Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations (Northern Ireland) 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2017 No. 1

HOUSING; RATES; SOCIAL SECURITY

The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations (Northern Ireland) 2017

Made - - - - 4th January 2017
Coming into operation in accordance with regulation 1(1)

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 122(1)(d), 129A(2), 133(2)(b) and (h) and 171(1), (3), (4) and (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and now vested in it(**2**)and sections 1(5), 12(2)(a), 15(3) and (6)(b), 17(2) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(**3**).

In accordance with section 149(1) of the Social Security Administration (Northern Ireland) Act 1992 the Department for Social Development has referred these Regulations to the Social Security Advisory Committee(**4**).

The Social Security Advisory Committee have agreed that the proposals in respect of these Regulations should not be referred to it(**5**).

Regulations 2 and 3 are made with the consent of the Department of Finance(**6**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations (Northern Ireland) 2017 and come into operation—

(a) For the purposes of regulations 2(1), (2), (4) and (5), and 3 to 5, on 30th January 2017.

(b) For the purposes of regulation 2(3) on 20th February 2017.

(**1**) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(**2**) *See* Article 8(b) of S.R. 1999 No. 481and section 1(7) of the Departments Act (Northern Ireland) 2016 (c.5 (N.I.))
(**3**) 2002 c. 14 (N.I.)
(**4**) 1992 c. 8; section 149(1) was amended by section 89(1) of the Northern Ireland Act 1998 (c. 47)
(**5**) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992
(**6**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see also* Article 6(b) of S.R. 1999 No. 481

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(2) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Assembly.

Commencement Information

I1 Reg. 1 in operation at 30.1.2017, see **reg. 1(1)(a)**

Amendment of the Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(**8**) are amended in accordance with paragraphs (2) to (5).

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

(a) in paragraph (11) after "residential accommodation" in the opening words insert "in Northern Ireland";

(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 Northern Ireland 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 absence within Northern Ireland from the home 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 Northern Ireland.

(13B) Where—

(a) a person returns to Northern Ireland after a period of absence from Northern Ireland;

(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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland and who occupied the main dwelling as his home, or was treated as occupying

(**7**) 1954 c. 33 (N.I.)
(**8**) S.R. 2006 No. 405

that dwelling as his home, immediately before the period of absence from Northern Ireland.

(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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of that absence from Northern Ireland, 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 Northern Ireland 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 Northern Ireland 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 Northern Ireland 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 Northern Ireland.

(13G) A person to whom paragraph (13F) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Northern Ireland, for a period not exceeding 26 weeks beginning with the first day of that absence from Northern Ireland, 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 Northern Ireland 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-paragraph (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 Northern Ireland, 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 Northern Ireland by a person to whom any of sub-paragraphs (c)(ii), (iii), (vii) or (x) apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 26 weeks beginning with the first day of the absence from Northern Ireland; or

(iii) absence from Northern Ireland by a person to whom head (ii) does not apply, any period of absence from Northern Ireland is unlikely to exceed or, in exceptional circumstances is unlikely substantially to exceed, 4 weeks beginning with the first day of absence from Northern Ireland.".

(f) for paragraph (17) substitute—

"(17) Subject to paragraph (17B), a person to whom paragraph (16) applies who is absent within Northern Ireland, 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 Northern Ireland.

(17B) Where—

(a) a person returns to Northern Ireland after a period of absence from Northern Ireland;

(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 Northern Ireland, he ceased to be treated as occupying the main dwelling as his home,

then, for any day that follows the period of absence from Northern Ireland 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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 26 weeks beginning with the first day of the absence from Northern Ireland.

(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 Northern Ireland; 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 Northern Ireland, for a period not exceeding 4 weeks beginning with the first day of the absence from Northern Ireland.".

(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(**9**);

"designated area" means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(**10**) 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(**11**)), who is absent from the main dwelling because the person has been posted outside of Northern Ireland 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 purposes 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 regulation 13AA(4) (eligible rent and maximum rent (social sector)) (**12**)substitute—

(**9**) 1998 c.17
(**10**) 1964 c. 29
(**11**) 2006 c.52
(**12**) Regulation 13AA was inserted by regulation 5(5) of SR 2016 No. 326