

2017 No. 1

HOUSING; RATES; SOCIAL SECURITY

The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations (Northern Ireland) 2017

Made - - - - 4th January 2017

Coming into operation in accordance with regulation 1(1)

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129A(2), 133(2)(b) and (h) and 171(1), (3), (4) and (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and now vested in it(b) and sections 1(5), 12(2)(a), 15(3) and (6)(b), 17(2) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(c).

In accordance with section 149(1) of the Social Security Administration (Northern Ireland) Act 1992 the Department for Social Development has referred these Regulations to the Social Security Advisory Committee(d).

The Social Security Advisory Committee have agreed that the proposals in respect of these Regulations should not be referred to it(e).

Regulations 2 and 3 are made with the consent of the Department of Finance(f).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations (Northern Ireland) 2017 and come into operation—

- (a) For the purposes of regulations 2(1), (2), (4) and (5), and 3 to 5, on 30th January 2017.
- (b) For the purposes of regulation 2(3) on 20th February 2017.

(2) The Interpretation Act (Northern Ireland) 1954(g) shall apply to these Regulations as it applies to an Act of the Assembly.

(a) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(b) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c.5 (N.I.))
(c) 2002 c. 14 (N.I.)
(d) 1992 c. 8; section 149(1) was amended by section 89(1) of the Northern Ireland Act 1998 (c. 47)
(e) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992
(f) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); see also Article 6(b) of S.R. 1999 No. 481
(g) 1954 c. 33 (N.I.)

Amendment of the Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) —

- (a) in paragraph (11) after “residential accommodation” in the opening words insert “in Northern Ireland”;
- (b) in paragraph (12) for “a residential accommodation” substitute “the residential accommodation”;
- (c) for paragraph (13) substitute—

“(13) Subject to paragraphs (13B) and (17), where a person is temporarily absent within Northern Ireland 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 absence within Northern Ireland from the home is unlikely to extend beyond the overall limit.”.

(d) after paragraph (13) insert—

“(13A) The period of 13 weeks referred to in paragraph (13) shall run or continue to run during any period of absence from Northern Ireland.

(13B) Where—

- (a) a person returns to Northern Ireland after a period of absence from Northern Ireland;
- (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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland 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 Northern Ireland.

(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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of that absence from Northern Ireland, 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 Northern Ireland is unlikely to exceed 4 weeks.

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

(a) S.R. 2006 No. 405

- (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 Northern Ireland 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 Northern Ireland 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 Northern Ireland.

(13G) A person to whom paragraph (13F) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Northern Ireland, for a period not exceeding 26 weeks beginning with the first day of that absence from Northern Ireland, 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 Northern Ireland is unlikely to exceed 26 weeks.”.
- (e) in paragraph (16) —
- (i) in the opening words for “dwelling he normally occupies as his home (“absence”)” substitute “main dwelling”;
 - (ii) in sub-paragraphs (a) and (b) for “dwelling” substitute “main dwelling”;
 - (iii) in sub-paragraph (c)(iii), (iv) and (vii) omit “, in the United Kingdom or elsewhere,”;
 - (iv) in sub-paragraph (c)(v) omit “residing in the United Kingdom or elsewhere”;
 - (v) for sub-paragraph (d) substitute—
 - “(d) in the case of—
 - (i) absence within Northern Ireland, 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 Northern Ireland by a person to whom any of sub-paragraphs (c)(ii), (iii), (vii) or (x) apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 26 weeks beginning with the first day of the absence from Northern Ireland; or
 - (iii) absence from Northern Ireland by a person to whom head (ii) does not apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 4 weeks beginning with the first day of absence from Northern Ireland.”.
- (f) for paragraph (17) substitute—
- “(17) Subject to paragraph (17B), a person to whom paragraph (16) applies who is absent within Northern Ireland, 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.”.
- (g) after paragraph (17) insert—

“(17A) The period of 52 weeks referred to in paragraph (17) shall run or continue to run during any period of absence from Northern Ireland.

(17B) Where—

- (a) a person returns to Northern Ireland after a period of absence from Northern Ireland;
- (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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 26 weeks beginning with the first day of the absence from Northern Ireland.

(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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of the absence from Northern Ireland.”.

(h) in paragraph (18)—

(i) before the definition of “medically approved” insert—

““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(a);

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(b) 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

(a) 1998 c.17
(b) 1964 c. 29

- (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;”;
- (ii) after the definition of “medically approved” insert—
- ““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(a)), who is absent from the main dwelling because the person has been posted outside of Northern Ireland to perform the duties of a member of Her Majesty’s regular forces or reserve forces”; and
- (iii) after the definition of “patient” insert—
- ““prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purposes 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;”.
- (3) For regulation 13AA(4) (eligible rent and maximum rent (social sector)) (b) substitute—
- “(4) For the purposes of paragraph (3), a claimant is treated as occupying the dwelling if—
- (a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or
- (b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.”.
- (4) For regulation 13C(4) (eligible rent and maximum rent (LHA))(c) substitute—
- “(4) For the purposes of paragraph (3), a claimant is treated as occupying the dwelling if—
- (a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or
- (b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.”.
- (5) For regulation 14A(2) (protection on death and 13 week protection)(d) substitute—
- “(2) For the purposes of paragraph (1), a claimant is treated as occupying the dwelling if—
- (a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or
- (b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.”.

(a) 2006 c.52
 (b) Regulation 13AA was inserted by regulation 5(5) of SR 2016 No. 326
 (c) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 101
 (d) Regulation 14A was inserted by regulation 2(7) of S.R. 2008 No. 101

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

3.—(1) The Housing Benefit (Persons who have attained the age for state pension credit) Regulations (Northern Ireland) 2006^(a) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) —

- (a) in paragraph (11) after “residential accommodation” insert “in Northern Ireland”;
- (b) in paragraph (12) for “a residential accommodation” substitute “the residential accommodation”;
- (c) for paragraph (13) substitute—

“(13) Subject to paragraphs (13B) and (17), where a person who is temporarily absent within Northern Ireland 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 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 absence within Northern Ireland is unlikely to extend beyond the overall limit.”.

- (d) after paragraph (13) insert—

“(13A) The period of 13 weeks referred to in paragraph (13) shall run or continue to run during any period of absence from Northern Ireland.

(13B) Where—

- (a) a person returns to Northern Ireland after a period of absence from Northern Ireland;
- (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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland 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 Northern Ireland.

(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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of that absence from Northern Ireland, 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 Northern Ireland is unlikely to exceed 4 weeks.

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

^(a) S.R. 2006 No. 406

- (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 Northern Ireland 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 Northern Ireland 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 Northern Ireland.

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

(e) in paragraph (16) —

- (i) in the opening words for “dwelling he normally occupies as his home (“absence”)” substitute “main dwelling”;
- (ii) in sub-paragraphs (a) and (b) for “dwelling” substitute “main dwelling”;
- (iii) in sub-paragraph (c) (iii), (iv) and (vii) omit “, in the United Kingdom or elsewhere”;
- (iv) for sub-paragraph (d) substitute—
“(d) in the case of—

- (i) absence within Northern Ireland, 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) an absence from Northern Ireland by a person to whom any of sub-paragraphs (c)(ii), (iii), (vii) or (x) apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 26 weeks beginning with the first day of the absence from Northern Ireland; or
- (iii) absence from Northern Ireland by a person to whom head (ii) does not apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 4 weeks beginning with the first day of absence from Northern Ireland.”.

(f) for paragraph (17) substitute—

“(17) Subject to paragraph (17B), a person to whom paragraph (16) applies who is absent within Northern Ireland, 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.”.

(g) after paragraph (17) insert—

“(17A) The period of 52 weeks referred to in paragraph (17) shall run or continue to run during any period of absence from Northern Ireland.

(17B) Where—

- (a) a person returns to Northern Ireland after a period of absence from Northern Ireland;
- (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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 26 weeks beginning with the first day of the absence from Northern Ireland.

(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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of the absence from Northern Ireland.”.

(h) in paragraph (18)—

(i) before the definition of “medically approved” insert—

““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(a);

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(b) 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

(a) 1998 c.17
(b) 1964 c. 29

- (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;”;
- (ii) after the definition of “medically approved” insert—
 - ““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(a)), who is absent from the main dwelling because the person has been posted outside of Northern Ireland to perform the duties of a member of her Majesty’s regular forces or reserve forces;”;
- (iii) after the definition of “patient” insert—
 - ““prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purposes 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;”.
- (3) For regulation 13C(4) (eligible rent and maximum rent (LHA))(b) substitute—
 - “(4) For the purposes of paragraph (3), a claimant is treated as occupying the dwelling if—
 - (a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or
 - (b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.”.
- (4) For regulation 14A(2) (protection on death and 13 week protection)(c) substitute—
 - “(2) For the purpose of paragraph (1), a claimant is treated as occupying the dwelling if—
 - (a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or
 - (b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.”.

Amendments to the State Pension Credit Regulations

4.—(1) The State Pension Credit Regulations (Northern Ireland) 2003(d) are amended in accordance with paragraphs (2) to (10)—

- (2) For regulation 3(e) (persons temporarily absent from Northern Ireland) substitute—

“Persons temporarily absent from Northern Ireland

3.—(1) A claimant’s entitlement to state pension credit while the claimant is temporarily absent from Northern Ireland is to continue but for no longer than—

- (a) 4 weeks, provided the absence is not expected to exceed 4 weeks;
- (b) 8 weeks, where paragraph (2) applies; or
- (c) 26 weeks, where paragraph (3) applies,

provided the claimant continues to satisfy the other conditions of entitlement.

(a) 2006 c.52
 (b) Regulation 13C was inserted by regulation 2(6) of S.R. 2008 No. 102
 (c) Regulation 14A was inserted by regulation 2(7) of S.R. 2008 No. 102
 (d) S.R. 2003 No. 28: relevant amending Regulations are S.R. 2006 Nos. 128 and 359 and S.R. 2008 No. 410
 (e) Regulation 3 was substituted by regulation 3(2) of S.R. 2008 No. 410

(2) This paragraph applies where the absence is not expected to exceed 8 weeks and is in connection with the death of—

- (a) the claimant’s partner or a child or qualifying young person normally living with the claimant; or
- (b) a close relative of—
 - (i) the claimant;
 - (ii) the claimant’s partner; or
 - (iii) a child or qualifying young person normally living with the claimant,

and the Department considers that it would be unreasonable to expect the claimant to return to Northern Ireland within 4 weeks.

(3) This paragraph applies where the absence is not expected to exceed 26 weeks and is solely in connection with—

- (a) the claimant undergoing—
 - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner; or
 - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the claimant had that illness or impairment before leaving Northern Ireland; or
- (b) the claimant accompanying his or her partner or a child or a qualifying young person normally living with the claimant for treatment or convalescence or care as mentioned in sub-paragraph (a).

(4) In this regulation and in regulation 5—

“medically approved” means certified by a registered medical practitioner;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.”.

(3) Omit regulation 3A(a) (persons temporarily absent from Northern Ireland on 6th October 2008).

(4) Omit regulation 4 (persons receiving treatment outside Northern Ireland).

(5) After regulation 3, insert—

“Meaning of “qualifying young person”

4A.—(1) A person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of these Regulations—

- (a) up to, but not including, 1st September following the person’s 16th birthday; and
- (b) up to, but not including, the 1st September following the person’s 19th birthday, if the person is enrolled on, or accepted for, approved training or a course of education—
 - (i) which is not a course of advanced education within the meaning of regulation 12(3) of the Universal Credit Regulations (Northern Ireland) 2016(b);
 - (ii) which is provided at a school or college or provided elsewhere but approved by the Department for the purposes of regulation 6 of the Universal Credit Regulations (Northern Ireland) 2016; and

(a) Regulation 3A was inserted by regulation 3(2) of S.R. 2008 No. 410
(b) S.R. 2016 No. 216

(iii) where the average time spent during term time in receiving tuition, engaging in practical work or supervised study or taking examinations exceeds 12 hours per week.

(2) Where the young person is aged 19, he or she must have started the education or training or been enrolled on or accepted for it before reaching that age.

(3) The education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.

(4) “Approved training” means training provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department under the Employment and Training Act (Northern Ireland) 1950^(a) whether that agreement is known as an operating agreement or by any other name and which is approved by the Department for the purposes of regulation 6 of the Universal Credit Regulations (Northern Ireland) 2016.

(5) A person who is receiving universal credit, a contributory employment and support allowance, a contribution-based jobseeker’s allowance, an income-related employment and support allowance, an income-based jobseeker’s allowance or income support is not a qualifying young person.”.

(6) In regulation 5 (persons treated as being or not being members of the same household)—

(a) for paragraph (1)(f)^(b) substitute—

“(f) except in circumstances where paragraph (1A) applies, he is absent from Northern Ireland;”;

(b) for paragraph (1A)^(c) substitute—

“(1A) A person is to be treated as being a member of the same household as the claimant while he is absent from Northern Ireland but for no longer than—

- (a) 4 weeks, provided the absence is not expected to exceed 4 weeks;
- (b) 8 weeks, where paragraph (1B) applies; or
- (c) 26 weeks, where paragraph (1C) applies.

(1B) This paragraph applies where the absence is not expected to exceed 8 weeks and is in connection with the death of—

- (a) a child or qualifying young person normally living with the person; or
- (b) a close relative of—
 - (i) the person;
 - (ii) the person’s partner; or
 - (iii) a child or qualifying young person normally living with the person,

and the Department considers that it would be unreasonable to expect the person to return to Northern Ireland within 4 weeks.

(1C) This paragraph applies where the absence is not expected to exceed 26 weeks and is solely in connection with—

- (a) the person undergoing—
 - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner; or
 - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Northern Ireland; or

(a) 1950 c. 29 (N.I.)

(b) Paragraph (1)(f) was substituted by regulation 3(3)(a) of S.R. 2008 No. 410

(c) Paragraph (1A) was inserted by regulation 14(2)(b) of S.R. 2006 No. 359

- (b) the person accompanying his partner or a child or qualifying young person normally living with the person for treatment or convalescence or care as mentioned in sub-paragraph (a).”.

(7) In paragraph 2(2)(f)(a) of Schedule 1 (circumstances in which persons are treated as being or not being severely disabled) after “qualifying young person” insert “within the meaning of regulation 4A” and for “for the purposes of Part IX of the Contributions and Benefits Act (child benefit)” substitute “as defined in Article 46 of the 2015 Order”.

(8) In paragraph 1(8)(b) of Schedule 3 (special groups) after “In regulations” insert “3,”.

(9) In Schedule 5 (income from capital)—

- (a) for paragraph 6(2) there is substituted—

“In this paragraph—

“dwelling” means the dwelling occupied as the home formerly so occupied by the claimant;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household, as, a child;

“child” means a person who is a qualifying young person within the meaning of regulation 4A or a child as defined in Article 46 of the 2015 Order.”

- (b) in paragraph 15(8) in the definition of “child”(c) after “qualifying young person” insert “within the meaning of regulation 4A” and for “for the purposes of Part IX of the Contributions and Benefits Act (child benefit)” substitute “as defined in Article 46 of the 2015 Order”.

(10) In paragraph 1(2) of Schedule 6 (sums disregarded from claimant’s earnings) in the definition of “child”(d) after “qualifying young person” insert “within the meaning of regulation 4A” and for “for the purposes of Part IX of the Contributions and Benefits Act” substitute “as defined in Article 46 of the 2015 Order”.

Transitional provision

5.—(1) Subject to paragraph (2), regulations 2(1), (2) and 3 shall not apply in respect of a person who is temporarily absent from Northern Ireland on 30th January 2017 until the day that person returns to Northern Ireland.

(2) Paragraph (1) shall not apply to a person who, on 30th January 2017, is temporarily absent from Northern Ireland and is—

- (a) a member of Her Majesty’s forces posted overseas;
- (b) absent in the capacity of a continental shelf worker; or
- (c) absent in the capacity of a mariner.

(3) Regulation 4 shall not apply in respect of a person who is temporarily absent from Northern Ireland on 30th January 2017 until the day that person returns to Northern Ireland.

(4) In this regulation—

“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;

(a) Paragraph 2(2)(f) was amended by regulation 5(3) of S.R. 2006 No. 128

(b) Paragraph 1(8) was amended by regulation 3(4) of S.R. 2008 No. 410

(c) The definition of “child” was amended by regulation 5(5)(b) of S.R. 2006 No. 128

(d) The definition of “child” was amended by regulation 5(6) of S.R. 2006 No. 128

“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;

“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 dwelling that the person normally occupies as his home because the person has been posted outside of Northern Ireland to perform the duties of a member of Her Majesty’s regular forces or reserve forces; and

“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.

Sealed with the Official Seal of the Department for Communities on 4th January 2017

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

The Department of Finance hereby consents to regulations 2 and 3.

Sealed with the Official Seal of the Department of Finance on 5th January 2017

(L.S.)

Joanne McBurney
A senior officer of the Department of Finance

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations (Northern Ireland) 2006 (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 and the State Pension Credit Regulations (Northern Ireland) 2002 (“the State Pension Credit Regulations”).

Regulation 7(11) and (12) of the Housing Benefit Regulations provides that a person who enters residential accommodation on a trial basis for the purpose of ascertaining whether the accommodation satisfies his or her needs, can receive housing benefit in respect of his former dwelling for up to 13 weeks. Regulation 2(2)(a) of these Regulations amends regulation 7(11) of the Housing Benefit Regulations so that it only applies where the person enters residential accommodation in Northern Ireland. Regulation 2(b) makes a consequential amendment to regulation 7(12).

Regulation 7(13) of the Housing Benefit Regulations provides that a person is treated as occupying the dwelling that the person normally occupies as his or her home (“main dwelling”) where the person is temporarily absent from that dwelling, for up to 13 weeks, provided that: the person intends to return to occupy the dwelling, the dwelling is not let or, as the case may be, sub-let, and the period of absence is unlikely to exceed 13 weeks. Regulation 7(13) currently makes no distinction between absences within and outside of Northern Ireland.

Regulation 2(2)(c) of these Regulations substitutes a new paragraph (13) into regulation 7 so that that paragraph only applies to persons who are temporarily absent from their home within Northern Ireland.

Regulation 2(2)(d) of these Regulations inserts new paragraphs into regulation 7. The new paragraphs provide that:

- the period of 13 weeks under paragraph (13) runs or continues to run during any period of absence from Northern Ireland (new paragraph (13A));
- if, after a period of absence from Northern Ireland, a person returns to Northern Ireland within 13 weeks of the first day of absence from the main dwelling and, whilst abroad, the person ceased to be treated as occupying the main dwelling as his or her home, paragraph (13) does not apply to the person with effect from the time that the person returns to Northern Ireland (new paragraph 13B);
- where a person is absent from Northern Ireland and occupied the main dwelling as his or her home, or was treated as so occupying it, immediately before the period of absence, the person is to be treated as occupying the main dwelling as his or her home for a period of up to 4 weeks beginning on the first day of the person’s absence from Northern Ireland (new paragraphs (13C) and (13D));
- if the absence from Northern Ireland is in connection with the death of: a partner, a child or young person for whom the person or the person’s partner is responsible, a close relative of the person or the person’s partner’s or a 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 may be extended by up to 4 further weeks if the relevant authority considers it unreasonable to expect the person to return within the first 4 weeks (new paragraph (13E));
- if the person is absent from Northern Ireland and is a member of Her Majesty’s forces posted overseas, a mariner or a continental shelf worker, the person is to be treated as occupying the main dwelling as his or her home whilst the person is temporarily absent, for up to 26 weeks beginning on the first day of the person’s absence from Northern Ireland (new paragraph (13F) and (13G)).

Regulations 2(2)(e) to (f) of these Regulations amends paragraphs (16) and (17) of regulation 7 of the Housing Benefit Regulations. Those paragraphs currently provide that a person is to be

treated as occupying the main dwelling as his or her home for up to 52 weeks where the person is temporarily absent therefrom in the circumstances set out in paragraph (16).

Regulations 2(2)(f) of these Regulations amends paragraphs (17) of regulation 7 and regulation 2(2)(g) inserts new paragraphs (17A) to (17D) into that regulation. Those new paragraphs provide that where a person to whom paragraph (16) applies is absent from Northern Ireland, the person is to be treated as occupying the dwelling as his or her home for up to 4 weeks beginning on the first day of his or her absence from Northern Ireland, unless the person is a person to whom any of subparagraphs (c)(ii), (iii), (vii) and (x) of paragraph (16) apply, in which case the person is to be treated as occupying the dwelling for up to 26 weeks.

The period remains at 52 weeks if the person is absent within Northern Ireland. The period 52 weeks under paragraph (17) runs or continues to run during any period of absence from Northern Ireland, but if a person returns to Northern Ireland after a period of absence abroad within 52 weeks beginning with the first day of absence from the main dwelling and, whilst abroad, the person ceased to be treated as occupying the main dwelling as his or her home, then paragraph (17) does not apply to that person when the person returns to Northern Ireland.

Linked to these changes, regulation 2(2)(e) makes various technical changes to paragraph (16) of regulation 7. In particular it amends paragraph (16)(d) to reduce the period that the absence must be unlikely to exceed, or in exceptional circumstances unlikely substantially to exceed, so as to align with changes to periods of time referred to above.

Regulations 2(2)(h), (3), (4) and (5) of these Regulations makes amendments which are consequential to the above changes.

Regulation 3 makes similar amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006.

Regulation 3 of the State Pension Credit Regulations currently allows for a claimant's entitlement to State Pension Credit to continue where the claimant is absent from Northern Ireland for up to 13 weeks, the period of absence is unlikely to exceed 52 weeks and the claimant continues to satisfy the other conditions of entitlement during his or her absence. Regulation 4(2) of these Regulations inserts new regulation 3 into the State Pension Credit Regulations which replaces this 13 week period with a 4 week period, providing the absence is not expected to exceed 4 weeks. New regulation 3(2) provides that a claimant's entitlement can continue for up to 8 weeks where the absence is in connection with the death of the claimant's partner, or a child or qualifying young person normally living with the claimant, or the death of a close relative of one of these or a close relative of the claimant. New regulation 3(3) allows for entitlement to continue during an absence of up to 26 weeks where the claimant is undergoing medical treatment or convalescence or care, or is accompanying a partner or a child or qualifying young person normally living with the claimant for medical treatment or convalescence or care.

Regulation 4(5) inserts a definition of "qualifying young person" into the State Pension Credit Regulations.

Regulation 5(1)(f) of the State Pension Credit Regulations currently allows for a person to continue to be treated as being a member of the claimant's household when the person is absent from Northern Ireland for up to 13 weeks. Regulation 4(6) amends this so that the person is subject to the same rules on temporary absence as the claimant.

Regulation 4(7), 4(9) and (10) makes changes to certain Schedules to the State Pension Credit Regulations so that the definitions of "qualifying young person" and "child" cross-refer to regulation 4A of those Regulations and Article 46 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)) respectively.

Regulation 4(8) applies the provisions relating to polygamous marriages to regulation 3 of the State Pension Credit Regulations.

Regulation 5 makes transitional provision such that the amendments in regulations 2 and 3 do not apply in respect of a person who is temporarily absent from Northern Ireland on 30th January

2017 until he or she returns to Northern Ireland unless the person is a member of Her Majesty's forces posted overseas, a continental shelf worker or a mariner. Regulation 5 also provides that regulation 4 does not apply to a person who is temporarily absent from Northern Ireland on 30 January 2017 until the person returns to Northern Ireland.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c.8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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