

**EXPLANATORY MEMORANDUM TO**  
**THE HOUSING BENEFIT AND STATE PENSION CREDIT (TEMPORARY**  
**ABSENCE) (AMENDMENT) REGULATIONS 2016**

**2016 No. 624**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to reduce the period in which entitlement to Housing Benefit (HB) and Pension Credit (PC) may continue when a person is temporarily absent from Great Britain, and to set out exceptions to this requirement.
- 2.2 The temporary absence period is reduced from 13 to 4 weeks, in most cases, to achieve fairness in the benefits system, balancing the burden on taxpayers with support for claimants on low incomes.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 This policy change was announced in November 2015 as part of the Spending Review and Autumn Statement;  
“ 3.46 Temporary absence in Housing Benefit and Pension Credit – The government will end the payment of Housing Benefit and Pension Credit to claimants who travel outside of Great Britain for longer than 4 weeks consecutively, from April 2016.”
- 4.2 The announcement can be found in Chapter 3, paragraph 3.46 in ‘Spending Review and Autumn Statement 2015’ at the following link:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479749/52229\\_Blue\\_Book\\_PU1865\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf)
- 4.3 To achieve the policy objective, amendments are being made to the following instruments:
- the Housing Benefit Regulations (SI 2006/213) ([www.legislation.gov.uk/ukxi/2006/213](http://www.legislation.gov.uk/ukxi/2006/213));
  - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (SI 2006/214) ([www.legislation.gov.uk/ukxi/2006/214](http://www.legislation.gov.uk/ukxi/2006/214));

- the State Pension Credit Regulations 2002 (SI 2002/1792) ([www.legislation.gov.uk/ukSI/2002/1792](http://www.legislation.gov.uk/ukSI/2002/1792)).

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain (GB).
- 5.2 The territorial application of this instrument is GB.
- 5.3 Corresponding provisions will be made for Northern Ireland.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

#### Background

- 7.1 Housing Benefit (HB) is a means-tested benefit to help people pay their rent in a dwelling they occupy as their home. The Department for Work and Pensions (DWP) is responsible for the legislation, but it is administered by Local Authorities (LAs), who are the HB decision-makers.
- 7.2 Pension Credit (PC) is a tax-free income related benefit for people who have reached the minimum qualifying age (linked to women's State Pension age) and live in GB. PC is made up of two parts – the Guarantee Credit and the Savings Credit. The Guarantee Credit tops weekly income up to a minimum level and the Savings Credit is an extra payment for people who have saved some money towards their retirement such as a pension. The Savings Credit will close for people who reach their State Pension age on or after 6th April 2016.

#### Current system

- 7.3 It is a basic condition of entitlement to HB that the person must be occupying a dwelling in GB as their home, and it is a basic condition of entitlement to Pension Credit that the person must be in GB. There are some exemptions to those rules which, effectively, enable people to be treated as occupying a dwelling in GB as their home, or being in GB, for periods of time when they are not.
- 7.4 HB has a general temporary absence rule, meaning that entitlement to HB can continue for a maximum of 13 weeks, where the period of absence does not, or is not expected to exceed 13 weeks, and the person intends returning to the dwelling and has not sub-let it. If the period of absence is expected to last more than 13 weeks, HB stops immediately. Within this rule, HB does not distinguish between absences from the dwelling within GB or outside GB.
- 7.5 Since October 2008, it has been possible for PC to continue for up to 13 weeks during a temporary absence from GB, where the absence is unlikely to exceed 52 weeks. Prior to that, the general rule was that entitlement could continue for up to 4 weeks.
- 7.6 There is currently no time limit in PC cases where the absence from GB is in order to receive medical treatment under NHS arrangements.

Reducing the temporary absence period

- 7.7 The Government has decided that the Housing Benefit (HB) and Pension Credit (PC) regulations relating to temporary absences should be amended to specify that absences from GB are, in most cases, limited to 4 weeks. This aligns the temporary absence rules in these benefits with Universal Credit<sup>1</sup> (UC). This means that absences from GB where entitlement to HB and PC continues, will, for most cases, be reduced from 13 weeks to 4 weeks. There will, however, be exceptions to that general rule.

Exceptions – absence from GB

- 7.8 Where the absence from GB is in connection with the death of a partner, a child or young person, then the 4 week period can be extended by a further 4 weeks if it would be unreasonable to expect a return to GB within 4 weeks. This also applies where the temporary absence is in connection with the death of a close relative of the claimant, or of their partner or of a child or young person normally living with the claimant.
- 7.9 If the absence from GB is due to the need to receive medical treatment or convalescence, then HB and/or PC may continue for up to 26 weeks. Where the claimant is accompanying their partner or a child or a young person who lives with them for medical treatment or convalescence outside GB, then HB and/or PC may continue for up to 26 weeks. In PC this amendment has broadened the range of circumstances where the medical exemption can apply (broadly this equates to the position in UC)
- 7.10 The new absence from GB rules for both HB and PC will apply to members of the claimant's household as well as the claimant.

Housing Benefit specific

- 7.11 To be entitled to HB a claimant must be liable to make payments in respect of a dwelling they occupy as their home. As noted, the number of people who occupy the claimant's dwelling as their home will affect a claimant's housing benefit award. So where the claimant is absent from GB for more than 4 weeks the claimant's entitlement to HB will cease. HB will need to be reassessed if a person who normally lives with the claimant is absent from GB for more than 4 weeks.
- 7.12 Where the absence from GB is due to HB claimants fleeing from domestic violence, then HB may continue for up to 26 weeks. The Government accepted this recommendation from the Social Security Advisory Committee (SSAC).
- 7.13 There will be further exceptions to the general rule for members of the armed forces who are posted overseas from GB, continental shelf workers and mariners. This is in line with UC rules for these groups of claimants. Under the new rules, all three groups may be entitled to HB for up to 26 weeks when they are outside GB. Where the absence is within GB they will continue to be covered by the general 13 week absence rule. For continental shelf workers and mariners, the nature of their work is that they are generally employed outside GB territorial waters. These exceptions do not apply in PC, as it is primarily a safety net benefit for people who have reached women's State Pension age.

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<sup>1</sup> The Universal Credit Regulations 2013 ([SI 2013/376](#))

- 7.14 Where a person is absent within Great Britain (GB) from their dwelling, and they then leave GB, the allowable period of absence can be (unless they qualify under one of the further exceptions to these rules): up to 13 weeks (for the absence within GB) starting from the absence from the dwelling; plus up to 4 weeks for absences outside of GB (starting from the absence from GB). Where the temporary absence from GB ends and they have been absent from their home in GB for more than 13 weeks, they must return to the dwelling they occupy as their home in order to continue to meet the condition that they occupy the dwelling as their home.
- 7.15 However if a person who is absent within GB from their dwelling, leaves GB, but then returns to GB, they might have a number of weeks remaining from their original 13 weeks absence within GB. For example, a person leaves their dwelling but stays in GB for 8 weeks. They then leave GB for three weeks, but return to GB (though not to their dwelling). They would still have 2 weeks allowable absence within GB (overall GB allowable absence of 13 weeks, less 8 weeks' absence (in GB), less 3 weeks' absence (outside GB) = 2 weeks allowable absence within GB remaining). However, where, during a period of absence outside GB, the person ceases to be treated as occupying their dwelling as their home (because they decide to stay abroad for longer than 4 weeks), then the rule containing the allowable period of absence within GB will cease to apply and they will not be able to make use of any unexpired part of the period of 13 weeks when they return to GB.

*Transitional provision*

- 7.16 A transitional provision is included in these amendments for both Housing Benefit (HB) and Pension Credit (PC) and will apply to people who are temporarily absent from GB when the regulations come into force. For HB only, this will not apply to members of the armed forces on operations outside GB, continental shelf workers or mariners as these groups are entitled to up to 26 weeks absence and so the new measure is more beneficial to them .

*Consolidation*

- 7.17 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [www.legislation.gov.uk](http://www.legislation.gov.uk). An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

**8. Consultation outcome**

- 8.1 As the policy was announced in the Autumn statement the Department has not undertaken a separate consultation. However, in accordance with section 172(1) of the Social Security Administration Act 1992, the Department referred the regulations to the Social Security Advisory Committee (SSAC).
- 8.2 At SSAC's meeting on 27 January 2016 members raised concerns about groups they felt should be included as exceptions to the general 4 week absence rule. The groups were: those who are used to being abroad for long periods; cases such as where a family member overseas is ill or dies; workers, including those who are undertaking training courses outside GB or seeking work outside GB. SSAC ran a consultation from 1 February to 29 February 2016.

- 8.3 The Government has published a response to the Committee in an unnumbered Act paper alongside these regulations which can be seen at <https://www.gov.uk/government/publications/the-housing-benefit-and-state-pension-credit-temporary-absence-amendment-regulations-2016-ssac-report-and-government-statement>. The response included acceptance of some SSAC recommendations including extending the period of allowable absence for those HB claimants fleeing domestic violence and broadening the definition of members of the regular forces or reserve forces to include “posted overseas” as opposed to being “on operations”
- 8.4 In accordance with section 176(1) of the Social Security Administration Act 1992, the Department consulted with the Local Authority Associations (LAAs).
- 8.5 Comments were received regarding the additional administrative burdens for the individual local authorities, as they will have to amend several communication products, to ensure that all staff, landlords and claimants are aware of the changes.
- 8.6 Although the Pension Credit (PC) changes have not been subject to separate formal consultation, the Department engaged informally with key stakeholders to make them aware of the change.

## **9. Guidance**

- 9.1 Guidance will be made available to local authority and DWP staff prior to the regulations coming into force. The guidance about the changes to Housing Benefit (HB) will also be available on the ‘Housing Benefit for local authorities’ section which can be found at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>. The Department routinely issues new guidance to HB processing staff at least five weeks before a legislative change comes into effect.
- 9.2 Guidance for PC staff will be in place for implementation at the end of July to reflect the changes along with the public facing communications. This will include updating the PC leaflet INF4 that tells PC customers which changes they must report. The proposed change has been reported in the media and we have received and responded to queries from members of the public.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is a potential saving of around £15m a year to the taxpayer. We have worked with the LAAs and IT suppliers to assess requirements to implement the change.
- 10.3 There may be some extra administration for local authorities and the Pension Service arising from dealing with those cases where claims are closed and then re-opened following a period outside of Great Britain (GB) exceeding the prescribed limits when those limits are reduced. To address this we have made New Burden payments available to local authorities.

### ***Impact on claimants***

- 10.4 Claimants are currently required to report any changes which might affect their HB and PC entitlement. For HB this includes absences from home, where those will last or are expected to last more than 13 weeks, and for both benefits any absence from GB should be notified.

- 10.5 Those leaving GB will, under the new measure, be required to continue to report such absences (but in relation to the new 4 week limit), the reason for the absence and the expected duration, but will not be required to answer more questions, provide more information and evidence or undertake new activities. For PC claimants any absence from GB which does not meet the criteria will result in the end of entitlement and no benefit would be due for the full period of the absence.
- 10.6 It is difficult to predict behavioural impacts with any certainty, but it is possible that people who would previously have been absent from GB for between four and 13 weeks will reconsider the length of time they plan to be absent.
- 10.7 The International Passenger Survey was used to identify volumes of passengers who went abroad for between 28 and 90 days. The international passenger survey data is not able to identify benefit claimants and other surveys used by the department including the English Housing Survey and the Family Resource Survey do not collect any data that would allow us to estimate accurately what proportion of passengers are claiming benefits, or travel abroad for between 4 and 13 weeks. However, assumptions agreed with the Office of Budget Responsibility (OBR) estimate the changes will affect around 80,000 Housing Benefit (HB) claimants and 50,000 Pension Credit (PC) claimants in the first year. Taking account of overlaps between the two (about 45% of PC claimants also claim HB), this represents about 110,000 claimants.
- 10.8 In respect of the potential impact on claimants, we assume (with OBR) that over half of claimants will adapt their behaviours to avoid any benefit losses and that around 35,000 will continue to take an absence between 4 and 13 weeks and incur a loss of benefit of, on average, around £600 in total per year.
- 10.9 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The monitoring of the changes will be part of the general monitoring of HB and PC claims. The Department will review the impact of these regulations through the normal course of business. Additionally, the Government has accepted a recommendation from the Social Security Advisory Committee (SSAC) to undertake an evaluation of the policy change a year after introduction.

## **13. Contact**

- 13.1 Catherine Garman at the Department for Work and Pensions Telephone: 0207 449 7025 or email: [Catherine.garman@dwp.gsi.gov.uk](mailto:Catherine.garman@dwp.gsi.gov.uk) can answer any queries regarding the instrument.