- (b) in the case of a claim for housing benefit in respect of that dwelling which has been refused and a further claim was or was treated as made in accordance with Part 10 (claims) within 4 weeks of the date on which he moved into the dwelling, the date on which the claim was refused or was treated as made; or
- (c) the date from which he is treated by virtue of paragraph (8) as occupying the dwelling as his home,

whichever of those dates is the later.

(10) Where a person to whom neither paragraph (6)(a) nor (16)(c)(x) applies—

- (a) formerly occupied a dwelling but has left and remains absent from it through fear of violence—
 - (i) in the dwelling; or
 - (ii) by a person who was formerly a member of the family of the person first mentioned; and
- (b) has a liability to make payments in respect of that dwelling which is unavoidable,

he shall be treated as occupying the dwelling as his home for a period not exceeding 4 benefit weeks.

(11) This paragraph shall apply to a person who enters residential accommodation [^{F14}in Great Britain]—

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

(12) A person to whom paragraph (11) applies shall be treated as if he is occupying the dwelling he normally occupies as his home for a period not exceeding, subject to an overall limit of 52 weeks

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on the absence from that home, 13 weeks beginning from the first day he enters [^{F15}the residential accommodation].

[^{F16}(13) Subject to paragraphs (13B) and (17), where a person is temporarily absent within Great Britain from his main dwelling, he shall be treated as occupying that dwelling as his home whilst he is so absent, subject to an overall limit of a period of 13 weeks beginning with the first day of the absence from the main dwelling, provided that—

- (a) the person intends to return to occupy the main dwelling as his home;
- (b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and
- (c) the period of the absence within Great Britain is unlikely to extend beyond the overall limit.]

[^{F17}(13A) The period of 13 weeks referred to in paragraph (13) shall run or continue to run during any period of absence from Great Britain.

(13B) Where—

- (a) a person returns to Great Britain after a period of absence from Great Britain;
- (b) he has been absent from the main dwelling for less than 13 weeks beginning with the first day of absence from that dwelling; and
- (c) at the outset of, or during, the period of absence from Great Britain, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Great Britain and precedes his return to the main dwelling, he shall not be treated as occupying the main dwelling as his home under paragraph (13).

(13C) This paragraph applies to a person who is temporarily absent from Great Britain and who occupied the main dwelling as his home, or was treated as occupying that dwelling as his home, immediately before the period of absence from Great Britain.

(13D) Subject to paragraphs (13E), (13G), (17C) and (17D) a person to whom paragraph (13C) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of that absence from Great Britain, provided that—

- (a) the person intends to return to occupy the main dwelling as his home;
- (b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and
- (c) the period of absence outside Great Britain is unlikely to exceed 4 weeks.

(13E) If the temporary absence from the main dwelling is in connection with the death of—

- (a) the person's partner or a child or young person for whom the person or the person's partner is responsible;
- (b) the person's close relative;
- (c) the close relative of the person's partner; or
- (d) the close relative of a child or young person for whom the person or the person's partner is responsible,

then the period of 4 weeks in the opening words of paragraph (13D) may be extended by up to 4 further weeks if the relevant authority considers it unreasonable to expect the person to return to Great Britain within the first 4 weeks (and so that the reference in sub-paragraph (c) of that paragraph to a period of 4 weeks shall, where the period is extended, be taken as referring to the period as so extended).

(13F) This paragraph applies to a person who is temporarily absent from Great Britain as a member of Her Majesty's forces posted overseas, a mariner or a continental shelf worker, and who occupied the main dwelling as his home, or was treated as occupying that dwelling as his home, immediately before the period of absence from Great Britain.

(13G) A person to whom paragraph (13F) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 26 weeks beginning with the first day of that absence from Great Britain, provided that—

- (a) the person intends to return to occupy the main dwelling as his home;
- (b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and
- (c) the period of absence outside Great Britain is unlikely to exceed 26 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 Act 1983 ^{M2}, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{M3} or the Criminal Procedure (Scotland) Act 1995 ^{M4}; and
- (b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952 ^{M5} or the Prisons (Scotland) Act 1989 ^{M6}.

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

- (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;
- (b) for the purposes of paragraph (16)(c)(i), he shall be treated as if he remains in detention; and
- (c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.

(16) This paragraph shall apply to a person who is temporarily absent from the [^{F18}main dwelling], if—

- (a) he intends to return to occupy the [^{F19}main dwelling] as his home; and
- (b) while the part of the [^{F20}main dwelling] which is normally occupied by him has not been let, or as the case may be, sublet; and
- (c) he is—

[^{F21}(i) a person to whom paragraph (16A) applies;]

- (ii) resident in a hospital or similar institution as a patient; or
- (iii) undergoing, or as the case may be, his partner or his dependant child is undergoing ^{F22}... , medical treatment, or medically approved convalescence, in accommodation other than residential accommodation; or
- (iv) following ^{F23}... , a training course; or
- (v) undertaking medically approved care of a person ^{F24}... ; or
- (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; or

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- (vii) a person who is ^{F25}... , receiving medically approved care provided in accommodation other than residential accommodation; or
- (viii) a student to whom paragraph (3) or (6)(b) does not apply; or
- (ix) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
- (x) a person who has left the dwelling he occupies as his home through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned, and to whom paragraph (6)(a) does not apply; and

[^{F26}(d) in the case of—

- (i) absence within Great Britain, any period of absence from the dwelling is unlikely to extend beyond or, in exceptional circumstances is unlikely substantially to extend beyond, an overall limit of 52 weeks beginning with the first day of the absence from the dwelling;
- (ii) absence from Great Britain by a person to whom any of sub-paragraphs (c)(ii), (iii), (vii) or (x) apply, any period of absence from Great Britain is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 26 weeks beginning with the first day of the absence from Great Britain; or
- (iii) absence from Great Britain by a person to whom paragraph (ii) of this sub-paragraph does not apply, any period of absence from Great Britain is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 4 weeks beginning with the first day of absence from Great Britain.]

[^{F27}(16A) This paragraph applies to a person (“P”) who is—

- (a) detained in custody on remand pending trial;
- (b) detained pending sentence upon conviction; or
- (c) as a condition of bail required to reside—
 - (i) in a dwelling, other than a dwelling P occupies as P’s home; or
 - (ii) in premises approved under section 13 of the Offender Management Act 2007,

and who is not also detained in custody following sentence upon conviction.]

[^{F28}(17) Subject to paragraph (17B), a person to whom paragraph (16) applies who is absent within Great Britain, shall be treated as occupying the main dwelling as his home whilst he is so absent, subject to an overall limit of a period of 52 weeks beginning with the first day of the absence from the dwelling.]

[^{F29}(17A) The period of 52 weeks referred to in paragraph (17) shall run or continue to run during any period of absence from Great Britain.

(17B) Where—

- (a) a person returns to Great Britain after a period of absence from Great Britain;
- (b) he has been absent from the main dwelling for less than 52 weeks beginning with the first day of absence from that dwelling; and
- (c) at the outset of, or during, the period of absence from Great Britain, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Great Britain and precedes his return to the main dwelling, he shall not be treated as occupying the main dwelling as his home under paragraph (17).

(17C) A person to whom paragraph (16) applies who—

- (a) is a person described in any of sub-paragraphs (c)(ii), (iii), (vii) or (x) of that paragraph;
- (b) is temporarily absent from Great Britain; and
- (c) immediately before that period of temporary absence, occupied the main dwelling as his home or was treated as so occupying that dwelling,

shall be treated as occupying that dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 26 weeks beginning with the first day of the absence from Great Britain.

(17D) A person to whom paragraph (16) applies who—

- (a) is a person described in any of sub-paragraphs (c)(i), (iv), (v), (vi), (viii) or (ix) of that paragraph;
- (b) is temporarily absent from Great Britain; and
- (c) immediately before that period of temporary absence, occupied the main dwelling as his home or was treated as so occupying that dwelling,

shall be treated as occupying that dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of the absence from Great Britain.]

(18) In this regulation—

[^{F30}“continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998;

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964 as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“main dwelling” means the dwelling that a person normally occupies as his home;

“mariner” means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel, where—

- (a) the employment in that capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;]

“medically approved” means certified by a medical practitioner;

[^{F31}“member of Her Majesty’s forces posted overseas” means a person who is 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 from the main dwelling because the person has been posted outside of Great Britain to perform the duties of a member of Her Majesty’s regular forces or reserve forces;]

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

[^{F32}“prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;]

“residential accommodation” means accommodation which is provided in—

- (a) a care home;
- (b) an independent hospital;

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- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;
- “training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, [^{F33}Skills Development Scotland,] Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Textual Amendments

- F1** Words in reg. 7(5) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **6(3)(a)**
- F2** Words in reg. 7(6)(a)(i) substituted (28.10.2013) by [The Universal Credit \(Transitional Provisions\) and Housing Benefit \(Amendment\) Regulations 2013 \(S.I. 2013/2070\)](#), regs. 1, **7(4)**
- F3** Words in reg. 7(6)(d) inserted (8.1.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2006 \(S.I. 2006/3274\)](#), regs. 1, **5**
- F4** Word in reg. 7(8) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(a)**
- F5** Words in reg. 7(8)(a) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(b)**
- F6** Reg. 7(8)(b) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(c)**
- F7** Words in reg. 7(8)(c)(ii) inserted (2.4.2013) by [The Social Security \(Miscellaneous Amendments\) Regulations 2013 \(S.I. 2013/443\)](#), regs. 1, **7(3)(a)**
- F8** Words in reg. 7(8)(c)(ii) substituted (19.5.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **3(3)(a)**
- F9** Words in reg. 7(8)(c)(ii) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **3(3)(b)**
- F10** Words in reg. 7(8)(c)(ii) added by [SI 2008/1082 reg. 7A \(as inserted\) \(27.10.2008\) by The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **28**
- F11** Words in reg. 7(8)(c)(ii) omitted (23.6.2017) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments and Transitional and Savings Provision\) Regulations 2017 \(S.I. 2017/581\)](#), regs. 1, **5(3)(a)** (with reg. 10)
- F12** Words in reg. 7(8)(c)(ii) inserted (23.6.2017) by [The Employment and Support Allowance \(Miscellaneous Amendments and Transitional and Savings Provision\) Regulations 2017 \(S.I. 2017/581\)](#), regs. 1, **5(3)(b)** (with reg. 10)
- F13** Words in reg. 7(8) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(d)**
- F14** Words in reg. 7(11) inserted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **2(2)(a)** (with reg. 5(1)(2))
- F15** Words in reg. 7(12) substituted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **2(2)(b)** (with reg. 5(1)(2))
- F16** Reg. 7(13) substituted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **2(2)(c)** (with reg. 5(1)(2))
- F17** Reg. 7(13A)-(13G) inserted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **2(2)(d)** (with reg. 5(1)(2))
- F18** Words in reg. 7(16) substituted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **2(2)(e)(i)** (with reg. 5(1)(2))

- F19** Words in reg. 7(16)(a) substituted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(ii)** (with reg. 5(1)(2))
- F20** Words in reg. 7(16)(b) substituted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(ii)** (with reg. 5(1)(2))
- F21** Reg. 7(16)(c)(i) substituted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(3)(b)**
- F22** Words in reg. 7(16)(c)(iii) omitted (28.7.2016) by virtue of The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(iii)** (with reg. 5(1)(2))
- F23** Words in reg. 7(16)(c)(iv) omitted (28.7.2016) by virtue of The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(iii)** (with reg. 5(1)(2))
- F24** Words in reg. 7(16)(c)(v) omitted (28.7.2016) by virtue of The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(iv)** (with reg. 5(1)(2))
- F25** Words in reg. 7(16)(c)(vii) omitted (28.7.2016) by virtue of The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(iii)** (with reg. 5(1)(2))
- F26** Reg. 7(16)(d) substituted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(e)(v)** (with reg. 5(1)(2))
- F27** Reg. 7(16A) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(3)(c)**
- F28** Reg. 7(17) substituted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(f)** (with reg. 5(1)(2))
- F29** Reg. 7(17A)-(17D) inserted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(g)** (with reg. 5(1)(2))
- F30** Words in reg. 7(18) inserted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(h)(i)** (with reg. 5(1)(2))
- F31** Words in reg. 7(18) inserted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(h)(ii)** (with reg. 5(1)(2))
- F32** Words in reg. 7(18) inserted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **2(2)(h)(iii)** (with reg. 5(1)(2))
- F33** Words in reg. 7(18) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(3)(b)**

Marginal Citations

- M1** 2000 c. 43.
M2 1983 c. 20.
M3 2003 asp 13.
M4 1995 c. 46.
M5 1952 c. 52.
M6 1989 c. 45.

Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling **E+W+S**

8.—(1) Subject to regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), the following persons shall be treated as if they were liable to make payments in respect of a dwelling—

- (a) the person who is liable to make those payments;

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- (b) a person who is a partner of the person to whom sub-paragraph (a) applies;
- (c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—
 - (i) he was formerly a partner of the person who is so liable; or
 - (ii) he is some other person whom it is reasonable to treat as liable to make the payments;
- (d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability;
- (e) a person who is a partner of a student to whom regulation 56(1) (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling) applies.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in, or in respect of, which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 79 to 81 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent free periods), be treated as liable to pay the amount as so varied during the whole of that period.

Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling E+W+S

9.—(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

- (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
- (b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;
- (c) his liability under the agreement is—
 - (i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners; or
 - (ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;
- (d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;
- (e) subject to paragraph (3), his liability under the agreement is to a company or a trustee of a trust of which—
 - (i) he or his partner;
 - (ii) his or his partner's close relative who resides with him; or
 - (iii) his or his partner's former partner;
 is, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;
- (f) his liability under the agreement is to a trustee of a trust of which his or his partner's child is a beneficiary;
- (g) subject to paragraph (3), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;

- (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;

[^{F34}(ha) he or his partner—

- (i) was a tenant under a long tenancy in respect of the dwelling; and
(ii) less than five years have elapsed since that tenancy ceased,

except where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing the tenancy;]

- (i) his occupation, or his partner's occupation, of the dwelling is a condition of his or his partner's employment by the landlord;
- (j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies as his home) by, a religious order;
- (k) he is in residential accommodation;
- (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.

(2) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law.

(3) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme.

(4) In this regulation “residential accommodation” means accommodation which is provided in—

- (a) a care home; or
(b) an independent hospital.

Textual Amendments

F34 Reg. 9(1)(ha) inserted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), 2(3)

Persons from abroad **E+W+S**

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1 ^{M7} (treatment of claims for housing benefit by refugees) apply.

[^{F35}(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

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(3A) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—

- (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
- (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;

[^{F36}(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;]

(c) Article 6 of Council Directive No.2004/38/EC; ^{F37} ...

(d) [^{F38}Article 39 of the Treaty establishing the European Community][^{F38}Article 45 of the Treaty on the Functioning of the European Union] (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland)[^{F39}; or

(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).]

(3B) A person is not a person from abroad if he is—

[^{F40}(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;

(zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;

(zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;]

(g) a refugee;

(h) [^{F41}a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—

(i) discretionary leave to enter or remain in the United Kingdom ^{F42} ...;

(ii) leave to remain under the Destitution Domestic Violence concession; or

(iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;]

(hh) [^{F43}a person who has humanitarian protection granted under those rules;]

(i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;

^{F44}(j)

^{F45}(jj)

(k) in receipt of income support^{F46}[^{F47} ... or on an income-related employment and support allowance].]

[^{F48}(1) in receipt of an income-based jobseeker’s allowance and has a right to reside other than a right to reside falling within paragraph (3A).]

^{F49}(4)

^{F50}(5)

(6) In this regulation—

^{F51} ...

^{M8}“refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees .

Textual Amendments

- F35** Reg. 10(2)-(3B) substituted for reg. 10(2)(3) (30.4.2006) by [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(a)** (with reg. 11(2))
- F36** Reg. 10(3A)(bb) inserted (8.11.2012) by [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012 \(S.I. 2012/2587\)](#), regs. 1, **5(2)**
- F37** Word in reg. 10(3A)(c) omitted (8.11.2012) by virtue of [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012 \(S.I. 2012/2587\)](#), regs. 1, **5(3)**
- F38** Words in reg. 10(3A)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 2** (with art. 2(2))
- F39** Reg. 10(3A)(e) and word added (8.11.2012) by [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012 \(S.I. 2012/2587\)](#), regs. 1, **5(4)**
- F40** Reg. 10(3B)(za)-(zc) substituted for (31.5.2014) by [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2014 \(S.I. 2014/902\)](#), regs. 1, **5**
- F41** Reg. 10(3B)(h) substituted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **11(3)(a)**
- F42** Word in reg. 10(3B)(i) omitted (1.4.2014) by virtue of [The Housing Benefit \(Habitual Residence\) Amendment Regulations 2014 \(S.I. 2014/539\)](#), regs. 1, **2(1)(a)** (with reg. 3)
- F43** Reg. 10(3B)(h)(hh) substituted for reg. 10(3B)(h) (9.10.2006) by [The Social Security \(Persons from Abroad\) Amendment \(No. 2\) Regulations 2006 \(S.I. 2006/2528\)](#), regs. 1, **5(2)**
- F44** Reg. 10(3B)(j) omitted (29.10.2013) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **11(3)(c)**
- F45** Reg. 10(3B)(jj) omitted (29.10.2013) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **11(3)(c)**
- F46** Words in reg. 10(3B)(k) omitted (1.4.2014) by virtue of [The Housing Benefit \(Habitual Residence\) Amendment Regulations 2014 \(S.I. 2014/539\)](#), regs. 1, **2(1)(b)** (with reg. 3)
- F47** Words in reg. 10(3B)(k) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **8**
- F48** Reg. 10(3B)(l) and word added (1.4.2014) by [The Housing Benefit \(Habitual Residence\) Amendment Regulations 2014 \(S.I. 2014/539\)](#), regs. 1, **2(1)(c)** (with reg. 3)
- F49** Reg. 10(4) omitted (29.10.2013) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **11(3)(c)**
- F50** Reg. 10(5) omitted (30.4.2006) by virtue of [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(b)** (with reg. 11(2))
- F51** Words in reg. 10(6) omitted (30.4.2006) by virtue of [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(c)** (with reg. 11(2))

Marginal Citations

- M7** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

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M8 Cmnd. 9171. See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 2 for regulation 10A and Schedule 1A (claims by refugees).

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Changes to legislation:

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