

SCHEDULE 6

HOUSING COSTS

Circumstances in which a person is to be treated as occupying a dwelling as the home

5.—(1) Subject to the following provisions of this paragraph, a person is to be treated as occupying as the home the dwelling normally occupied as the home by that person or, if that person is a member of a family, by that person and that person's family and that person is not to be treated as occupying any other dwelling as the home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard must be had to any other dwelling occupied by the claimant or by the claimant and that claimant's family whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student 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 that claimant occupies for the purpose of attending the course of study or the training course or, as the case may be, the dwelling which that claimant occupies when not attending that course, that claimant is to be treated as occupying as the home the dwelling in respect of which that claimant is liable to make payments.

(4) A full-time student is not to be treated as occupying a dwelling as that student's home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purposes of that student's occupation during the period of study would be to facilitate attendance on that student's course.

(5) 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 the home and that claimant 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 normally occupied or the temporary accommodation, that claimant must be treated as occupying as the home the dwelling in respect of which that claimant is liable to make those payments.

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

- (a) where that claimant has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or of violence by a former member of the claimant's family and it is reasonable that housing costs should be met in respect of both that claimant's former dwelling and that claimant's present dwelling occupied as the home;
- (b) in the case of a couple or a member of a polygamous marriage where a partner is a full-time student or is on a training course and it is unavoidable that that student, or they, should occupy two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or
- (c) in the case where a claimant has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks from the first day of the benefit week in which the move occurs if that claimant's liability to make payments in respect of two dwellings is unavoidable.

(7) Where—

- (a) a claimant has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;

*Status: Point in time view as at 05/01/2009. This version of this provision has been superseded.
Changes to legislation: There are currently no known outstanding effects for the The Employment
and Support Allowance Regulations 2008, Paragraph 5. (See end of Document for details)*

- (b) that claimant had claimed an income-related allowance before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; 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 the claimant or any member of the claimant's family;
 - (ii) the move was delayed pending the outcome of an application for a social fund payment under Part 8 of the Contributions and Benefits Act to meet a need arising out of the move or in connection with setting up the home in the dwelling, and—
 - (aa) a member of the claimant's family is aged five or under;
 - (bb) the claimant is a person in respect of whom the main phase employment and support allowance is payable;
 - (cc) the claimant's applicable amount includes a pensioner premium;
 - (dd) the claimant's applicable amount includes a severe disability premium; or
 - (ee) a child tax credit is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of section 9(6) of the Tax Credits Act; or
 - (iii) the claimant became liable to make payments in respect of the dwelling while that claimant was a patient or was in residential accommodation,

that claimant is to be treated as occupying the dwelling as the home for any period not exceeding four weeks immediately prior to the date on which that claimant moved into the dwelling and in respect of which that claimant was liable to make payments.

- (8) This sub-paragraph applies to a claimant who enters residential accommodation—
 - (a) for the purpose of ascertaining whether the accommodation suits that claimant's needs; and
 - (b) with the intention of returning to the dwelling which that claimant normally occupies as the home should, in the event, the residential accommodation prove not to suit that claimant's needs,

and while in the accommodation, the part of the dwelling which that claimant normally occupies as the home is not let or sub-let to another person.

(9) A claimant to whom sub-paragraph (8) applies is to be treated as occupying the dwelling that the claimant normally occupies as the home during any period (commencing on the day that claimant enters the accommodation) not exceeding 13 weeks in which the claimant is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A claimant, other than a claimant to whom sub-paragraph (11) applies, is to be treated as occupying a dwelling as the home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) that claimant intends to return to occupy the dwelling as the home;
- (b) the part of the dwelling normally occupied by that claimant has not been let or sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a claimant whose absence from the dwelling that that claimant normally occupies as the home is temporary and—

- (a) that claimant intends to return to occupy the dwelling as the home;

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- (b) the part of the dwelling normally occupied by that claimant has not been let or sub-let; and
 - (c) that claimant 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 that claimant occupies as the home; or
 - (bb) in premises approved under section 13 of the Offender Management Act 2007 ^{F1},
 - or, detained pending sentence upon conviction;
 - (ii) resident in a hospital or similar institution as a patient;
 - (iii) undergoing or, as the case may be, that claimant's partner or 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) a claimant who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
 - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
 - (ix) a claimant other than a claimant to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation; or
 - (x) a claimant to whom sub-paragraph (6)(a) does not apply and who has left the dwelling that claimant occupies as the home through fear of violence in that dwelling, or by a person who was formerly a member of that claimant's family; and
 - (d) the period of that claimant's absence is unlikely to exceed a period of 52 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.
- (12) A claimant to whom sub-paragraph (11) applies is to be treated as occupying the dwelling that claimant normally occupies as the home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

“medically approved” means certified by a medical practitioner;

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

“residential accommodation” means accommodation which is a care home, an Abbeyfield Home or an independent hospital;

“training course” means such 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, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Textual Amendments

F1 2007 c. 21.

Status:

Point in time view as at 05/01/2009. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Paragraph 5.