

SCHEDULE 3

Regulation 3(2)(c)

Circumstances in which a claimant is, or is to be, treated as occupying accommodation

PART 1

General

Interpretation

1.—(1) In this Schedule—

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“care home”—

(a) in England and Wales, has the meaning given in section 3 of the Care Standards Act 2000(1);

(b) in Scotland, means a care home service within the meaning of paragraph 2 of Schedule 12 to the Public Services Reform (Scotland) Act 2010(2),

and in either case includes an independent hospital;

“croft” means a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993(3);

“full-time student” has the meaning given—

(a) in the case of income support, in regulation 61(1) of the IS Regulations(4);

(b) in the case of jobseeker’s allowance, in regulation 1(3) of the JSA Regulations(5);

(c) in the case of employment and support allowance, in regulation 131 of the ESA Regulations(6);

(d) in the case of state pension credit, in regulation 1(2) of the SPC Regulations(7);

“independent hospital”—

(a) in England, means a hospital as defined in section 275 of the National Health Service Act 2006(8) that is not a health service hospital as defined by that section;

(b) in Wales, has the meaning given in section 2 of the Care Standards Act 2000;

(c) in Scotland means an independent healthcare service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978(9);

“medically approved” means certified by a medical practitioner;

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

“period of study” has the meaning given—

(1) 2000 c. 4. Section 3 was amended by paragraph 4(2) and (3) of Part 1 of Schedule 5 to the Health and Social Care Act 2008 (c. 14).

(2) 2010 asp 8.

(3) 1993 c. 44. Section 3(1) was amended by section 2(a) of the Crofting Reform etc. Act 2007 (asp 7) and section 22(1) of the Crofting Reform (Scotland) Act 2010 (asp 4).

(4) The definition of “full-time student” was amended by S.I. 2000/1981 and 2006/718.

(5) The definition of “full-time student” was amended by S.I. 1996/1516, 2001/1434 and 2319, 2006/718, 2008/3157, 2010/641 and 2015/971.

(6) There have been amendments to regulation 131 which are not relevant to these Regulations.

(7) There have been amendments to regulation 1(2) which are not relevant to these Regulations.

(8) 2006 c. 41.

(9) 1978 asp 29. Section 10F(1)(A) was inserted by the Public Services Reform (Scotland) Act 2010 (asp 8).

Status: This is the original version (as it was originally made).

- (a) in the case of income support and state pension credit, in regulation 2(1) of the IS Regulations⁽¹⁰⁾;
- (b) in the case of jobseeker’s allowance, in regulation 1(3) of the JSA Regulations⁽¹¹⁾;
- (c) in the case of employment and support allowance, in regulation 2 of the ESA Regulations⁽¹²⁾;

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

“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, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

(2) In this Schedule, a reference to a claimant being liable to make owner-occupier payments is to be read as a reference to a person being treated as liable to make owner-occupier payments under Schedule 2.

PART 2

Legacy benefit claimants and SPC claimants

Application of Part 2

2. This Part applies to legacy benefit claimants and SPC claimants.

Occupying accommodation: general rule

3.—(1) Subject to the following paragraphs of this Part, the accommodation which the claimant occupies as the claimant’s home or, if the claimant is a member of a family, the claimant and the claimant’s family occupy as their home, is the accommodation which is normally occupied as the home.

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

Full-time study

4.—(1) Subject to sub-paragraph (2), where a claimant is a full-time student or on a training course and is liable to make owner-occupier payments in respect of either (but not both)—

- (a) the accommodation which the claimant occupies for the purpose of attending the course of study or training course; or
- (b) the accommodation which the claimant occupies when not attending the course of study or training course,

the claimant shall be treated as occupying as the claimant’s home the accommodation in respect of which the claimant is liable to make the owner-occupier payments.

⁽¹⁰⁾ Regulation 2(1) was amended by [S.I. 2000/1981](#) and other amending instruments which are not relevant to these Regulations.

⁽¹¹⁾ Regulation 1(3) was amended by [S.I. 2000/1922](#) and other amending instruments which are not relevant to these Regulations.

⁽¹²⁾ There have been amendments to regulation 2 which are not relevant to these Regulations.

(2) A claimant who is a full-time student shall not be treated as occupying accommodation as the claimant's home for any week of absence from it outside the period of study, other than an absence occasioned by the need to enter hospital for treatment.

Living in other accommodation during essential repairs

5. Where the claimant—

- (a) has been required to move into temporary accommodation by reason of essential repairs being carried out to the accommodation which the claimant occupies as the claimant's home ("the home accommodation"); and
- (b) is liable to make owner-occupier payments in respect of either (but not both) the home accommodation or the temporary accommodation,

the claimant shall be treated as occupying as the claimant's home the accommodation in respect of which the claimant is liable to make those payments.

Living in other accommodation due to fear of violence, where a claimant's partner is a full-time student or where moving into new accommodation

6. Where a claimant is liable to make owner-occupier payments in respect of two dwellings, the claimant shall be treated as occupying both dwellings as the claimant's home—

(a) where—

- (i) the claimant has left and remains absent from the accommodation which the claimant occupies as the claimant's home ("the home accommodation") through fear of violence in the home or of violence by a close relative or former partner; and
- (ii) it is reasonable that owner-occupier payments should be met in respect of both the claimant's home accommodation and the claimant's present accommodation which the claimant occupies as the home;

(b) in the case of a couple or a member of a polygamous marriage, where—

- (i) one partner is a full-time student or is on a training course and it is unavoidable that the members of the couple or polygamous marriage should occupy two separate dwellings; and
- (ii) it is reasonable that owner-occupier payments should be met in respect of both dwellings; or

(c) where—

- (i) the claimant has moved into new accommodation occupied as the claimant's home, except where paragraph 5 applies, for a period not exceeding four benefit weeks from the first day of the benefit week in which the move occurs; and
- (ii) the claimant's liability to make owner-occupier payments in respect of both the new accommodation and the accommodation from which the move was made is unavoidable.

Moving in delayed for certain reasons

7.—(1) Where—

- (a) a claimant was delayed in moving into accommodation ("the new accommodation") and was liable to make owner-occupier payments in respect of that accommodation before moving in; and
- (b) the delay was reasonable and one of the conditions in sub-paragraphs (2) to (4) applies,

Status: This is the original version (as it was originally made).

the claimant shall be treated as occupying the new accommodation as the claimant's home for the period of delay, not exceeding four weeks immediately prior to the date on which the claimant moved into the new accommodation.

(2) The first condition is that the delay occurred in order to adapt the accommodation to meet the needs of the claimant or a member of the claimant's family who is a disabled person.

(3) The second condition is that—

(a) the move was delayed pending local welfare provision to meet a need arising out of the move or in connection with setting up the claimant's home in the new accommodation; and

(b) in the case of a legacy benefit claimant only—

(i) a member of the claimant's family is aged 5 or under;

(ii) the claimant's applicable amount includes a pensioner premium or disability premium under Schedule 2 to the IS Regulations(13), Schedule 1 to the JSA Regulations(14) or Schedule 4 to the ESA Regulations(15); or

(iii) 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 2002(16);

(4) The third condition is that the claimant became liable to make owner-occupier payments in respect of the accommodation while the claimant was a patient or was in a residential home.

Temporary absence to try new accommodation of up to 13 weeks

8.—(1) This sub-paragraph applies to a claimant who enters residential accommodation—

(a) for the purpose of ascertaining whether the accommodation suits the claimant's needs; and

(b) with the intention of returning to the accommodation which the claimant occupies as the claimant's home ("the home accommodation") in the event that the residential accommodation proves not to suit the claimant's needs,

and while in the residential accommodation, the home accommodation is not let or sub-let to another person.

(2) A claimant to whom sub-paragraph (1) applies shall be treated as occupying the home accommodation during the period of absence, not exceeding 13 weeks in which the claimant is resident in the residential accommodation, but only where the total absence from the home accommodation does not exceed 52 consecutive weeks.

Temporary absence of up to 13 weeks

9. A claimant, except where paragraph 10 applies, shall be treated as occupying accommodation as the claimant's home throughout any period of absence not exceeding 13 weeks, where—

(a) the claimant intends to return to occupy the accommodation as the claimant's home;

(b) the part of the accommodation occupied by the claimant has not been let or sub-let to another person; and

(c) the period of absence is unlikely to exceed 13 weeks.

(13) Relevant amending instruments are: S.I. 1988/663, 1991/2742, 1993/1150 and 2119, 1994/2139 and 3061, 1995/482, 1998/2231, 2000/681 and 724, 2002/490, 2497 and 3019, 2003/455, 2379 and 2629, 2004/1141, 2006/2378, 2007/719, 2009/1488, 2010/1160 and 1907, 2011/674 and 2425, 2013/388 and 591, 2014/2888 and 2015/173 and 1754 and other amending instruments which are not relevant to these Regulations.

(14) Relevant amending instruments are: S.I. 1996/1516 and 2538, 1998/2231, 2000/681 and 724, 2002/490, 2003/455 and 511, 2006/2378, 2007/719, 2009/1488, 2010/1160, 2013/388 and 591, 2014/2888 and 2015/1754 and other amending instruments which are not relevant to these Regulations.

(15) Relevant amending instruments are: 2012/913, 2013/630 and 2017/204.

(16) 2002 c. 21. Section 9 is amended by the Act.

Absences for certain reasons up to 52 weeks

10.—(1) Where sub-paragraph (2) applies, a claimant is to be treated as occupying accommodation as the claimant's home ("the home accommodation") during any period of absence from it not exceeding 52 weeks beginning with the first day of that absence.

(2) This paragraph applies where a claimant's absence from the home accommodation is temporary and—

- (a) the claimant intends to return to occupy the home accommodation;
- (b) the home accommodation has not been let or sub-let;
- (c) the 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 home accommodation; or
 - (bb) in premises approved under section 13 of the Offender Management Act 2007⁽¹⁷⁾;
 - (ii) detained pending sentence upon conviction;
 - (iii) resident in a hospital or similar institution as a patient;
 - (iv) undergoing or, the claimant's partner or child, or in the case of an SPC claimant, a person who has not attained the age of 20, is undergoing medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
 - (v) undertaking a training course;
 - (vi) undertaking medically approved care of another person;
 - (vii) undertaking the care of a child or, in the case of an SPC claimant, a person under the age of 20 whose parent or guardian is temporarily absent from the dwelling occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (viii) a person who is receiving medically approved care provided in accommodation other than a residential home;
 - (ix) a full-time student to whom paragraph 4(1) or 6(b) does not apply;
 - (x) a person, other than a person to whom paragraph 8(1) applies, who is receiving care provided in residential accommodation; or
 - (xi) a person to whom paragraph 6(a) does not apply and who has left the home accommodation through fear of violence in that accommodation, or by a person who was formerly his or her partner or is a close relative; and
- (d) the period of the claimant's absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

⁽¹⁷⁾ 2007 c. 21.

PART 3

UC claimants

Application of Part 3

11. This Part applies to UC claimants.

Occupying accommodation: general rule

12.—(1) Subject to the following paragraphs of this Part, the accommodation which the claimant occupies as the claimant's home is the accommodation which the claimant normally occupies the home.

(2) Where the claimant occupies more than one dwelling, in determining whether accommodation is the accommodation normally occupied as the home for the purposes of sub-paragraph (1), regard is to be had to all the circumstances including (among other things) any persons with whom the claimant occupies each dwelling.

(3) Where accommodation which a claimant occupies as the claimant's home is situated on or pertains to a croft, croft land used for the purposes of the accommodation is to be treated as included in the accommodation.

Living in other accommodation due to essential repairs

13.—(1) Where a claimant—

- (a) is required to move into accommodation ("the other accommodation") on account of essential repairs being carried out to the accommodation the claimant occupies as the claimant's home ("the home accommodation");
- (b) intends to return to the home accommodation; and
- (c) is liable to make owner-occupier payments in respect of either the other accommodation or the home accommodation (but not both),

the claimant is to be treated as occupying as the claimant's home the accommodation in respect of which the owner-occupier payments are made.

Moving homes: adaptations to new home for disabled person

14.—(1) Sub-paragraph (2) applies where—

- (a) a claimant has moved into accommodation ("the new accommodation") and, immediately before the move, was liable to make owner-occupier payments in respect of the new accommodation; and
- (b) there was a delay in moving in to adapt the new accommodation in order to meet the needs of a disabled person.

(2) The claimant is to be treated as occupying both the new accommodation and the accommodation from which the move was made ("the old accommodation") if—

- (a) immediately before the move, the claimant was receiving loan payments or, in the case of an existing claimant, a qualifying benefit which includes an amount for owner-occupier payments, in respect of the old accommodation; and
- (b) the delay in moving into the new accommodation was reasonable.

(3) A person is disabled under this Part if the person is—

- (a) a claimant or any child or qualifying young person for whom the claimant is responsible; and
 - (b) in receipt of—
 - (i) the care component of disability living allowance at the middle or highest rate;
 - (ii) attendance allowance; or
 - (iii) the daily living component of personal independence payment.
- (4) No claimant may be treated as occupying both the old accommodation and the new accommodation under this paragraph for more than one month.

Living in other accommodation due to fear of violence

- 15.—(1) Sub-paragraph (2) applies where—
- (a) a claimant is occupying accommodation (“the other accommodation”) other than the accommodation which the claimant occupies as the claimant’s home (“the home accommodation”);
 - (b) it is unreasonable to expect the claimant to return to the home accommodation on account of the claimant’s reasonable fear of violence in the home, or by a former partner, against the claimant or any child or qualifying young person for whom the claimant is responsible; and
 - (c) the claimant intends to return to the home accommodation.
- (2) The claimant is to be treated as occupying both the home accommodation and the other accommodation as the claimant’s home if—
- (a) the claimant is liable to make payments in respect of both the other accommodation and the home accommodation; and
 - (b) it is reasonable to make loan payments in respect of both the home accommodation and the other accommodation.
- (3) Where the claimant is liable to make payments in respect of one accommodation only, the claimant is to be treated as occupying that accommodation as the claimant’s home but only if it is reasonable to make loan payments in respect of that accommodation.
- (4) No claimant may be treated as occupying both the home accommodation and the other accommodation under this paragraph for more than 12 months.

Moving in delayed by adaptations to accommodation to meet needs of disabled person

- 16.—(1) The claimant is to be treated as having occupied accommodation before the claimant moved into it where—
- (a) the claimant has since moved in and, immediately before the move, the claimant is liable to make payments in respect of that accommodation;
 - (b) there was a delay in moving in that was necessary to enable the accommodation to be adapted to meet the needs of a disabled person; and
 - (c) it was reasonable to delay moving in.
- (2) No claimant may be treated as occupying accommodation under this paragraph for more than one month.

Moving into accommodation following a stay in hospital or care home

- 17.—(1) The claimant is to be treated as having occupied accommodation before he or she moved into it where—

Status: This is the original version (as it was originally made).

- (a) the claimant has since moved in and, immediately before the move, the claimant was liable to make payments in respect of that accommodation; and
 - (b) the liability to make the payments arose while the claimant was a patient or accommodated in a care home (or, in the case of joint claimants, where both individuals were patients or were accommodated in a care home).
- (2) No claimant may be treated as occupying the accommodation under this paragraph for more than one month.

Temporary absence exceeding 6 months

18.—(1) Subject to sub-paragraph (2), a claimant is to be treated as no longer occupying accommodation from which the claimant is temporarily absent where the absence exceeds, or is expected to exceed, 6 months.

(2) Where a claimant who falls within paragraph 14 is temporarily absent from the relevant accommodation, the claimant is to be treated as no longer occupying that accommodation where the absence exceeds, or is expected to exceed, 12 months.