

# Housing Rights



**Joint response to SSAC consultation on The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016**

## About us

Housing Rights was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We work to achieve positive change by protecting and promoting the rights of people who are in housing need and our policy work is based on the experience of our clients. Any change to Housing Benefit regulations, and even those concerning Pension Credit, could impact on the ability of our clients to sustain their tenancies and avoid becoming homeless as a consequence of rent arrears.

Law Centre (NI) provides specialist legal support - advice, representation, training, information and policy comment - to organisations and disadvantaged individuals, in the areas of social security; trafficking; employment and forced labour; and health and social care. It is a not-for-profit agency working to advance social welfare rights and social justice in Northern Ireland.

## The proposal

DWP proposes to amend the Housing Benefit and State Pension Credit regulations to reduce the period of allowable absence from outside Great Britain, generally from 13 weeks to 4 weeks. It is a condition of entitlement to both benefits that claimants are in Great Britain, although the regulations provide that temporary absences are permitted in some instances. We are aware that this is part of a series of measures to harmonise existing Regulations with the Universal Credit system.

## Geographical scope

The new regulations substitutes "Great Britain" for "United Kingdom." This means that any claimant outside of Great Britain for more than the allowed temporary absence period will lose their entitlement to benefit.

In its Explanatory Memorandum to the Committee, the Department for Work and Pensions states that:

*'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.'*<sup>1</sup>

It seems to us that the proposed regulations will in fact have the very opposite effect: claimants moving from Great Britain to Northern Ireland will be adversely impacted by this new approach and therefore will not be treated the same way. For example, a claimant living in Glasgow who enrolls in a training course in Belfast might lose her entitlement to benefit. She would not be so affected if the training took place in Cardiff. We can find no rationale for reducing the geographical scope of the regulations to Great Britain<sup>2</sup>, and thereby limiting entitlement to those moving between Great Britain and Northern Ireland. We would recommend that the Social Security Advisory Committee seeks an explanation from DWP as to the rationale for this.

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<sup>1</sup> Department for Work & Pensions (2016) 'Explanatory Memorandum to the Social Security Advisory Committee: The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016', p3

<sup>2</sup> We note that the Universal Credit regulations only apply to GB, but we can see no rationale for this either.

We are also concerned by the prospect of NI Ministers implementing similar policies, as per the Explanatory Memorandum cited above. Does this mean that the geographical scope for Northern Irish claimants will be reduced from GB to Northern Ireland alone, resulting in a possible loss of entitlement for claimants moving from Northern Ireland to Great Britain? Our experience is that claimants can already face difficulties with their benefits when moving between Northern Ireland and Great Britain.<sup>3</sup> These regulations will subject more claimants to such difficulties.

Given our concerns about the effect these regulations will have on people in Northern Ireland, and our concern about how Northern Ireland legislators will respond, we are pleased to respond, even though these regulations have an initial GB focus.

We have offered comment below on several aspects of the proposed Regulations.

### **Impact of changes**

We have several concerns with the impact of these changes on the ability of claimants to sustain their tenancies, and avoid becoming homeless.

#### (a) General impact

In general terms, it is likely that these changes will result in significant increases in rent arrears, homelessness and associated increases in avoidable public expenditure. If we take the Department's forecasts to be accurate, for illustrative purposes – 45,000 claimants across Great Britain losing an average of £600 – the scale of the potential impact is immediately evident. It is clear from our experience providing advice and representation that those claimants affected by these changes are highly unlikely to have £600 in disposable income to begin with. This inevitably means that these households will fall into rent arrears, which could have serious effects on their ability to sustain their tenancies.

In this regard, we are also conscious that the impact of these Regulations in Northern Ireland will overlap with the implementation of Welfare Reform - specifically Universal Credit - in Northern Ireland. It is therefore possible that households in Northern Ireland affected by these changes will find their Housing Benefit claim terminated, and instead of making a new Housing Benefit claim, will be "migrated" into making an application for Universal Credit.

This is particularly concerning, given that Universal Credit applications take 5 weeks (if not longer) to commence regular payment, which could practically result in the accumulation of further debt and rent arrears by affected households. The Committee will be aware of a recent survey by the National Federation of ALMOs and the Association of Retained Council Housing, which found that 89% of the 2,000 new Universal Credit recipients surveyed were in rent arrears and 34% were subject to an alternative payment arrangement (meaning that rent was passed directly to landlords after the tenant accrued more than eight weeks of arrears). Significantly, the proportion of Universal Credit recipients in rent arrears was found to be almost three times higher than the sector average rate of 31%.<sup>4</sup>

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<sup>3</sup> The Law Centre has assisted in a number of such cases: <http://www.lawcentreni.org/news/recent-news/1-news/1221-esa-payments-ni-gb-reciprocal-agreement.html>

<sup>4</sup> National Federation of Arms Length Management Organisations & Association of Retained Council Housing (2015) 'Welfare Reform survey 2015'

The general impact of these changes, combined with the pending implementation of Welfare Reform in Northern Ireland, leads Housing Rights and the Law Centre to fear significantly increased rent arrears and rates of homelessness amongst affected claimants, with significant associated costs to the public purse.

(b) Impact on victims of domestic violence

The accompanying Equality Analysis recognises that there will be an impact of claimants impacted by the policy who have left their dwelling through fear of domestic violence. The Analysis notes that the majority of these claimants are likely to be women.<sup>5</sup> Despite this acknowledgement, the Department's view is that a different approach is not necessary because the numbers are so small (we would note that, while the numbers might be low, the risks faced by victims could not be higher).

Victims of domestic violence currently have 52 weeks protection before they are deemed to be temporarily absent (regulation 7 (16) (x)). This period will be reduced to 4 weeks, which is a very significant change. Our concern is that some victims, who are worried about their tenancies and financial liabilities, might move back to their dwelling prematurely and back into a risky situation. Quite simply, 4 weeks is unlikely to be adequate for a victim of domestic violence to seek help and for statutory agencies to respond e.g. through the criminal justice system, assessing vulnerabilities, implementing security measures, et cetera. Accordingly, we feel strongly that the legislation should not reduce the period of Temporary Absence for victims of domestic violence.

(c) Impact on prisoners

Another group who will experience very significant changes are those detained in the criminal justice system outside their home jurisdiction, whether that be GB or NI (regulation 7(16)(i)): specifically, a person detained 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.<sup>6</sup> The period of Temporary Absence allowed for this group will decrease from 52 weeks to 4 weeks. This will inevitably lead to greater instability for claimants in this category, which is unlikely to assist in any rehabilitation.

(d) Impact on engagement with training programmes outside of GB

The current rules permit a temporary absence of up to 52 weeks for claimants receiving training (regulation 7(16) (iv)). This enables people to benefit from short to medium term training opportunities or work placements, such as the European Commission Leonardo da Vinci programme that aims to build a skilled and mobile workforce across Europe. Participants in such programmes are often young people at early stages in their careers.<sup>7</sup> Other changes to the social security system have already made it difficult for participants returning from such programmes, including changes in habitual residence and the three month rule introduced in 2014.<sup>8</sup> The Law Centre has acted for a number of claimants – many of them in their 20s – who have been adversely impacted.<sup>9</sup>

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<sup>5</sup> Equality Analysis for Housing Benefit (Temporary Absence) (Amendment) Regulations 2015 (18 January 2016)

<sup>6</sup> The Equality Analysis notes that there are arrangements where a sentenced UK prisoner can request to be transferred to their home country under Schedule 1 of the Crime (Sentences) Act 1997. It is therefore possible that a prisoner serving a sentence in a Northern Ireland prison would be impacted by these GB regulations.

<sup>7</sup> The Equality Analysis suggests that, if there is an age impact, then it is likely to be older age groups. There does not seem to have been any consideration about impact on younger claimants.

<sup>8</sup> As of 1 January 2014, a person cannot be considered to be habitually resident (e.g. necessary for income-based JSA) unless s/he has been living in the Common Travel Area for at least three months. See Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013.

<sup>9</sup> For example, see Law Centre (NI) *Impact Report 2015* p.7 client story.

Given the risk of difficulties that a claimant may face on return – namely the prospect of losing entitlement to Housing Benefit and Jobseekers Allowance – we imagine that many young people will simply opt to ‘stay put.’ This may have a knock on effect on employability, and is likely to affect young people in particular.

(e) Impact on migrant workers

The new rules are likely to impact on migrant workers and their families. Currently, it is permissible to spend up to 13 weeks abroad while retaining entitlement to Housing Benefit if their absence from UK is in connection with the death of a close relative or partner’s close relative. This period will be reduced to 4 weeks, although there is provision to extend period for up to a 4 further weeks if the relevant authority considers that it would be ‘unreasonable’ to expect the claimant to return (proposed regulation 2(4)(13e)).

This arrangement strikes us as being cumbersome and potentially difficult to operate, especially given that claimants are likely to be abroad at this time. For example, will claimants be able to appeal a decision that it is reasonable to require a claimant to return?

These regulations are also narrowly prescriptive in their scope: the death of a close relative might be one reason for a claimant to be abroad but there are many other reasons, including provision of care to a sick or injured relative, making arrangements for long-term care for disabled or elderly relatives, helping children settle into school et cetera. These are all fundamental aspects of family life, and the new regulations will pose a significant obstacle for some families. Cross-border workers – specifically, those normally residing in Northern Ireland but working in the Republic of Ireland – are also likely to be affected.

Equality Impact

As we have noted above, Housing Rights and the Law Centre (NI) are concerned about the impact of these proposals on a number of specific groups such as those temporarily absent as a result of domestic violence, prisoners, migrant workers, and students. Whilst the Equality Analysis which accompanied these proposals highlights that the numbers impacted are likely to be small, it is disappointing that little evidence has been produced to support this and that the severity of the impact in each of these cases does not appear to have been given appropriate consideration. The Equality Impact Assessment provided by the Department in this regard is therefore disappointing.

### **Behavioural change forecasts**

In the explanatory memorandum, DWP states that 'it is difficult to predict behavioural impacts with any certainty'<sup>10</sup>; this is understandable given that elsewhere the Department have acknowledged that 'information on claimants that take a temporary absence, regardless of length of time, is not collected.'<sup>11</sup>

However, DWP go on to assume, for the purposes of costing, that 'over half of [those affected] 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.'<sup>12</sup>

It is not at all clear how the Department has travelled from asserting that it is difficult to predict behavioural impacts, to assuming that over half of all claimants will change their behaviours in response to the proposed changes: the Department have already acknowledged that they do not collect any information on the affected claimants in this regard. We would therefore recommend that the Committee seek further clarity from the Department as to how they have arrived at these assumptions, and if there is any way in which these assumptions could be improved.

### **Conclusion**

We do not support the proposed changes.

However, if the changes do proceed, we would recommend that the Social Security Advisory Committee seek a commitment from the Department to monitor the impact of these Regulations given their potential impact. We would also recommend that the Social Security Advisory Committee scrutinises the equivalent Northern Ireland regulations when available.

For more information about this response, please contact:

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<sup>10</sup> Ibid., p7

<sup>11</sup> Department for Work & Pensions (2016) 'Equality Analysis for Housing Benefit (Temporary Absence) (Amendment) Regulations 2015', p3

<sup>12</sup> DWP (2016) 'Explanatory Memorandum', p7