

Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling

8.—(1) Subject to regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), the following persons shall be treated as if they were liable to make payments in respect of a dwelling—

- (a) the person who is liable to make those payments;
- (b) a person who is a partner of the person to whom sub-paragraph (a) applies;
- (c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—
 - (i) he was formerly a partner of the person who is so liable; or
 - (ii) he is some other person whom it is reasonable to treat as liable to make the payments;
- (d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability;
- (e) a person who is a partner of a student to whom regulation 56(1) (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling) applies.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in, or in respect of, which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 79 to 81 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent free periods), be treated as liable to pay the amount as so varied during the whole of that period.

Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling

9.—(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

- (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
- (b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner,
- (c) his liability under the agreement is—
 - (i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners; or
 - (ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;
- (d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;
- (e) subject to paragraph (3), his liability under the agreement is to a company or a trustee of a trust of which—
 - (i) he or his partner;
 - (ii) his or his partner's close relative who resides with him; or
 - (iii) his or his partner's former partner;
 is, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;

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- (f) his liability under the agreement is to a trustee of a trust of which his or his partner's child is a beneficiary;
 - (g) subject to paragraph (3), before the liability was created, he was a non-dependant of someone who resides, and continues to reside, in the dwelling;
 - (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;
- ¹(ha) he or his partner—
- (i) was a tenant under a long tenancy in respect of the dwelling; and
 - (ii) less than five years have elapsed since the tenancy ceased, except where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing the tenancy; ◀
- (i) his occupation, or his partner's occupation, of the dwelling is a condition of his or his partner's employment by the landlord;
 - (j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies at his home) by, a religious order;
 - (k) he is in residential accommodation;
 - (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.

¹Reg. 9(1)(ha) inserted by reg. 2(3) of S.I. 2007/1356 as from 1.10.07.

(2) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had *inter alia* to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law.

(3) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme.

(4) In this regulation "residential accommodation" means accommodation which is provided in—

- (a) a care home; or
- (b) an independent hospital.

Persons from abroad

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1(a) (treatment of claims for housing benefit by refugees) apply.

►²(2) In paragraph (1), "person from abroad" means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

²Regs. 10(2)-(3B) substituted for regs. 10(2) & (3) by reg. 4(2)(a) of S.I. 2006/1026 as from 30.4.06.

(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).