Changes to legislation: *The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 is up to date with all changes known to be in force on or before 14 January 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 624

SOCIAL SECURITY

The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016

Made - - - -	*5th July 2016*
Laid before Parliament	*7th July 2016*
Coming into force - -	*28th July 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2), 137(1) and (2)(b) and (h) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992 [F1] and sections 1(5), 12(2)(a), 15(3) and (6)(b) and 17(1) and (2) of the State Pension Credit Act 2002 [F2].

In accordance with section 172(1) of the Social Security Administration Act 1992 [F3], the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

In accordance with section 176(1) of the Social Security Administration Act 1992 [F4], the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

F1 1992 c.4. Section 130A was inserted by section 30(2) of the Welfare Reform Act 2007 (c.5). Section 137(1) is cited for the meaning of "prescribed". Subsections (1), (3), (4) and (5) of section 175 are applied to provisions of the State Pension Credit Act 2002 (c.16) by section 19(1) of that Act.

F2 2002 c.16. Section 17(1) is cited for the meaning of "prescribed" and "regulations".

F3 1992 c.5.

F4 Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), **paragraph 3(4)** of Schedule 13 to the Housing Act 1996 (c.52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c.19).

Citation and commencement

1. These Regulations may be cited as the Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 and come into force on 28th July 2016.

Amendments to the Housing Benefit Regulations 2006

2.—(1) The Housing Benefit Regulations 2006 [F5] are amended as follows.

(2) In regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) [F6]—

(a) in paragraph (11) after "residential accommodation" in the opening words insert " in Great Britain ";

(b) in paragraph (12) for "a residential accommodation" substitute " the residential accommodation ";

(c) for paragraph (13) substitute—

"(13) Subject to paragraphs (13B) and (17), where a person is temporarily absent within Great Britain from his main dwelling, he shall be treated as occupying that dwelling as his home whilst he is so absent, subject to an overall limit of a period of 13 weeks beginning with the first day of the absence from the main dwelling, provided that—

(a) the person intends to return to occupy the main dwelling as his home;

(b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and

(c) the period of the absence within Great Britain is unlikely to extend beyond the overall limit.";

(d) after paragraph (13) insert—

"(13A) The period of 13 weeks referred to in paragraph (13) shall run or continue to run during any period of absence from Great Britain.

(13B) Where—

(a) a person returns to Great Britain after a period of absence from Great Britain;

(b) he has been absent from the main dwelling for less than 13 weeks beginning with the first day of absence from that dwelling; and

(c) at the outset of, or during, the period of absence from Great Britain, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Great Britain and precedes his return to the main dwelling, he shall not be treated as occupying the main dwelling as his home under paragraph (13).

(13C) This paragraph applies to a person who is temporarily absent from Great Britain and who occupied the main dwelling as his home, or was treated as occupying that dwelling as his home, immediately before the period of absence from Great Britain.

(13D) Subject to paragraphs (13E), (13G), (17C) and (17D) a person to whom paragraph (13C) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of that absence from Great Britain, provided that—

(a) the person intends to return to occupy the main dwelling as his home;

(b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and

(c) the period of absence outside Great Britain is unlikely to exceed 4 weeks.

(13E) If the temporary absence from the main dwelling is in connection with the death of—

(a) the person's partner or a child or young person for whom the person or the person's partner is responsible;

(b) the person's close relative;

(c) the close relative of the person's partner; or

(d) the close relative of a child or young person for whom the person or the person's partner is responsible,

then the period of 4 weeks in the opening words of paragraph (13D) may be extended by up to 4 further weeks if the relevant authority considers it unreasonable to expect the person to return to Great Britain within the first 4 weeks (and so that the reference in sub-paragraph (c) of that paragraph to a period of 4 weeks shall, where the period is extended, be taken as referring to the period as so extended).

(13F) This paragraph applies to a person who is temporarily absent from Great Britain as a member of Her Majesty's forces posted overseas, a mariner or a continental shelf worker, and who occupied the main dwelling as his home, or was treated as occupying that dwelling as his home, immediately before the period of absence from Great Britain.

(13G) A person to whom paragraph (13F) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 26 weeks beginning with the first day of that absence from Great Britain, provided that—

(a) the person intends to return to occupy the main dwelling as his home;

(b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and

(c) the period of absence outside Great Britain is unlikely to exceed 26 weeks.";

(e) in paragraph (16)—

(i) in the opening words for "dwelling he normally occupies as his home ("absence")" substitute " main dwelling ";

(ii) in sub-paragraphs (a) and (b) for "dwelling" substitute " main dwelling ";

(iii) in sub-paragraphs (c)(iii), (iv) and (vii) omit ", in the United Kingdom or elsewhere,";

(iv) in sub-paragraph (c)(v) omit "residing in the United Kingdom or elsewhere";

(v) for sub-paragraph (d) substitute—

"(d) in the case of—

(i) absence within Great Britain, any period of absence from the dwelling is unlikely to extend beyond or, in exceptional circumstances is unlikely substantially to extend beyond, an overall limit of 52 weeks beginning with the first day of the absence from the dwelling;

(ii) absence from Great Britain by a person to whom any of sub-paragraphs (c)(ii), (iii), (vii) or (x) apply, any period of absence from Great Britain is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 26 weeks beginning with the first day of the absence from Great Britain; or

(iii) absence from Great Britain by a person to whom paragraph (ii) of this sub-paragraph does not apply, any period of absence from Great Britain is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 4 weeks beginning with the first day of absence from Great Britain.";

(f) for paragraph (17) substitute—

"(17) Subject to paragraph (17B), a person to whom paragraph (16) applies who is absent within Great Britain, shall be treated as occupying the main dwelling as his home whilst he is so absent, subject to an overall limit of a period of 52 weeks beginning with the first day of the absence from the dwelling.";

(g) after paragraph (17) insert—

"(17A) The period of 52 weeks referred to in paragraph (17) shall run or continue to run during any period of absence from Great Britain.

(17B) Where—

(a) a person returns to Great Britain after a period of absence from Great Britain;

(b) he has been absent from the main dwelling for less than 52 weeks beginning with the first day of absence from that dwelling; and

(c) at the outset of, or during, the period of absence from Great Britain, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Great Britain and precedes his return to the main dwelling, he shall not be treated as occupying the main dwelling as his home under paragraph (17).

(17C) A person to whom paragraph (16) applies who—

(a) is a person described in any of sub-paragraphs (c)(ii), (iii), (vii) or (x) of that paragraph;

(b) is temporarily absent from Great Britain; and

(c) immediately before that period of temporary absence, occupied the main dwelling as his home or was treated as so occupying that dwelling,

shall be treated as occupying that dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 26 weeks beginning with the first day of the absence from Great Britain.

(17D) A person to whom paragraph (16) applies who—

(a) is a person described in any of sub-paragraphs (c)(i), (iv), (v), (vi), (viii) or (ix) of that paragraph;

(b) is temporarily absent from Great Britain; and

(c) immediately before that period of temporary absence, occupied the main dwelling as his home or was treated as so occupying that dwelling,

shall be treated as occupying that dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of the absence from Great Britain.";

(h) in paragraph (18)—

(i) before the definition of "medically approved" insert—

""continental shelf worker" means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998 [F7];

"designated area" means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964 [F8] as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

"main dwelling" means the dwelling that a person normally occupies as his home;

"mariner" means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel, where—

(a) the employment in that capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;";

(ii) after the definition of "medically approved" insert—

""member of Her Majesty's forces posted overseas" means a person who is a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006 [F9]), who is absent from the main dwelling because the person has been posted outside of Great Britain to perform the duties of a member of Her Majesty's regular forces or reserve forces;"; and

(iii) after the definition of "patient" insert—

""prescribed area" means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;".

(3) For each of regulation 12BA(4) (eligible rent and maximum rent (social sector)) and 12D(4) (eligible rent and maximum rent (LHA)) [F10] substitute—

"(4) For the purpose of paragraph (3), a claimant is treated as occupying the dwelling if—

(a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or

(b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.".

(4) For regulation 13ZA(2) (protection on death and 13 week protection) [F11] substitute—

"(2) For the purpose of paragraph (1), a claimant is treated as occupying the dwelling if—

(a) any of paragraphs (13), (13D) (with (13E) where applicable) or (13G) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of those paragraphs were omitted; or

(b) any of paragraphs (17), (17C) or (17D) of regulation 7 is satisfied and for that purpose those paragraphs shall have effect as if sub-paragraph (b) of paragraph (16) of that regulation were omitted.".

F5 S.I. 2006/213.

F6 Regulation 7 was amended by S.I. 2013/443. There are other amendments to regulation 7 that are not relevant to this instrument.

F7 1998 c.17.