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STATUTORY INSTRUMENTS

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**1987 No. 1971**

**The Housing Benefit (General) Regulations 1987**

**PART II**

**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**

5.—(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 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 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) 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 it is reasonable that housing benefit should be paid in respect of both his former dwelling and his present dwelling occupied as the home; or
- (b) in the case of a married or unmarried couple or a member of a polygamous marriage, where he or one partner is a student 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 four benefit weeks if his liability to make payments in respect of two dwellings is unavoidable.
- (6) 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 that claim has not yet been determined 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 III 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, 13 or 14 of Schedule 2; 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.
- (7) Where a person is treated by virtue of paragraph (6) as occupying a dwelling as his home in respect of the period before moving in, his claim for housing benefit shall be treated as having been made on either–
- (a) in the case of a claim which has not yet been determined the date that claim was or was treated as made in accordance with regulation 72 (time and manner in which claims are to be made); or
  - (b) in the case of a claim for housing benefit which has been refused and a further claim was or was treated as made in accordance with Part X (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 (6) as occupying the dwelling as his home,
- whichever of those dates is the later.
- (8) A person shall be treated as occupying a dwelling as his home while he is temporarily absent therefrom for a period not exceeding 52 weeks 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 52 weeks or, in exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence), is unlikely substantially to exceed that period.

(9) In this regulation—

“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 by an establishment—

- (a) under sections 21 to 24 and 26 of the National Assistance Act 1948(1) (provision of accommodation);
- (b) under section 21(1) of, and paragraph 1 or 2 of Schedule 8 to the National Health Service Act 1977(2) (prevention, care and after-care);
- (c) under section 59 of the Social Work (Scotland) Act 1968(3) (provision of residential and other establishments) where board is available to the claimant;
- (d) registered under Part I of the Registered Homes Act 1984(4);
- (e) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
- (f) managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;
- (g) in Scotland, which is a home registered under section 61 of the Social Work (Scotland) Act 1968(5) or is an establishment provided by a housing association registered with the Housing Corporation established by the Housing Act 1964(6) which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act 1968;
- (h) in premises which are a nursing home or mental nursing home within the meaning of the Registered Homes Act 1984 and which are either registered under Part II of that Act or exempt from registration under section 37 thereof (power to exempt Christian Science Homes);
- (i) in any premises used or intended to be used for the reception of such persons or the provision of such nursing or services as are mentioned in any of subsections (1)(a) to (c) of section 21 or section 22(1) of the Registered Homes Act 1984 (meaning of nursing home or mental nursing home) or, in Scotland, as are mentioned in section 10(2) of the Nursing Homes Registration (Scotland) Act 1938(7) (interpretation) and which are

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- (1) 1948, c. 29; section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23 paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4 paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the National Health Service Act 1977 (c. 49), Schedule 15 paragraph 5; the Health Services Act 1980 (c. 53), Schedule 1 Part I paragraph 5, Section 22 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 87(4) and Schedule 9 Part I; the Supplementary Benefits Act 1976 (c. 71) Schedule 7 paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security Act 1980 (c. 30), section 20, Schedule 4 paragraph 2(1) and Schedule 5 Part II and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(a). Section 24 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6 paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23 paragraph 2; The National Health Service Reorganisation Act 1973 (c. 32), Schedule 4 paragraph 45 and the Housing (Homeless Persons) Act 1977 (c. 48), Schedule. Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49) Schedule 9 Part I and applied by section 87(3); the Local Government Act 1972 (c. 70), Schedule 23 paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b).
  - (2) 1977 c. 49; paragraphs 1(2) and 2(5) of Schedule 8 were repealed by section 30 and Schedule 10 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); paragraphs 2(1) to 3 were amended by section 148 and Schedule 4 of the Mental Health Act 1983 (c. 20).
  - (3) 1968 c. 49.
  - (4) 1984 c. 23.
  - (5) 1968 c. 49; section 61(3) was amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21) section 289C(1) and Schedule 7C as inserted by the Criminal Law Act 1977 (c. 45) section 63(1) and Schedule 11 paragraphs 5 and 13 and section 289G as inserted by the Criminal Justice Act 1982 (c. 48) section 54.
  - (6) 1964 c. 56.
  - (7) 1938 c. 73; section 10 was amended by section 15 of the Mental Health (Scotland) Act 1960 (c. 61) and that amendment is preserved notwithstanding the repeal of that 1960 Act by section 126(1)(a) of the Mental Health (Scotland) Act 1984 (c. 36),

maintained or controlled by a body instituted by special Act of Parliament or incorporated by Royal Charter; or

- (j) in Scotland,
  - (i) in premises which are a nursing home within the meaning of section 10 of the Nursing Homes Registration (Scotland) Act 1938 which are either registered under that Act or exempt from registration under section 6 or 7 thereof<sup>(8)</sup> (general power to exempt homes and power to exempt Christian Science Homes); or
  - (ii) in premises which are a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984<sup>(9)</sup> (private hospitals), and which are registered under that Act;

“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, a government department or the Manpower Services Commission.

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

6.—(1) 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;
 and
- (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.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period 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 68 to 70 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent or rate free periods), be treated as liable to pay the amount as so varied during the whole of that period.

(3) Where there is no liability to pay rates in any benefit week because, exceptionally, the rating authority has failed to make a rate, but the claimant makes a payment by way of rates otherwise than to a rating authority and the amount of his rent treated as such a payment which he is liable to pay remains constant, he shall be treated as liable to make payments by way of rates.

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subsection (2) of that section 10 was added by section 26 of, and paragraph 14(b) of Schedule 4 to the Health Services Act 1980 (c. 53). Section 10 was also amended by Schedule 1 of the National Health Service (Scotland) Act 1972 (c. 58); by Schedules 7 and 8 to the Nurses Midwives and Health Visitors Act 1979 (c. 36) and by Schedule 7 to the Health Services Act 1980 (c. 53).

(8) Section 6 was amended by Schedule 6 paragraph 75 to the National Health Service (Scotland) Act 1972 (c. 58) and by Schedule 15 to the National Health Service (Scotland) Act 1978 (c. 29). Section 7 was amended by section 26 and Schedule 4 paragraph 12 to the Health Services Act 1980 (c. 53).

(9) 1984 c. 36.

**Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling**

7. The following persons shall be treated as if they were not liable to make payments in respect of a dwelling—

- (a) a person who resides with the person to whom he is liable to make payments in respect of the dwelling and either—
  - (i) that person is a close relative of his or his partner, or
  - (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the appropriate authority to have been created to take advantage of the housing benefit scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to make such payments, otherwise liable to make payments of rent in respect of the same dwelling;
- (c) a person who is a joint occupier of a dwelling and who was, at any time during the period of eight weeks prior to the creation of the joint tenancy or other agreement giving rise to the joint liability to make payments in respect of the dwelling, a non-dependant of one or more of the other joint occupiers of the dwelling, unless the appropriate authority is satisfied that the joint tenancy or other agreement was not created to take advantage of the housing benefit scheme;
- (d) a person who is a member of, and is fully maintained by, a religious order.