

## SCHEDULE 2

Regulation 25(3)

### Claimant treated as liable or not liable to make payments

#### PART 1

##### Treated as liable to make payments

###### **Certain other persons liable to make payments**

1.—(1) A claimant is to be treated as liable to make payments where the person who is liable to make the payments is—

- (a) any child or qualifying young person for whom the claimant (or if the claimant is a member of a couple, either member) is responsible; or
- (b) in the case of a claimant who is a member of a couple claiming as a single person, the other member of the couple.

(2) Sub-paragraph (1)(b) does not apply to a person who is claiming as a single person by virtue of regulation 3(4).

###### **Failure to pay by the person who is liable**

2.—(1) A claimant is to be treated as liable to make payments where all of the conditions specified in sub-paragraph (2) are met.

(2) These are the conditions—

- (a) the person who is liable to make the payments is not doing so;
- (b) the claimant has to make the payments in order to continue occupation of the accommodation;
- (c) the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements;
- (d) it is otherwise reasonable in all the circumstances to treat the claimant as liable to make the payments.

(3) In determining what is reasonable for the purposes of sub-paragraph (2)(d) in the case of owner-occupier payments, regard may be had to the fact that continuing to make the payments may benefit the person with the liability to make the payments.

###### **Payments waived in return for repair work**

3. A claimant is to be treated as liable to make payments where—

- (a) the liability to make payments is waived by the person ("P") to whom the liability is owed; and
- (b) the waiver of that liability is by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant to the accommodation which P would otherwise have carried out or been required to carry out.

###### **Rent free periods**

4.—(1) Where the arrangements under which the claimant occupies the accommodation provide for rent free periods, the claimant is to be treated as liable to make rent payments and service charge payments in respect of accommodation for the whole of any rent free period.

(2) In paragraph (1), “rent free period” has the meaning given in paragraph 7(4) of Schedule 4.

## PART 2

### Treated as not liable to make payments

#### **Liability to make rent and other payments to close relative**

**5.**—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a person who lives in the accommodation and who is—

- (a) if the claimant is a member of a couple, the other member; or
- (b) a child or qualifying young person for whom—
  - (i) the claimant is responsible, or
  - (ii) if the claimant is a member of a couple, the other member is responsible; or
- (c) a close relative of—
  - (i) the claimant, or
  - (ii) if the claimant is a member of a couple, the other member, or
  - (iii) any child or qualifying young person who falls within paragraph (b).

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

#### **Liability to make rent and other payments to company**

**6.**—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a company and the owners or directors of the company include—

- (a) the claimant;
- (b) if the claimant is a member of a couple, the other member;
- (c) a qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible; or
- (d) a close relative of any of the above who lives in the accommodation with the claimant.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the company is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—

- (a) the same company; or
- (b) another company of which the owners or directors include any of the persons listed in sub-paragraph (1)(a) to (d).

(3) In this paragraph, “owner”, in relation to a company (“C”), means a person (“A”) who has a material interest in C.

(4) For the purposes of sub-paragraph (3), A has a material interest in C if A—

- (a) holds at least 10% of the shares in C; or
- (b) is able to exercise a significant influence over the management of C by virtue of A’s shareholding in C; or
- (c) holds at least 10% of the shares in a parent undertaking (“P”) of C; or

- (d) is able to exercise a significant influence over the management of P by virtue of A's shareholding in P; or
  - (e) is entitled to exercise, or control the exercise of, voting power in C which, if it consists of voting rights, constitutes at least 10% of the voting rights in C; or
  - (f) is able to exercise a significant influence over the management of C by virtue of A's entitlement to exercise, or control the exercise of, voting rights in C; or
  - (g) is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
  - (h) is able to exercise a significant influence over the management of P by virtue of A's entitlement to exercise, or control the exercise of, voting rights in P.
- (5) For the purposes of sub-paragraph (4), references to "A" are to—
- (a) the person; or
  - (b) any of the person's associates; or
  - (c) the person and any of the person's associates taken together.
- (6) For the purposes of sub-paragraph (5), "associate", in relation to a person ("A") holding shares in an undertaking ("X") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("Y"), means—
- (a) the spouse or civil partner of A;
  - (b) a child or step-child of A (if under 18);
  - (c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest);
  - (d) an undertaking of which A is a director;
  - (e) a person who is an employee or partner of A;
  - (f) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in X or Y, that other person;
  - (g) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to X or Y, that other person.
- (7) In sub-paragraph (6)(c), "settlement" means any disposition or arrangement under which property is held on trust (or subject to comparable obligations).
- (8) For the purposes of this paragraph—
- "parent undertaking" has the same meaning as in the Financial Services and Markets Act 2000<sup>(1)</sup> (see section 420 of that Act);
- "shares" means—
- (a) in relation to an undertaking with shares, allotted shares (within the meaning of Part 17 of the Companies Act 2006<sup>(2)</sup>);
  - (b) in relation to an undertaking with capital but no share capital, rights to share in the capital of the body;
  - (c) in relation to an undertaking without capital, interests—
    - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up;

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(1) 2000 c.8.

(2) 2006 c.1.

“voting power”, in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the rights under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

#### **Liability to make rent and other payments to a trust**

7.—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a trustee of a trust and the trustees or beneficiaries of the trust include—

- (a) the claimant;
- (b) if the claimant is a member of a couple, the other member;
- (c) a child or qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible; or
- (d) a close relative of any of the above who lives in the accommodation with the claimant.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the trustee of a trust is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—

- (a) a trustee of the same trust; or
- (b) a trustee of another trust of which the trustees or beneficiaries include any of the persons listed in sub-paragraph (1)(a) to (d).

#### **Liability to make owner-occupier and other payments to member of same household**

8.—(1) A claimant is to be treated as not liable to make owner-occupier payments where the liability to make the payments is owed to a person who lives in the claimant’s household.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make owner-occupier payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

(3) A claimant is to be treated as not liable to make service charge payments where—

- (a) there is no liability to make rent payments or owner-occupier payments; but
- (b) the liability to make service charge payments is to a person who lives in the claimant’s household.

#### **Arrears of payments**

9.—(1) A claimant is to be treated as not liable to make payments in respect of any amount which—

- (a) represents an increase in the sum that would be otherwise payable; and
- (b) is the result of—
  - (i) outstanding arrears of any payment or charge in respect of the accommodation,
  - (ii) outstanding arrears of any payment or charge in respect of other accommodation, previously occupied by the claimant, or
  - (iii) any other unpaid liability to make a payment or charge.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.

### **Contrived liability**

**10.**—(1) A claimant is to be treated as not liable to make payments where the Secretary of State is satisfied that the liability to make the payments was contrived in order to secure the inclusion of the housing costs element in an award of universal credit or to increase the amount of that element.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.