

Chapter F2: Housing Costs Element

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Chapter F2: Housing costs element – general conditions

[See Memo ADM 9/18]

Introduction

F2001 An award of UC may include an amount for housing costs, the HCE, if the claimant is liable to make payments on the accommodation they occupy as their home¹. This could be in the form of rent, mortgage costs or other housing-related costs. However the accommodation

1. must be in GB **and**
2. must be residential **and**
3. can consist of the whole or part of a building or comprise separate or self contained premises.

1 WR Act 12, s 11

When is an award to include the housing costs element

F2002 [\[See ADM memo 6/17\]](#) An award of UC will include an amount in the HCE for an assessment period where the claimant meets¹

1. the payment condition (see F2003) **and**
2. the liability condition (see F2004) **and**
3. the occupation condition (see F2005).

1 UC Regs, reg 25(1) & (5)

F2003 The payment condition is met¹ if the payments in respect of the accommodation are

1. rent payments (see F2033) **or**
2. owner-occupier payments (see F2036) **or**
3. service charge payments (see F2050).

1 UC Regs, reg 25(2)

F2004 The liability condition is met¹ if

1. the claimant (or joint claimant)
 - 1.1 has a liability to make the payments which is on a commercial basis (see F2081 et seq) **or**
 - 1.2 is treated as having a liability to make the payments (see F2087 et seq) **and**

2. none of the exceptions in F2105 et seq apply.

1 UC Regs, reg 25(3)

F2005 The occupation condition is met¹ if

1. the claimant is treated as occupying the accommodation as their home, (see F2161 et seq) **and**
2. none of the exceptions in F2211 et seq apply.

1 UC Regs, reg 25(4)

F2006 – F2015

HCE for renters and owner occupiers

F2016 [\[See ADM memo 6/17\]](#) The HCE of UC will include support for renters where¹

1. the claimant meets all the conditions in F2003 **and**
2. the payments the claimant is liable to make are rent payments (F2041) (whether or not service charge payments are also payable).

1 UC Regs, reg 26(1)

F2017 The housing costs element of UC will include support for owner occupiers where¹

1. the claimant meets all the conditions in F2003 **and**
2. the payments the claimant is liable to make are
 - 2.1 owner-occupier payments (F2044) (whether or not service charge payments are also payable) **or**
 - 2.2 service charge payments only.

1 UC Regs, reg 26(2)

F2018 Where both F2016 and F2017 apply to payments in respect of a shared ownership tenancy¹

1. an amount will be calculated for support for renters and support for owner-occupiers **and**
2. the amount of the claimant's housing costs element will be the aggregate of both those amounts.

1 UC Regs, reg 26(3)

F2019 Where there are service charges payments in shared ownership tenancy cases, those service charges will be calculated under the rules for rent¹.

1 UC Regs; reg 26(4)

Meaning of shared ownership tenancy

F2020 Shared ownership tenancy means¹

1. in England and Wales, a lease granted on payment of a premium calculated by reference to a percentage of the value of the accommodation or the cost of providing it
2. in Scotland, an agreement by virtue of which
 - 2.1 the tenant of the accommodation of which they and landlord are joint owners is the tenant in respect of the landlord's interest in the accommodation **or**
 - 2.2 the tenant has the right to purchase the accommodation or the whole or part of the landlord's interest in it.

1 UC Regs, 26(5)

F2021 Shared ownership is a way of buying a stake in a property if a person cannot afford to buy it outright. They have a sole occupancy right, that is they do not have to share their home with anyone else. Shared ownership properties are usually offered for sale by housing associations. A share of a property is bought, and rent is paid to the housing association for the remainder. Monthly payments will include repayments on any mortgage taken out, plus rent on the part of the property retained by the housing association.

F2022 – F2026

Meaning of payments in respect of accommodation

Interpretation

Approved premises

F2027 Approved premises means premises approved under prescribed legislation¹. This includes provision for the approval of premises providing accommodation when people are granted bail in criminal proceedings and for or in connection with the supervision or rehabilitation of people convicted of criminal offences.

1 UC Regs, Sch 1, para 1; Offender Management Act 07, s 13

Care home

F2028 Care home¹

1. in England, means a care home² within the meaning of prescribed legislation
2. in Wales and Scotland, means a care home service within the meaning of prescribed legislation³ **and**
3. includes an independent hospital.

1 UC Regs, Sch 1, para 1; 2 Care Standards Act 2000, s 3;

3 Public Reform (Scotland) Act 2010, Sch 12, para 2, Regulation and Inspection of Social Care (Wales) Act 2016 s.2

Exempt accommodation

F2029 Exempt accommodation means¹

1. accommodation which is
 - 1.1 a resettlement place **and**
 - 1.2 provided by persons to whom the Secretary of State has given assistance by way of a grantwithin the meaning of prescribed legislation² **or**
2. accommodation provided by
 - 2.1 a non-metropolitan county council **or**
 - 2.2 a housing association **or**
 - 2.3 a registered charity **or**
 - 2.4 a voluntary organisation

where they, or someone acting on their behalf, also provides a person with care, support or supervision.

1 UC Regs, Sch 1, para 1; 2 JSA Act, 95, s 30

Housing association

F2030 Housing association has the meaning given in prescribed legislation¹.

1 UC Regs, Sch 1, para 1; Housing Associations Act 1985 s 1(1)

Independent hospital

F2031 Independent hospital has the meaning given in prescribed legislation¹.

1 UC Regs, Sch 1, para 1; NHS Act 2006 s 275; Care Standards Act 2000 s 2; NHS (Scotland) Act 1978 s 10F(1)(a) & (b)

Registered charity

F2032 Registered charity means¹ a charity maintained in the register of charities under prescribed legislation.

1 UC Regs, Sch 1, para 1; Ch Act 2011, part 4; Charities and Trustee Investment (Scotland) Act 2005

Specified accommodation

F2033 Specified accommodation means

1. exempt accommodation
2. accommodation provided by a
 - 2.1 county council

- 2.2 housing association
- 2.3 registered charity
- 2.4 voluntary organisation

in which the claimant has been placed in order to meet an identifiable need for care, support or supervision and where he receives that care, support or supervision.

- 3. accommodation for victims of domestic violence where they are managed by
 - 3.1 local authorities
 - 3.2 county councils
 - 3.3 housing associations
 - 3.4 registered charities
 - 3.5 voluntary organisations
- 4. hostel accommodation provided by local authorities where care, support or supervision is also provided

F2034 – F2037

Tent

F2038 Tent means¹ a moveable structure that is designed or adapted (solely or mainly) for the purpose of sleeping in a place for any period and that is not

- 1. a caravan **or**
- 2. a mobile home **or**
- 3. a houseboat.

1 UC Regs, Sch 1, para 1

Upper-tier county council

F2039 Upper-tier county council means¹ a council for a county in England for each part of whose area there is a district council.

1 UC Regs, Sch 1, para 1

Voluntary organisation

F2040 Voluntary organisation means a body, other than a public or local authority, the activities of which are carried out on a not for profit basis¹.

1 UC Regs, Sch 1, para 1

Rent Payments

Rent payments

F2041 [\[See memo ADM 26/17\]](#)[\[See memo ADM 5/18\]](#) Subject to F2042 and F2043 rent payments are¹

1. payments of rent
2. payments for a licence or other permission to occupy accommodation
3. mooring charges payable for a houseboat
4. where accommodation is a caravan or mobile home, payments in respect of the site on which it stands
5. contributions by residents towards maintaining almshouses (and essential services in them) provided by a housing association which is
 - 5.1 a registered charity **or**
 - 5.2 exempt charity under prescribed legislation².

1 UC Regs, Sch 1, para 2; 2 Charities Act 2011, s 3

Payments excluded from being rent payments

F2042 [\[See memo ADM 4/18\]](#) Rent payments do not include payments¹

1. of ground rent
2. in respect of a tent or the site on which a tent stands
3. in respect of approved premises
4. in respect of a care home
5. which are owner occupier payments as in F2045
6. which are service charge payments as in F2050.
7. in respect of specified accommodation

Note: If a claimant lives in exempt accommodation help with housing costs will be provided by their LA.

1 UC Regs, Sch 1, para 3

Owner-occupier payments

Owner-occupier payments

F2044 Owner-occupier payments are¹

1. loan interest payments (F2046) **or**
2. alternative finance payments (F2047)

1 UC Regs, Sch 1, para 4(1)

F2045 Owner occupier payments do not include payments which are service charge payments as in F2050¹.

1 UC Regs, Sch 1, para 4(2)

Loan interest payments

F2046 Loan interest payments are¹ payments of interest on a loan that is secured on the accommodation in respect of which the claimant meets the occupation condition.

1 UC Regs, Sch 1, para 5

Alternative finance payments

F2047 Alternative finance payments¹ are payments

1. made under alternative finance arrangements, under prescribed legislation²
and
2. which are entered into to enable a person to acquire an interest in the accommodation in respect of which the claimant meets the occupation condition.

1 IT Act 07; 2 UC Regs, Sch 1, para 6

Example

Ishaq wants to buy his home but his religion forbids him from paying interest on money loaned. A bank arranges a special scheme under which Ishaq and the bank agree jointly to buy the property. Ishaq provides £10,000 of the purchase price and the bank provides the balance of £90,000. Beneficial interest in the property is shared between Ishaq and the bank. Ishaq has the right and duty to acquire the bank's share of the property over 15 years in return for monthly payments. He also pays an extra monthly amount for his use of the bank's share of the property.

The agreement between Ishaq and the bank is an arrangement provided specifically to avoid payment of interest and meet Ishaq's religious needs. It is an alternative finance payment and therefore an allowable housing costs payment.

F2048 - F2049

Service charge payments

Service charge payments

F2050 [\[See memo ADM 26/17\]](#)[\[See memo ADM 5/18\]](#) Service charge payments are payments which¹

1. fall within F2051
2. are not excluded as in F2053 **and**
3. where F2060 et seq applies, meet all the conditions set out in those paragraphs.

1 UC Regs, Sch 1, para 7(1)

F2051 Service charge payments are payments which are, in whole or in part¹

1. of, or towards, the cost of, or charges for, providing services or facilities to or for the benefit of the people occupying the home **or**
2. fairly attributable to the costs of, or charges for, providing such services or facilities connected with the accommodation as are available for the use or benefit of persons occupying the home

1 UC Regs, Sch 1, para 7(2)

F2052 It is irrelevant whether or not the service charge payments¹

1. are separately identified as relating to the costs or expenses referred to in F2051
2. are made in addition to or as part of any other payment (including a payment that would otherwise be regarded as a rent payment)
3. are made under the same or a different agreement as that under which the accommodation is occupied.

1 UC Regs, Sch 1, para 7(4)

F2053 Payments are not service charge payments where¹

1. a loan was taken out to make the payments **or**
2. the payments relate to services or facilities provided for the use or benefit of anyone occupying
 - 2.1 a tent
 - 2.2 approved premises
 - 2.3 a care home
 - 2.4 exempt accommodation

Note: If a claimant lives in exempt accommodation help with housing costs will be provided by their LA.

1 UC Regs, Sch 1, para 7(3)

F2054 - F2059

Service charge payments in the social rented sector and for owner occupiers

- F2060 Paragraphs F2061 - F2072 apply when calculating the amount of housing costs element in the social rented sector and for owner occupiers¹. They do not apply to calculations in respect of the private rented sector or temporary accommodation:
1 UC Regs, Sch 1, para 8(1)
- F2061 Service charge payments within F2060 must meet the conditions set out in F2062-F2068¹.
1 UC Regs, Sch 1, para 7(1)(c)
- F2062 The first condition is that the right to occupy the accommodation depends upon paying the service charge payments¹.
1 UC Regs, Sch 1, para 8(3)
- F2063 The second condition is that the service charge payments must fall into one or more of the descriptions set out in paragraphs F2071 et seq and (but see F2076-F2077)¹. Before deciding that a service charge is eligible the DM must be satisfied that it comes within one of the categories at F2065 et seq.
1 UC Regs, Sch 1, para 8(4)
- F2064 The third condition is that the amount of the costs and charges the service charge payments relate to are reasonable and the services or facilities they relate to are reasonable to provide¹.
1 UC Regs, Sch 1, para 8(5)
- F2065 What is reasonable is a question of fact to be determined in the circumstances of each individual case. When considering what is reasonable the DM should, for example, take into account whether
1. the rent and service charges are above the LHA rate
 2. the service charge is unreasonably high compared to other similar services in area (although this is dealt with in chapter F3)
 3. the service charge is for a luxury e.g. maintenance of a swimming pool.
- F2066 Where it appears that an owner occupier's service charges are excessive or unreasonable to provide the DM should check that the information provided does not contain any errors, or ineligible service charges. There is no power to refer to the rent officer the DM should therefore consider the amounts supplied as 'reasonable' and allow the payment to be made.
- F2067 Where the claimant is in the social rented sector and the DM is examining whether specific services are reasonable to provide, they should make reference to the lists of eligible service charges in this guidance. Where the charge is not listed, or isn't

implied by the wording of the guidance, the service charge should be deemed ineligible.

F2068 Where the DM considers the service charges in the social rented sector are unreasonable amounts, the decision-maker will need to check that the amount supplied by the claimant is correct. Once the decision-maker is satisfied that the information supplied is correct, the case should be referred to rent officers to determine whether or not the charged amounts are excessive. UC DMs should not make any determination themselves about the reasonability of any amounts of service charges.

Note: See chapter F3 for guidance relating to referrals to the rent officer.

F2069 - F2070

Service charge payments to maintain the general standard of the accommodation

F2071 The service charge payments are for¹

1. the external cleaning of the upper floor windows of a multi-storey building
2. other internal or external maintenance or repair of the accommodation, but only where the payments are
 - 2.1 separately identifiable as relating to such maintenance or repair **and**
 - 2.2 payable
 - 2.2.a for shared ownership tenancies **or**
 - 2.2.b by owner occupiers.

1 UC Regs, Sch 1, para 8(4) Category A

Service charge payments for the general upkeep of areas of communal use

F2072 The service charge payments are for the ongoing maintenance and cleaning of, and supply of water, fuel or any other commodity relating to the common use of, internal or external areas including areas for reasonable facilities, examples include

1. grounds maintenance such as lawn mowing, litter removal and lighting costs for areas of access
2. tenant parking but not extending to the manning of car parks for security purposes
3. laundry facilities
4. upkeep of internal areas of common use outside the home, such as hallways and corridors

5. children's play areas.

1 UC Regs, Sch 1, para 8(4) Category B

Service charge payments in respect of basic communal services

F2073 The service charge payments are for the provision, on going maintenance, cleaning or repair in connection with basic services generally available to everyone living in the accommodation¹. Examples of service charge payments that are included in this category are charges relating to the provision, maintenance, cleaning or repair of

1. communal lifts
2. a communal telephone, but not the cost of calls
3. secure building access for example key cards and keypad door locking mechanism
4. any additional costs for equipment, such as aerials, to access free-to-air television and radio, but not extending to include cable, satellite or internet connections
5. refuse collection
6. CCTV but only where this applies to areas of communal use.

1 UC Regs, Sch 1, para 8(4) Category C

F2074 Where the service charge payments are for the provision of a service only the proportion that directly relates to the time spent on providing that service will be eligible. Where

1. a person such as a concierge, groundskeeper or caretaker, is employed to provide any eligible service charge, then the relevant proportion of staffing costs for this person will be eligible **and**
2. the terms of the claimant's tenancy, or other related agreement makes the claimant liable to pay costs for management and administration of eligible services, the relevant portion will be eligible.

Example

A janitor is employed to carry out a range of maintenance services and the cost of this is £300 per week (wages plus employer pension contributions etc.). The janitor will normally spend 20% of his time carrying out work directly related to eligible service charges each week.

20% of the cost is £60 p/week.

There are 50 tenants. £60 divided by 50 tenants = £1.20.

The eligible weekly amount, per tenant, is therefore £1.20.

Accommodation specific service charge payments

F2075 The service charge payments are specific to the particular type of accommodation but are limited to payments for the use of essential items contained in it¹. This will include basic furniture or domestic appliances. This will apply only where the item or items remain the property of the original owner and do not form part of a purchase or part ownership agreement.

1 UC Regs, Sch 1, para 8(4) Category D

Ineligible service charge payments

F2076 No service charge payments will be included in a claimant's HCE where¹

1. public funding is available from another source to meet the payments, irrespective of whether the claimant has any entitlement to any such funding
or
2. the person making a payment in connection with the use of an asset acquires the asset or any interest in it **or**
3. the payments relate to the costs or charges of providing of food, medical services or personal services of any description.

1 UC Regs, Sch 1, para 8(6)

F2077 Examples of service charge payments that are excluded are charges relating to the provision of

1. living expenses, such as heating, lighting, hot water or meals
2. personal services, such as a laundry or cleaning service
3. nursing or personal care services (help with personal hygiene, eating, dressing etc.)
4. provision of an emergency alarm system
5. counselling, medical or support services
- 6 any medical expenses (including those relating to the provision of counselling)
7. transport
8. any licences or permits
9. maintenance of un-adopted roads
10. installation, maintenance or repair of any special equipment or adaptations to the property in respect of disability or infirmity of tenants
11. individual emergency alarm systems
12. subscription or fee-based television (e.g. satellite television subscription)

13. communal social recreational areas such as gyms, bars, shops, hairdressers, internet rooms, restaurants, café's or swimming pools
14. gardening for individual's gardens
15. intensive housing management **and**
16. water, sewerage and utility charges relating to anything other than communal areas.
17. building insurance

F2078 Any service charge that is not eligible under F2065 et seq cannot be treated as either an owner occupier payment or a rent payment¹.

1 UC Regs, Sch 1, para 8(7)

F2079-F2080

Liability condition

Liable to make payments

F2081 There must be a liability to make payments which is on a commercial basis and a claimant must have the actual liability or be treated as having it. A liability to make payments imposes legally enforceable conditions on the parties to the agreement. If one party breaks the agreement, the other party has the right to go to court to seek redress.

F2082 An agreement may not be on a commercial basis where it includes terms which are not legally enforceable or which the parties do not intend to be legally enforceable.

Example

A claimant does household chores for their landlord. The chores could be considered as payments in kind and the rental agreement a commercial one if when the tenant

1. does household chores for their landlord they pay a lower rent
2. does not do household chores they have to pay a higher rent.

F2083 Charging a low rent does not on its own make an agreement non-commercial. Many charities, voluntary bodies and some individuals, choose to let properties at below market rents or do not want to make a profit from letting, but their tenancies may still be commercial arrangements if that is what the parties to the agreement intend.

F2084 The DM must decide whether the liability to make payments is on a commercial or non commercial basis as a question of fact based on all the evidence.

F2085 – F2086

Treated as liable to make payments

Certain other persons liable to make payments

F2087 A claimant will be treated as liable to make payments where the person who is liable is¹

1. any child or QYP the claimant (or if the claimant is a member of a couple, either member) is responsible for **or**
2. where the claimant is a member of a couple claiming as a single person, the other member of the couple.

1 UC Regs, Sch, 2 para 1(1)

F2088 F2087 will not apply to a person who is claiming as a single person where they are a party to a polygamous marriage¹.

Example

Abdul, Alkha and Fatima are parties to a polygamous marriage and make a claim to UC. Fatima is Abdul's second wife. Abdul and Alkha (his wife he married first) will make a joint claim to UC to form their own benefit unit. Fatima claims UC as a single person. Abdul cannot be treated as liable for any relevant payments that Fatima is liable to make.

1 UC Regs, Sch 2, para 1(2)

Failure to pay by the person who is liable

F2089 A claimant is treated as liable¹ to make payments where

1. the person who is liable is not making payments **and**
2. the claimant has to make payments in order to continue to live in the accommodation **and**
3. the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements **and**
4. it is reasonable to treat the claimant as liable to make the payments.

1 UC Regs, Sch 2, para 2(1); 2, para 2(2)

Example 1

Harry lives with his mother who has a mortgage on their home. Harry's mother dies and her estate becomes liable to meet the mortgage payments. But she did not leave a will and her estate is not making any payments. The building society cannot transfer the mortgage to Harry until his mother's estate is settled. But they agree that if Harry pays the mortgage he can carry on living in the home. It is reasonable

to treat Harry as liable for the payment of mortgage interest and housing costs for mortgage interest are allowed.

Example 2

Judith lives in a two bedroom house which she rents from a private landlord. She goes to court and is convicted and sentenced to a prison sentence. Her brother Tony moves into the property whilst she is in prison. Tony cannot be treated as a liable to make the payments as he did not live in the property prior to the prison sentence and therefore would not be continuing to live there.

F2090 When determining what is reasonable for owner-occupiers, consideration has to be given to the fact that continuing to make the payments may benefit the person with liability to make the payments¹.

1 UC Regs, Sch 2, para 2(3)

Example 1

Layla and John live together in a two bedroom property with their daughter. The mortgage is solely in John's name as he owned the property before they became a couple. They split up and are no longer a couple. John moves out and rents a one bedroom flat. He is unable to pay the mortgage but is taking steps to sell it. They were joint claimant's prior to the split. It is decided that the HCE can be included in Layla's subsequent new claim to UC.

Example 2

Caroline and Paul live together in a one bedroom flat. The mortgage is in Caroline's sole name. They split up and Caroline moves in with her parents. She refuses to pay the mortgage whilst Paul still lives in the property. It is decided that as Caroline could still pay the mortgage no amount of HCE will be included in Paul's UC claim.

F2091 – F2100

Payments waived in return for repair work

F2101 A claimant will be treated as liable to make payments where¹ the liability to make them is waived

1. by the person to whom the liability is owed **and**
2. by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant which the person to whom the liability is owed would have carried out or been required to carry out.

1 UC Regs, Sch 2, para 3

Rent free periods

F2102 A claimant will be treated as still liable to make rent and service charge payments during any rent free periods provided for in his rental agreement¹ (see F3101).

1 UC Regs, Sch 2, para 4

F2103 – F2104

Treated as not liable to make payments

Liability to make rent payments to close relative

F2105 A claimant will be treated as not liable to make rent payments where the liability is owed to a person who lives in the accommodation and who is¹

1. the other member of the couple, if the claimant is a member of a couple **or**
2. any child or QYP for whom
 - 2.1 the claimant is responsible **or**
 - 2.2 the other member of the couple is responsible, if the claimant is a member of a couple **or**
3. a close relative of
 - 3.1 the claimant **or**
 - 3.2 the other member of the couple, if the claimant is a member of a couple **or**
 - 3.3 any child or QYP in 2. above.

1 UC Regs, Sch 2, para 5(1)

F2106 A claimant who is treated as not liable to make rent payments to a person in F2105 is also treated as not liable to make service charge payments where the liability is to the same person¹.

1 UC Regs, Sch 2, para 5(2)

Example

Gary lives with his brother Dave in his two bedroom flat. Dave charges his brother for the use of a bedroom. Dave is treated as not liable for the rent his brother charges him and is also treated as not liable for any service charges his brother imposes on him.

F2107 Close relative has the meaning given in ADM Chapter F7

Liability to make rent and other payments to a company

F2108 A claimant will be treated as not liable to make rent payments where¹ their liability to make rent payments is to a company and the owners or directors of the company include

1. the claimant
2. in the case of a claimant who is a member of a couple the other member of the couple
3. a QYP either the claimant or the other member of a couple is responsible for,
or
4. a close relative of any of the above who lives with the claimant.

1 UC Regs, Sch 2, para 6(1)

F2109 A claimant who is treated as not liable to make rent payments to a company in F2108 is also treated as not liable to make service charge payments where the liability is to¹

1. the same company **or**
2. another company of which the owners or directors include anyone listed in F2108.

1 UC Regs, Sch 2, para 6(2)

F2110 An owner of a company for the purposes of F2108 is a person who has a material interest in the company¹.

1 UC Regs, Sch 2, para 6(3)

F2111 A person has a material interest in the company if they¹

1. hold at least 10% of the shares in the company **or**
2. are able to exercise a significant influence over the management of the company because of their shareholding in the company **or**
3. hold at least 10% of the shares in a parent undertaking of the company **or**
4. are able to exercise a significant influence over the management of a parent undertaking because of their shareholding in the parent undertaking **or**
5. are entitled to exercise, or control the exercise of, voting power in the company which, if it consists of voting rights, constitutes at least 10% of the voting rights in the company **or**
6. are able to exercise significant influence over the management of the company because of their entitlement to exercise, or control the exercise of, voting rights in the company **or**
7. are entitled to exercise, or control the exercise of, voting power in the parent undertaking which, if it consists of voting rights, constitutes at least 10% of the voting rights in the parent undertaking **or**
8. are able to exercise significant influence over the management of the parent undertaking because of their entitlement to exercise, or control the exercise of, voting rights in the parent undertaking.

1 UC Regs, Sch 2, para 6(4)

- F2112 In F2111 a person is an owner of a company where the material interest is held by
1. them **or**
 2. any of the their associates **or**.
 3. them and any of the their associates taken together¹.

1 UC Regs, Sch 2, para 6(5)

- F2113 In F2112 “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”), means¹
1. the spouse or civil partner of A
 2. a child or stepchild of A (if under 18)
 3. the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest)
 4. an undertaking of which A is a director
 5. a person who is an employee or partner of A
 6. 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
 7. 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.

1 UC Regs, Sch 2, para 6(6)

- F2114 In F2113 settlement means¹ any disposition or arrangement under which property is held on trust (or subject to comparable obligation).

1 UC Regs, Sch 2, para 6(7)

- F2115 Parent undertaking has the same meaning as in prescribed legislation¹.

1 UC Regs, Sch 2, para 6(8); 2 Financial Services and Markets Act 2000, s 420

- F2116 In F2111 shares means¹

1. in relation to an undertaking with shares, allotted shares within the meaning of the specified legislation²
2. in relation to an undertaking with capital but no share capital, rights to share in the capital of the body
3. in relation to an undertaking without capital, interests
 - 3.1 conferring any right to share in the profits, or liability to contribute to the losses, of the body **or**
 - 3.2 giving rise to the an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

F2117 Voting power, in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means¹ the rights under the constitution of the undertaking

1. to direct the overall policy of the undertaking **or**
2. to alter the terms of its constitution.

1 UC Regs, Sch 2, para 6(8)

F2118 – F2120

Liability to make rent or other payments to a trust

F2121 A claimant will be treated as not liable to make rent payments where the liability is owed to a trustee of a trust and the trustees or beneficiaries of the trust include¹

1. the claimant
2. if the claimant is a member of a couple, the other member of the couple **or**
3. a child or QYP either the claimant or the other member of a couple is responsible for, **or**
4. a close relative of any of 1. to 3. above who lives with the claimant.

1 UC Regs, Sch 2, para 7(1)

F2122 A claimant treated as not liable in F2121 will also be treated as not liable for any service charge payments where that liability is to

1. a trustee of the same trust **or**
2. a trustee of another trust of which the trustees or beneficiaries include anyone listed in F2121.

1 UC Regs, Sch 2, para 7(2)

Note: See chapter G1 for more guidance on the meaning of a trust.

F2123 – F2126

Liability to make owner-occupier and other payments to members of the same household

F2127 A claimant will be treated as not liable to make owner-occupier payments where the liability is to any person living in the claimant's household¹.

1 UC Regs, Sch 2, para 8(1)

Note: Living with and household has the meaning given in chapter D2.

F2128 A claimant who is treated as not liable to make the payments in F2105 et seq is also treated as not liable to make service charge payments where the liability is to the same person¹.

F2129 A claimant will be treated as not liable to make service charge payments where the claimant is¹

1. not liable to make rent or owner-occupier payments **but**
2. liable to make service charge payments to any person living in the claimant's household.

F2130 - F2133

Arrears of payment

F2134 A claimant will be treated as not liable to make a payment or payments in respect of any amount which is¹

1. an increase in the sum that would otherwise be payable **and**
2. the result of
 - 2.1 outstanding arrears of any payment or charge in respect of the accommodation
 - 2.2 outstanding arrears of any payment or charge in respect of another accommodation previously occupied by the claimant
 - 2.3 any other unpaid liabilities to make a payment or charge.

F2135 F2134 does not apply if the claimant is treated as not liable to make the payment or payments¹.

Example 1

Tyrion rents a 2 bedroom flat, his rental payments are £400.00 a month. Prior to his claim to UC he was 6 months behind with his rental payments. His landlord takes him to court and his rent is adjusted to £420.00 a month. His housing costs element of UC will be calculated on his original rental payments of £400.00.

F2136 Any loan secured on the owner-occupier's property (for any reason, including a re-mortgage to roll up arrears of interest) can be eligible for inclusion in the calculation of the HCE and does not represent an increase in the sum that would be otherwise payable¹. The loan interest payment would still be subject to the capital limit in chapter F4. Any unsecured loan cannot be eligible for inclusion in the calculation of the HCE.

Example 1

Arya has a mortgage on her two bedroom terraced house. The mortgage secured on the property is £72,000.00. Arya has defaulted on 5 mortgage payments, a total of £2,500, and the lender has added those arrears to her outstanding mortgage. When information is gathered to make the HCE calculation, this shows the outstanding loan secured on her home is £74,000. Her HCE for UC will be calculated on the £74,500 balance.

Example 2

Arya decides to pay off the arrears of mortgage of £2,500 by credit card. The loan from the credit card company is not secured on her property so cannot be included in the HCE.

- F2137 After HCE is awarded, any further increase in the total amount owing on loans secured on the property for arrears (or for any other reason) during the currency of an award, whether by increasing the existing loan or on account of a new loan, can only increase the HCE from the anniversary date set out in chapter F4. Similarly, decreases in the total amount owed can only decrease the HCE from the anniversary date. The loan interest payment would be subject to the capital limit in chapter F4.

Example

After HCE is awarded, Arya's mortgage builds up arrears at the rate of £20.00 a month because her interest rate is higher than the SR, and the lender adds that amount to her mortgage which is secured on the property. The arrears are allowable but only from the next anniversary date. The loan interest payment would be subject to the capital limit in chapter E4.

F2138 – F2139

Contrived liability

- F2140 A claimant will be treated as not liable to make any payment or payments where the DM is satisfied that the claimant's liability to make the payments was contrived¹ in order to
1. secure the HCE in an award of UC **or**
 2. increase the amount of the HCE in an award of UC.

1 UC Regs, Sch 2, para 10(1)

- F2141 F2140 does not apply if the claimant is treated as not liable to make the payment or payments because of F2105 et seq¹.

1 UC Regs, Sch 2, para 10(2)

F2142 Contrivance can be on the part of the claimant, the person to whom payments are made, or both acting together. There must be something about the arrangements relating to the liability that indicates it seeks to abuse the HCE of UC. It is the DM's responsibility to show such arrangements exist before deciding that abuse is involved. This means the DM must establish the facts and determine the dominant purpose of the arrangement before deciding to treat that person as not liable to make the payment.

F2143 Account must be taken of all the available evidence when making a decision that a liability has been created to abuse the HCE of UC.

F2144 The issue is not whether a liability exists, but whether a liability was created to abuse the housing costs element of UC. The DM must decide whether a liability exists before considering whether or not it is contrived, although the two questions often involve considering the same facts.

F2145 The DM should also look for arrangements the claimant has entered into

1. which create a liability they cannot meet without the HCE of UC **and**
2. when they could have avoided the situation and still been adequately accommodated.

F2146 This would not normally be the case when, for example, even though they rely on HCE of UC to help meet their liability to make relevant payments a person

1. previously had no accommodation **or**
2. has moved home
 - 2.1 to take up work because they could not travel to work from their previous address **or**
 - 2.2 because their family was overcrowded at their previous address
 - 2.3 but the move does not result in an increased amount of HCE.

F2147 – F2149

Landlord registration or licensing and antisocial behaviour penalties – Scotland only

F2150 The Antisocial Behaviour (Scotland) Act 2004 requires all landlords in Scotland, with a few exceptions, to register with their LA.

F2151 Failure to register can result in a rent penalty notice. The effective date of a rent penalty notice is

1. a date specified by the LA's registration section, and
2. no earlier than the day after the day on which the notice is served by the LA

F2152 A landlord cannot charge rent for a property to which a rent penalty notice applies, so tenants living in that property will not be liable and will not get HCE.

F2153 – F2154

F2155 The Antisocial Behaviour (Scotland) Act 2004 also allows an LA to serve an antisocial behaviour notice on a landlord if

1. anyone who occupies or visits their property engages in antisocial behaviour at or near the property, and
2. the landlord has failed to take reasonable management steps to address the antisocial behaviour.

Note: The notice requires the landlord to take specified actions to deal with the antisocial behaviour.

F2156 If the landlord fails to comply with the antisocial behaviour notice, the LA can apply to the courts for a no rent payable order, which means the landlord cannot charge rent and so the claimant will not have a liability and HCE cannot be paid.

F2157 – F2160

Occupation condition

General

The occupation condition: the general rule

F2161 A claimant is to be treated as occupying as their home the accommodation they normally occupy as their home¹.

1 UC Regs, Sch 3, para 1(1)

F2162 The dwelling normally occupied as the home is the accommodation where the claimant normally lives. In this context “normally” means “usually”.

F2163 Unless F2171 et seq apply no claimant is to be treated as occupying accommodation that comprises more than one dwelling¹. Dwelling has the meaning given in prescribed legislation².

1 UC Regs, Sch 3, para 1(2); 2 Local Government Finance Act 1992, part 1 & 2

F2164 Where F2171 et seq do not apply the DM must have regard to all the circumstances to determine which accommodation the claimant normally occupies as their home, including (but not limited to) any persons with whom the claimant occupies each dwelling¹.

1 UC Regs, Sch 3, para 1(3)

F2165 In the following paragraphs accommodation the claimant normally occupies as their home will be referred to as their home unless otherwise stated.

Croft land included in accommodation

F2167 Where the claimant's home is situated on or relates to a croft¹, croft land used for the purpose of their home is to be treated as included in their home².

1 Crofters (Scotland) Act 93; 2 UC Regs, Sch 3, para 2

F2168 – F2170

Other accommodation for essential repairs

F2171 A claimant who

1. has to move into other accommodation so that essential repairs can be carried out to their home
2. intends to return to their home following the repairs **and**
3. is liable to pay for only one home

shall be treated as normally living in the home which meets all of the conditions **1.** to **3.** above¹.

1 UC Regs, Sch 3, para 3(1)

F2172 Where a claimant has moved into other accommodation in the circumstances set out in F2171 but is liable to pay for both homes the DM must decide which the claimant normally occupies as his home¹.

1 UC Regs, Sch 3, para 3(2)

F2173 In F2171 and F2172 essential means necessary and not a luxury.

F2174 – F2180

Claimant housed in two homes by provider of social housing

F2181 Where a claimant

1. has been housed in two homes by a provider of social housing (see chapter F3), because of the number of children and QYPs living with them **and**
2. normally occupies both homes with the children and QYPs **and**
3. is liable to make payments for both homes (the liability need not be to the same person)

both homes will be treated as a single home¹.

1 UC Regs, Sch 3, para 4

Example

Joanne is liable to pay rent for two flats. She has had a tenancy of the first flat since March 2012 provided by her housing association. As she has a large family she is provided a second flat by her local authority in another block in August 2013. She stays over night at the original flat with her youngest two children and her husband

stays overnight at the other flat with the other children. Although Joanne lives in two separate flats the flats are treated as a single home for the purposes of the housing costs element of UC.

Moving home

Adaptations to new home for disabled person

- F2182 A claimant is to be treated as occupying both the new home and their old home if
1. the claimant has moved into a new home and immediately before the move was liable to pay for the new home **and**
 2. there was a delay in moving in that was necessary to enable the new home to be adapted to meet the disablement needs of a person referred to in F2183, see F2185 **and**
 3. immediately before the move the claimant was entitled to the housing costs element in an award of UC in respect of the old home **and**
 4. the delay in moving was reasonable¹.

1 UC Regs, Sch 3, para 5(1) & (2)

- F2183 The people referred to in F2182
1. are¹
 - 1.1 the claimant **or**
 - 1.2 any child or QYP for whom the claimant is responsible **and**
 2. are in receipt of
 - 2.1. the care component of DLA at the middle or highest rate
 - 2.2 “AA”
 - 2.3 the daily living component of a PIP.

1 UC Regs, Sch 3, para 5(3)

Example 1

Jane has diabetes and delayed her move to redecorate the house to a style she liked. This was not an adaptation necessary to meet her disability needs and she cannot be treated as occupying both homes.

Example 2

Joseph lost the use of his legs in a car accident. He delayed moving into his new bungalow because it requires adaptations to be undertaken to the kitchen and bathroom to enable Joseph to live independently. Once Joseph moves into the new property he can be treated as occupying both homes for the preceding month whilst the necessary work was being carried out.

F2184 No claimant shall be treated as occupying both homes under F2182 for more than one month¹.

1 UC Regs, Sch 3, para 5(4)

F2185 To determine whether the dwelling has been adapted to meet the disablement needs of the person referred to in F2183 consideration has to be given to whether the process which the dwelling had undergone was a change that made it more suitable for the needs of the disabled person. Redecoration and changing the floor coverings are examples of changes which could meet the definition of adapting the dwelling where there is a clear connection between the work undertaken and the person's disability needs¹.

1 Mahmoudi, R v London Borough of Lewisham & Anor [2014] EWCA Civ 284.

Example 1

Benson has significant difficulties with balance and coordination. He currently lives on an upper floor in a block with no lift access, and is moved by his housing association to a ground floor flat. This flat currently has polished wooden floors, which would be a health hazard to Benson due to his condition. His move to the new address is delayed for a week to allow the polished floors to be covered by carpets. He claims a dual payment of rent for his new property for the week before he moves in. The DM decides that Benson is eligible for benefit on two homes as the delay in moving is reasonable, there is a clear connection between the adaptations being made and Benson's disablement needs, and the works are reasonably required before he is able to move in.

Example 2

Yasmin, who is wheelchair bound, is moving from her present owner-occupied house to a single-floor dwelling. It has been left in poor condition by the previous tenant and so must be fully redecorated before Yasmin is able to move in. She makes a claim for rent to be awarded for the first two weeks of her tenancy before she takes up occupation. The DM refuses her request as, although the delay in moving is reasonable, there is no connection between her disability and the works which are being carried out.

Example 3

Karen suffers from obsessive compulsive disorder and has anxiety problems. She has been allocated a property by her local authority, which is being thoroughly repainted and having its carpets replaced with tiling so that it is easier for her to keep clean. Karen requests rent for the first two weeks of her tenancy whilst she is waiting for the redecorations to be completed. The DM allows her claim as there is a direct connection between the work being carried out and her disability. The Upper Tribunal has ruled that "disablement" includes mental as well as physical conditions

and it is necessary for the works to be carried out before she moves in to prevent Karen from suffering distress.

F2186 – F2190

Claimant living in another accommodation because of reasonable fear of violence

F2191 A claimant will be treated as normally occupying both their normal home and other accommodation where¹

1. they are occupying accommodation other than their normal home **and**
2. they are liable to make payments for both their normal home and the other accommodation **and**
3. they intend to return home **and**
4. it is unreasonable to expect the claimant to return to their normal home because of their reasonable fear of violence
 - 4.1 in the home **or**
 - 4.2 by a former partner against the claimant or any child or QYP for whom the claimant is responsible¹.
5. it is reasonable to include an amount of the HCE for both the other accommodation and their normal home.

Note: Where the claimant is treated as occupying their usual home, but who is actually occupying "exempt accommodation", such as a refuge, any costs for that accommodation will be met by the LA, where appropriate, and not under UC.

1 UC Regs, Sch 3, para 6(1) & (2)

F2192 A claimant will be treated as normally occupying the accommodation for which they are liable to make payments where¹

1. they are occupying accommodation other than their normal home **and**
2. they have a liability to pay for either their normal home or for the other accommodation (but not both) **and**
3. they intend to return to their normal home **and**
4. it is unreasonable to expect the claimant to return to their normal home because of their reasonable fear of violence
 - 4.1 in the home **or**
 - 4.2 by a former partner against the claimant or any child or QYP for whom the claimant is responsible¹.
5. it is reasonable to include an amount of the HCE for the accommodation for which there is a liability to make payments.

1 UC Regs, Sch 3, para 6(3)

F2193 Where F2191 applies no claimant shall be treated as occupying both their normal home and another accommodation for more than 12 months¹.

1 UC Regs, Sch 3, para 6(4)

F2194 – F2200

Moving in delayed by adaptations to home to meet disablement needs

F2201 Where a claimant has moved into a property they are treated as occupying that property as their home for up to 1 month before the date they actually moved in where¹

1. they have moved into the home and immediately beforehand were liable to make payments for the home **and**
2. there was a delay in moving in to enable the home to be adapted to meet the disablement needs of a person in F2183 **and**
3. it was reasonable to delay moving in.

1 UC Regs, Sch 3, para 7

Moving into accommodation following stay in hospital or care home

F2202 Where a claimant has moved into a property they are treated as occupying that property as their home for up to 1 month before the date they actually moved in where¹

1. they have moved into the home and immediately beforehand were liable to make payments for the home **and**
2. the liability to make payments arose while they were
 - 2.1 a patient **or**
 - 2.2 accommodated in a care home **or**
 - 2.3 in the case of joint claimants while both joint claimants were
 - 2.3.a patients **or**
 - 2.3.b accommodated in a care home.

Note 1: Patient means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution.

Note 2: See F2032 for the meaning of care home.

1 UC Regs, Sch 3, para 8

Example

Jackie is in hospital having treatment for a long term illness. She gave up her tenancy prior to being admitted to hospital. She is due to be discharged and finds a

property to rent. She finds the property in the month before being discharged. The property is a bungalow and is suitable for her to live in once she is discharged. On the day she moves in she is treated as occupying the home for the month previously.

F2203 'Treated as occupying the home' from F2201 onwards does not allow for payments on two properties so in F2201 – F2202 the claimant cannot already be receiving the HCE in respect of another address.

F2204 - F2210

Treated as not occupying the home

Periods of temporary absence exceeding 6 months

F2211 A claimant will be treated as no longer occupying their home where they are temporarily absent and the absence exceeds, or is expected to exceed 6 months¹.

1 UC Regs, Sch 3 para 9(1)

Example 1

H is claiming UC. He is involved in a road accident and is admitted to hospital. He needs prolonged treatment and rehabilitation and is expected to be in hospital about 4 months. Because H's absence is not expected to last for more than 6 months the DM treats him as still occupying his home.

Example 2

H is claiming UC. He is involved in a road accident and is admitted to hospital. He needs prolonged treatment and rehabilitation and is expected to be in hospital about 10 months. The DM decides H is not occupying his home from the outset of his admission to hospital, this also means that their HCE is withdrawn

F2212 F2211 does not apply where a claimant is temporarily absent due to essential repairs as in F2171 et seq¹.

1 UC Regs Sch 3 para 9(2)

F2213 In the circumstances set out in F2191 et seq the period in F2211 is 12 months¹.

1 UC Regs, Sch 3, para 9(3)

The content of the examples in this document (including use of imagery) is for illustrative purposes only