

# EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE

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

### Introduction

The Department proposes to amend the following sets of Regulations:

- the Housing Benefit Regulations 2006 (SI 2006/213);
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214); and
- the State Pension Credit Regulations (SI 2002/1792)

These amendments are intended to make changes so that the period of allowable absence from outside Great Britain (GB) is reduced, generally from 13 weeks to 4 weeks. There will be limited prescribed exceptions to the general rule which are detailed later in this paper.

### Explanation, purpose and effect of the proposed changes

It is a condition of entitlement to Housing Benefit and Pension Credit that claimants are in GB - although periods of temporary absence are allowed within the rules.

**Housing Benefit (HB)** has a general temporary absence rule meaning that 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 home within GB or outside GB

**Pension Credit (PC)** has a parallel rule which however is specific to absences outside of GB. This allows entitlement to continue for absences outside of GB for up to 13 weeks where the absence is unlikely to exceed 52 weeks and the claimant continues to fulfil the other conditions of entitlement.

The policy, announced as part of the Chancellor's Autumn Statement, is to restrict temporary absences from GB in both benefits to four weeks.

## **Rationale**

There are sound reasons for maintaining the 13 week absence rule for absences within GB, which allows flexibility for Housing Benefit claimants to leave home for work, or to look for work.

The rationale for the change *from GB* is that the current rule to allow a means tested benefit, paid for out of general taxation, to continue where the claimant is abroad for a period of up to 13 weeks is too long and should be shorter.

The Secretary of State has considered what the period should be shortened to and considers that 4 weeks is appropriate because the change will broadly align with Universal Credit (UC) and other legacy benefits such as Income Support (IS) and Jobseeker's Allowance (JSA) for simplification and fairness.

Transition Protection will apply to those away from GB at the time the policy comes into force.

The temporary absence changes will affect around 130,000 HB and PC claimants (taking account of overlaps). We have assumed for the costs that over half of these will adapt their behaviours to avoid any financial losses and that around 45,000 will continue to take an absence of between 4 and 13 weeks and incur a loss of benefit of, on average, around £600 in total. The change will provide savings to the tax payer of £20m in the first year.

## **Extensions to the temporary absence rule**

Within UC/other legacy benefits there are currently circumstances where extended periods of absence outside of GB, above the normal 4 week period, are permitted. Additionally, particular issues in relation to the extension of the general rule are outlined below to help the Committee.

UC provides that members of Her Majesty's Forces posted overseas do not have to meet the basic condition of entitlement of being in GB. They are dealt with by waiving the basic UC condition of entitlement which relates to being in GB rather than their being part of the UC Temporary Absence provisions. This allows such claimants to retain entitlement to the housing costs element of UC for up to 26 weeks if they meet the occupation criteria.

HB does not have any special temporary absence rules for these categories of people, so they currently fall under the general provisions of 13 weeks absence. We propose to align to 26 weeks for the armed forces who are absent from GB.

This would be more generous than the 13 week rule for those in GB, as training within GB is usually up to 43 days and deployments abroad are usually for longer than 13 weeks. Analytical evidence is slight. Collective opinion and anecdotal evidence suggests that there would be small numbers in the armed forces claiming HB due to enhanced payments they get if they

are serving abroad which would likely lift them out of HB. The costs for those that need HB for support would therefore be negligible.

UC provides protection to mariners and continental shelf workers by allowing them 6 months absence from GB.

We are proposing to mirror this treatment for mariners and continental shelf workers. This would be more generous than the current provision in order to align with UC, Were they not provided for specifically, it would mean that they would have their HB entitlement reduced from 13 weeks to four weeks if they work outside GB “waters”. By the nature of their work, the majority of their time is spent working in international “waters”.

### **Pension Age**

PC currently has no extension to the temporary absence rule to cover any of the categories above, and given PC is primarily a safety net benefit for people who have reached women’s State Pension age, we do not propose to introduce new rules to specifically cover mariners, continental shelf workers and members of the armed forces.

We do think however, that it is sensible to have a rule which is consistent in both the working age and pension age versions of HB. That is because the HB provisions need to cover the absences of a wider range of people than PC: namely people who form part of the claimant’s household, and therefore, irrespective of their age, could affect the claimant’s HB entitlement. The result of these changes is therefore that there will be some differences in the absence regimes for state pension credit claimants and those of state pension age who are claiming HB.

Both HB and PC will allow a temporary absence abroad for up to 26 weeks in the case of medical treatment and for up to 8 weeks in the case of bereavement.

### **Commencement and application of the proposed changes**

The changes to temporary absence rules will be effective from the 1st April 2016. Transitional protection will be afforded for those who are already abroad when the new rules commence including entitlement to existing extensions thus giving those claimants protection.

We are working with the relevant Northern Ireland Executive departments to ensure all UK claimants are treated in the same way for this policy change regardless of where they live in the UK. We would expect NI Ministers to implement similar policies in keeping with the commitment in the Northern Ireland Act to ensure common welfare systems as far as can be agreed.

## **The Regulations**

### **Draft Regulation 1**

Draft Regulation 1 provides the coming into force date as 1 April 2016.

### **Draft Regulation 2**

Draft regulation 2(2) of these Regulations amends regulation 7(11) of the Housing Benefit Regulations 2006 to provide that it will only apply where the person enters residential accommodation in Great Britain.

Draft regulation 2(3) amends regulation 7(13) of the Housing Benefit Regulations 2006 maintains this rule for people who are temporarily absent from their home and remain in Great Britain.

Draft regulation 2(4) reduces from 13 weeks to 4 weeks the period that a person will be treated as occupying a dwelling from which they are temporarily absent as their home when the person is absent from Great Britain.

However, if the absence from Great Britain is in connection with the death of: a partner; child or young person for whom they or their partner are responsible; their or their partner's close relative; or a close relative of a child or young person for whom they or their partner are responsible, then the period of absence may be extended by up to 4 further weeks if the relevant authority considers it unreasonable to expect the person to return within the first 4 weeks.

Draft regulation 2(4) provides for a further that if the person is a member of the armed forces away on operations, a mariner or a continental shelf worker, and is absent from Great Britain, the person may be treated as occupying the dwelling as their home whilst they are temporarily absent, for up to 26 weeks.

Draft regulation 2(5) amends regulation 7(16) of the Housing Benefit Regulations 2006 in four ways. Firstly, they substitute "Great Britain" for "United Kingdom", secondly they insert continental shelf workers and mariners into sub-paragraph (c), thirdly they amend paragraph (16)(d) in relation to how long the period of absence is likely to be.

Draft regulation 2(6) amends regulation 7(17) of the Housing Benefit Regulations 2006 to provide that where a person within paragraph (16) is absent from Great Britain then they will be treated as occupying the dwelling as their home for up to four weeks unless they are a person to whom any of paragraphs (16)(c) (ii), (iii) and (vii) of regulation 7 of the Housing Benefit Regulations 2006 applies, in which case they can be treated as occupying the dwelling for up to 26 weeks.

Draft regulation 2(7) makes amendments to regulation 7 which are consequential to these changes.

In terms of the relation between absences within and outside Great Britain, the intention is that a person may be temporarily absent within Great Britain, from the dwelling they normally occupy as their home, for a period of up to 13 weeks (or longer where allowed) beginning with the first day of absence from the home, and may in addition be temporarily absent from Great Britain for a period of up to 4 weeks (or longer where allowed). Where the temporary absence from Great Britain ends they must return home in order to retain entitlement to housing benefit, unless the period of absence outside Great Britain ends before the expiry of the 13 week period (or longer where allowed) in which case they may be absent within Great Britain for the remainder of that period.

### **Draft regulation 3**

Draft regulation 3 makes similar amendments to the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006.

### **Draft regulation 4**

Draft regulation 4(2) amends regulation 3 of the State Pension Credit Regulations 2002. This currently allows a claimant's entitlement to PC to continue for up to 13 weeks while the claimant is absent from GB. This is reduced to 4 weeks, providing that the absence is not expected to exceed, and does not exceed 4 weeks. This 4 week period can be extended by a further 4 weeks where the absence is in connection with the death of the claimant's partner, or a child or qualifying young person normally living with the claimant, or the death of a close relative of one of these groups.

PC currently allows indefinite absence for NHS patients receiving medical treatment abroad. Draft regulation 4(2) reduces this period to 26 weeks in line with the provisions in UC but will now allow the claimant to be absent for a wider range of medical treatment and for medically approved convalescence.. It will also allow for absence where a claimant is accompanying a partner or a child or qualifying young person normally living with the claimant for medical treatment.

Draft regulation 4(3) omits Regulation 3A of the State Pension Credit Regulations 2002 which contained a transitional provision from the last time the temporary absence provisions in the Regulations were amended.

Draft regulation 4(4) omits regulation 4 of the State Pension Credit Regulations 2002 which contained an absence provision relating to medical treatment. The new medical absence provisions can now be found in draft regulation 4(2).

Draft regulation 4(5) inserts a new regulation 4A into the State Pension Credit Regulations 2002 which contains a definition of qualifying young person in line with the definition in the Universal Credit Regulations 2013 (S.I. 2013/376).

Draft regulation 4(6) amends regulation 5 of the State Pension Credit Regulations 2002 so that the claimant's partner is subject to the same rules on temporary absence as the claimant. This means that the claimant's partner will continue to be treated as a member of the claimant's household while absent from GB which will enable the claimant to claim a couple's rate of PC.

Draft regulation 4(7), 4(9) and (10) makes changes to the Schedules of the State Pension Credit Regulations 2002 so that the definitions of qualifying young person and child cross-refer to the definition of qualifying young person in regulation 4A of those Regulations and to the definition of child in section 40 of the Welfare Reform Act 2012.

Draft regulation 4(8) applies the provisions relating to polygamous marriages to regulation 3 of the State Pension Credit Regulations so that the word 'partner' in regulation 3 will include any additional spouse to whom paragraph 1 of Schedule 3 applies. This will enable the claimant to be absent from GB in respect of the death or medical treatment of a polygamous spouse.

### **Draft regulation 5**

Draft regulation 5 makes transitional provision so that the amendments in draft regulations 2 and 3 do not apply in respect of a person who is temporarily absent from Great Britain on 01 April 2016 until they return to Great Britain unless the person is a member of the armed forces away on operations, a continental shelf worker or a mariner.

Draft regulation 5 also stipulates that draft regulation 4 does not apply to a person who is temporarily absent from Great Britain on 01 April 2016 until the person returns to Great Britain.

### **Impact of the proposed changes**

#### **Equality and diversity**

In respect of the proposed changes we have considered the policy in the context of the Public Sector Equality Duty under section 149 of the Equality Act 2010. A separate Equality Analysis is attached for HB and for PC.

#### **Operational impacts**

#### **Complexity**

These changes are intended to reduce the allowable absence from GB and align with UC and other legacy benefits. 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 abroad exceeding the prescribed limits when those limits are reduced.

We are working with the Local Authority Associations and IT suppliers to assess requirements to implement the change.

Minor IT changes will be required within LAs.

### **Impact on claimants**

Currently claimants are required to report any changes which might affect their HB and PC entitlement, including absences from home, where those will last or are expected to last more than 13 weeks.

Those leaving GB will, under the new measure, be required to continue to report such absences, 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.

Where there could be cases of real prejudice, e.g. on medical absence and, for HB only, some occupations abroad from GB we will allow absences of up to 26 weeks.

For claimants who have already made commitments to be abroad at the time the regulations come into force, we have provided transitional provisions. We are working with LAs and stakeholders to provide further information for claimants.

It is difficult to predict behavioural impacts with any certainty but it is possible that people who would previously have been temporarily absent for between four and 13 weeks will reduce the length of time they are absent from the country under the new rules.

The temporary absence changes will affect around 100,000 HB claimants and 60,000 PC claimants. Taking account of overlaps between the two (about 45% of PC claimants also claim HB), this represents about 130,000 claimants. We assume for the costs that over half of these will adapt their behaviours to avoid any benefit losses and that around 45,000 will continue to take an absence of between 4 and 13 weeks and incur a loss of benefit of, on average, around £600 in total.

There are other potential behavioural impacts - the policy could discourage claimants from notifying LAs and DWP of their intention to travel abroad, thus potentially increasing fraud rates. The potential behavioural aspects have been raised with the Fraud, Error and Debt (FED) working group. There are already disincentives to commit fraud including; cautions, administrative penalties and prosecution, as well as recovery of the fraudulent overpayment.

Due to the nature of the change it is not possible to identify in advance those who may be materially affected by this change, however, claimants who wish to be abroad from GB for longer periods should consider if they can afford to do so – just as working families do.

## **Information strategy and communications**

The Department routinely issues new guidance to HB processing staff at least five weeks before a legislative change comes into effect. The guidance for this change will be circulated in mid-February.

Guidance for PC staff will be updated to reflect the changes along with 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.

## **Consultation on the proposed changes**

The measure was decided and announced as part of the Spending Review 2015. Although the PC changes have not been subject to separate formal consultation, we are already in discussion with key stakeholders, for example, Age UK, before the changes are introduced. A six week period of consultation began with LAs on the 22nd December for changes to HB. The Committee will be notified in writing if the consultation process produces any change to the proposals.

## **Research, monitoring and evaluation**

We do not propose to undertake formal evaluation of this change. We will monitor the impact through our regular liaison with the Local Authority Associations and FED working group.

## **Business**

These proposed regulations will not impact on business.



## Annex A

### Summary of Housing Benefit changes relating to temporary absence outside GB

Situation	Current Rules of absence outside GB	Proposed Rules of absence outside GB
Claimant or partner temporarily absent for any reason.	Up to 13 weeks	Up to 4 weeks (aligns with UC)
Claimant absent in connection with the death of a partner	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent in connection with the death of a child or a qualifying young person normally living with the claimant.	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent in connection with the death of a close relative of claimant, partner or of a child of qualifying young person normally living with the claimant.	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent abroad in order to receive medical treatment	Up to 52 weeks	Up to 26 weeks (aligns with UC)
Claimant or partner accompanying a partner, child or qualifying young person for medical treatment abroad	Up to 52 weeks	Up to 26 weeks (aligns with UC)
A person enters residential accommodation to determine whether it is suitable for their needs	13 weeks	Up to 4 weeks (aligns with UC)
The person is resident in hospital or similar institution as a patient	52 weeks	Up to 26 weeks (aligns with UC)
The claimant, partner or dependent child is undergoing medical treatment (MT) or medically approved convalescence in accommodation other than	52 weeks	Up to 26 weeks (aligns with UC)

residential accommodation		
The person is providing medically approved care (MAC) of a person residing in the UK or elsewhere.	52 weeks	Up to 4 weeks (aligns with UC)
The person is caring for a child whose parent is temporarily absent for receiving MAC or MT.	52 weeks	Up to 4 weeks (aligns with UC)
The person receiving temporary care in residential accommodation that is not on a trial basis.	52 weeks	Up to 4 weeks (aligns with UC)
The person that has left their dwelling through fear of violence in that dwelling.	52 weeks	Up to 4 weeks (aligns with UC)
In connection with being a mariner or continental shelf worker	Up to 13 weeks	Up to 26 weeks (aligns with UC)
In connection with being a Share fisherman	Up to 13 weeks	Up to 4 weeks
The person is undertaking a training course.	Up to 52 weeks	Up to 4 weeks (aligns with UC)
Students	Up to 52 weeks	Up to 4 weeks (aligns with UC)
A person is detained in custody on remand pending trial, pending sentence upon conviction, has bail requirements to live elsewhere, needs to live in bail accommodation or is sentenced following conviction	Up to 52 weeks	Up to 4 weeks (aligns with UC)
Crown Servants	Up to 13 weeks	Up to 4 weeks (aligns with UC)
Members of Her Majesty's Armed Forces	Up to 13 weeks if absent outside of GB. If within GB, 13 weeks	For absence outside of GB, 26 weeks (aligns with UC Reg 10)  For absence within GB, no change.
Northern Ireland, Isle of Man and the Channel Islands (absences to any of these places is absence outside GB)	13 weeks	4 weeks in line with treatment in other legacy benefits and UC

## Annex B

### Summary of Pension Credit changes relating to temporary absence outside GB

Situation	Current Rules of absence outside GB	Proposed Rules of absence outside GB
Claimant or partner temporarily absent from GB for any reason.	Up to 13 weeks	Up to 4 weeks (aligns with UC)
Claimant absent in connection with the death of a partner	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent in connection with the death of a child or a qualifying young person normally living with the claimant.	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent in connection with the death of a close relative of claimant, partner or of a child of qualifying young person normally living with the claimant.	Up to 13 weeks	Up to 8 weeks (aligns with UC)
Claimant or partner absent abroad in order to receive medical treatment	Open-ended	Up to 26 weeks (aligns with UC)
Claimant or partner accompanying a partner, child or qualifying young person for medical treatment abroad	13 weeks	Up to 26 weeks (aligns with UC)
Transitional Protection	Exists for when the last rule change was introduced in 2008.	Those abroad at the time of the rule change subject to the old rules until they return to GB