

2004 No. 197

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Habitual Residence Amendment)
Regulations (Northern Ireland) 2004**

Made - - - - - *29th April 2004*

Coming into operation *1st May 2004*

The Department for Social Development, in exercise of the powers conferred by sections 122(1)(a) and (d), 131(1) and (2), 133(2)(i) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Articles 6(5) and (12) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(b) and now vested in it(c), and section 1(5)(a) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(d) and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(e), in so far as regulations 2 and 6 are concerned, and after reference to the Social Security Advisory Committee(f), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations shall be cited as the Social Security (Habitual Residence Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 1st May 2004.

(2) In these Regulations –

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(g);

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(h);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(i);

“the State Pension Credit Regulations” means the State Pension Credit Regulations (Northern Ireland) 2003(j).

(a) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(b) S.I. 1995/2705 (N.I. 15); Article 36(2)(a) was amended by Article 4 of and paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
(c) See Article 8(b) of S.R. 1999 No. 481 and Part II of Schedule 6
(d) 2002 c. 14 (N.I.)
(e) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); see also Article 6(b) of S.R. 1999 No. 481 and Part II of Schedule 4
(f) See section 149(2) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(g) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1994 Nos. 80 and 266, S.R. 1996 Nos. 405 and 448, S.R. 1998 No. 81 and S.R. 2000 Nos. 71 and 125
(h) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1994 No. 266, S.R. 1996 Nos. 375 and 405 and S.R. 2000 No. 71
(i) S.R. 1996 No. 198 ; relevant amending Regulations are S.R. 1996 Nos. 356 and 503 and S.R. 2000 No. 71
(j) S.R. 2003 No. 28; relevant amending Regulations are S.R. 2003 No. 421

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

Amendment of the Housing Benefit Regulations

2. After regulation 7A of the Housing Benefit Regulations(b) (persons from abroad)
- (a) in paragraph (4)(e)(i) after “No. 73/148/EEC” there shall be added “or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000(c) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(d)”;
- (b) after paragraph (4) there shall be inserted the following paragraph –
- “(4B) In this regulation, for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”.

Amendment of the Income Support Regulations

3. In regulation 21 of the Income Support Regulations (special cases) –
- (a) in paragraph (3)(e) for “Subject to paragraph (3D)” there shall be substituted “Subject to paragraphs (3D) and (3E)”;
- (b) in paragraph (3) in the definition of “person from abroad”(f) in sub-paragraph (a) after “No. 73/148/EEC” there shall be added “or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004”;
- (c) after paragraph (3D)(g) there shall be inserted the following paragraph –
- “(3E) In paragraph (3), for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”.

Amendment of the Jobseeker’s Allowance Regulations

4. In regulation 85 of the Jobseeker’s Allowance Regulations (special cases) –
- (a) in paragraph (4)(h) for “Subject to paragraph (4A)” there shall be substituted “Subject to paragraphs (4A) and (4B)”;
- (b) in paragraph (4) in the definition of “person from abroad”(i) in sub-paragraph (a) after “No. 73/148/EEC” there shall be added “or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004”;

(a) 1954 c. 33 (N.I.)

(b) Regulation 7A was inserted by regulation 2(1) of S.R. 1994 No. 80 and paragraph (4) was amended by regulation 3(a) of S.R. 1994 No. 266, regulation 4(3)(b) of S.R. 1996 No. 405, regulation 2(b) of S.R. 1996 No. 448, regulation 11(3) and (4)(a) of S.R. 1998 No. 81, regulation 6(3)(a) of S.R. 2000 No. 71 and regulation 4 of S.R. 2000 No. 125

(c) S.I. 2000/2326

(d) S.I. 2004/1219

(e) Paragraph (3) was amended by regulation 3(2) of S.R. 1996 No. 375

(f) Definition of “person from abroad” was amended by regulation 2(1) of S.R. 1994 No. 266, regulation 5(6)(b) of S.R. 1996 No. 405 and regulation 5(4)(b) of S.R. 2000 No. 71

(g) Paragraph (3D) was inserted by regulation 3(3) of S.R. 1996 No. 375

(h) Paragraph (4) was amended by regulation 2(9)(a) of S.R. 1996 No. 503

(i) Definition of “person from abroad” was amended by regulation 8(1)(b) of S.R. 1996 No. 356 and regulation 10(3)(b) of S.R. 2000 No. 71

(c) after paragraph (4A)(a) there shall be inserted the following paragraph –

“(4B) In paragraph (4), for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”.

Amendment of the State Pension Credit Regulations

5. In regulation 2 of the State Pension Credit Regulations(b) (persons not in Northern Ireland) –

(a) at the beginning there shall be inserted “–(1) Subject to paragraph (2)”;

(b) in renumbered paragraph (1)(a) after “No. 73/148/EEC” add “or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004”;

(c) after renumbered paragraph (1) there shall be added the following paragraph –

“(2) For the purposes of treating a person as not in Northern Ireland in paragraph (1), no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.”.

Transitional arrangements and savings

6.—(1) Paragraph (2) shall apply where a person –

(a) is entitled to a specified benefit in respect of a period which includes 30th April 2004;

(b) claims a specified benefit on or after 1st May 2004 and it is subsequently determined that he is entitled to that benefit in respect of a period which includes 30th April 2004;

(c) claims a specified benefit on or after 1st May 2004 and it is subsequently determined that he is entitled to such a benefit in respect of a period which is continuous with a period of entitlement to the same or another specified benefit which includes 30th April 2004;

(d) claims jobseeker’s allowance on or after 1st May 2004 and it is subsequently determined that he is entitled to jobseeker’s allowance in respect of a period of entitlement to that benefit which is linked to a previous period of entitlement which includes 30th April 2004 by virtue of regulations made under paragraph 3 of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995.

(2) Where this paragraph applies –

(a) regulation 7A of the Housing Benefit Regulations shall continue to have effect as if regulation 2 had not been made;

(b) regulation 21 of the Income Support Regulations shall continue to have effect as if regulation 3 had not been made;

(c) regulation 85 of the Jobseeker’s Allowance Regulations shall continue to have effect as if regulation 4 had not been made, and

(d) regulation 2 of the State Pension Credit Regulations shall continue to have effect as if regulation 5 had not been made.

(3) The provisions saved by paragraph (2) shall continue to have effect until the date on which entitlement to a specified benefit for the purposes of paragraph (1) ceases, and if there is more than one such specified benefit, until the last date on which such entitlement ceases.

(4) In this regulation “specified benefit” means income support, housing benefit, jobseeker’s allowance and state pension credit.

(a) Paragraph (4A) was inserted by regulation 2(9)(b) of S.R. 1996 No. 503

(b) Regulation 2 was amended by regulation 2(3) of S.R. 2003 No. 421

Sealed with the Official Seal of the Department for Social Development on 29th April 2004.

(L.S.)

John Deery

Senior Officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to regulations 2 and 6 of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 29th April 2004.

(L.S.)

Ciaran Doran

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the Housing Benefit (General) Regulations (Northern Ireland) 1987 and the State Pension Credit Regulations (Northern Ireland) 2003 ("the income-related benefit regulations").

In particular, they amend the income-related benefit regulations with effect that no person shall be treated as habitually resident for the purposes of entitlement to income support, jobseeker's allowance, housing benefit and state pension credit unless they have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. They also extend the exception to the habitual residence test to include certain persons treated as workers from countries acceding to the European Union from 1st May 2004 in accordance the Accession (Immigration and Worker Registration) Regulations 2004 (S.I. 2004/1219).

The Regulations also make provision for transitional arrangements and savings for those who are entitled to income support, jobseeker's allowance, housing benefit or state pension credit on 30th April 2004.

The Report of the Social Security Advisory Committee dated 22nd April 2004 on the proposals referred to them in respect of the Social Security (Habitual Residence) Amendment Regulations 2004 (S.I. 2004/1232), together with a statement showing the extent to which the proposals give effect to the Recommendations of the Committee, and in so far as they do not give effect to them, the reasons why not, are contained in Command Paper Cm 6181 published by the Stationery Office Ltd.

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