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STATUTORY INSTRUMENTS

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**2006 No. 213**

**The Housing Benefit Regulations 2006**

**PART 2**

**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**

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 section 9(1) of the Criminal Justice and Court Services Act 2000<sup>(1)</sup>, 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—

- (i) it is reasonable that housing benefit should be paid 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 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) Where a person—
- (a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
  - (b) 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; 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 the outcome of an application under Part 3 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 9, 10, 11, 12, 14 or 16 of Schedule 3; or

(iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

he 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—

- (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 on the absence from that home, 13 weeks beginning from the first day he enters a residential accommodation.

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

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

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

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(2), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 (3) or the Criminal Procedure (Scotland) Act 1995(4); and
  - (b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952(5) or the Prisons (Scotland) Act 1989(6).
- (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 dwelling he normally occupies as his home (“absence”), if—
- (a) he intends to return to occupy the dwelling as his home; and
  - (b) while the part of the dwelling which is normally occupied by him has not been let, or as the case may be, sublet; and
  - (c) he 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 he occupies as his home; or
      - (bb) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000(7),
 or, detained pending sentence upon conviction; or
    - (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, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation; or
    - (iv) following, in the United Kingdom or elsewhere, a training course; or
    - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere; 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
    - (vii) a person who is, in the United Kingdom or elsewhere, 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

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(2) 1983 c. 20.  
 (3) 2003 asp 13.  
 (4) 1995 c. 46.  
 (5) 1952 c. 52.  
 (6) 1989 c. 45.  
 (7) 2000 c. 43.

- (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
- (d) the period of his absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(17) A person to whom paragraph (16) applies shall be treated as occupying the dwelling he normally occupies at his home during any period of absence not exceeding 52 weeks beginning from the first day of that absence.

(18) In this regulation—

“medically approved” means certified by a medical practitioner;

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

“residential accommodation” means accommodation which is provided in—

- (a) a care home;
- (b) an independent hospital;
- (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, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

### **Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling**

**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;
- (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**

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;
- (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.

### **Persons from abroad**

**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(8) (treatment of claims for housing benefit by refugees) apply.

(2) In paragraph (1) “person from abroad” also means any person other than a person to whom paragraph (3) applies who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000(9) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(10); or
  - (b) a refugee; or
  - (c) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(11), or to remain in the United Kingdom by the Secretary of State; or
  - (d) 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.
- (3) This paragraph applies to a person who—
- (a) is in receipt of income support;
  - (b) is a person on an income-based jobseeker’s allowance; or
  - (c) is in Great Britain and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(4) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(12) shall not apply to a person who has been temporarily without funds for any period, or the aggregate

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(8) 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).

(9) S.I. 2000/2326, to which there are amendments not relevant to these Regulations.

(10) S.I. 2004/1219.

(11) 1971 c. 77.

(12) S.I. 2000/ 636.

of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(5) In this regulation, for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(6) In this regulation—

“a European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland;

“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<sup>(13)</sup>.

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(13) 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).