

2014 No. 133

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Habitual Residence) (Amendment)
Regulations (Northern Ireland) 2014**

Made - - - - *8th May 2014*

Coming into operation - *31st May 2014*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 131(1) and (2) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), Articles 6(5) and (12) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(b) and sections 115(3), (4) and (8) of the Immigration and Asylum Act 1999(c), and now vested in it(d), sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(e) and sections 4(3) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007(f).

Regulations 5 and 6 are made with the consent of the Department of Finance and Personnel(g).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 5 and 6 should not be referred to it(h).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2014 and shall come into operation on 31st May 2014.

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

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- (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; Article 36(2) was amended by paragraph 55 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
(c) 1999 c. 33
(d) See Article 8(b) of S.R. 1999 No. 481
(e) 2002 c. 14 (N.I.)
(f) 2007 c. 2 (N.I.)
(g) 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
(h) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992
(i) 1954 c.33 (N.I.)

Amendment of the Income Support Regulations

2. In regulation 21AA(4) of the Income Support (General) Regulations (Northern Ireland) 1987(a) (special cases: supplemental – persons from abroad) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006(b) as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

Amendment of the Jobseeker’s Allowance Regulations

3. In regulation 85A(4) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(c) (special cases: supplemental – persons from abroad) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

Amendment of the State Pension Credit Regulations

4. In regulation 2(4) of the State Pension Credit Regulations (Northern Ireland) 2003(d) (persons not in Northern Ireland) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

Amendment of the Housing Benefit Regulations

5. In regulation 10(5) of the Housing Benefit Regulations (Northern Ireland) 2006(e) (persons from abroad) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

(a) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178 and paragraph (4)(f) was substituted by regulation 2 of S.R. 2013 No. 167
(b) S.I. 2006/1003; regulation 6 was amended by paragraph 3 of Schedule 1 to S.I. 2013 No. 3032
(c) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178 and paragraph (4)(f) was substituted by regulation 3 of S.R. 2013 No. 167
(d) S.R. 2003 No. 28; regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178 and paragraph (4)(f) was substituted by regulation 4 of S.R. 2013 No. 167
(e) S.R. 2006 No. 405; paragraph (5)(f) of regulation 10 was substituted by regulation 5 of S.R. 2013 No. 167

Amendment of the Housing Benefit Regulations (Persons who have attained the qualifying age for state pension credit) Regulations

6. In regulation 10(5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(a) (persons from abroad) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

Amendment of the Employment and Support Allowance Regulations

7. In regulation 70(4) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(b) (special cases: supplemental – persons from abroad) for sub-paragraphs (a) to (f) substitute—

- “(za) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za) within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;”.

Revocations

8. Regulations 2, 3, 4, 5, 6 and 7 of the Social Security (Croatia) (Amendment) Regulations (Northern Ireland) 2013(c) are revoked.

Sealed with the Official Seal of the Department for Social Development on 8th May 2014

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

The Department of Finance and Personnel consents to regulations 5 and 6.

Sealed with the Official Seal of the Department of Finance and Personnel on 8th May 2014

(L.S.)

John McKibbin
A senior officer of the Department of Finance and Personnel

(a) S.R. 2006 No. 406; paragraph (5)(f) of regulation 10 was substituted by regulation 6 of S.R. 2013 No. 167
(b) S.R. 2008 No. 280; paragraph (4)(f) of regulation 70 was by substituted by regulation 7 of S.R. 2013 No. 167
(c) S.R. 2013 No. 167

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 State Pension Credit Regulations (Northern Ireland) 2003, the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 ("the income-related benefit Regulations").

The income-related benefit Regulations provide that a claimant is ineligible for benefit where he or she is a "person from abroad" or, in the case of state pension credit, a "person not in Northern Ireland". A person is a person from abroad or a person not in Northern Ireland if he or she is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. No person shall be treated as habitually resident without a relevant right to reside in the place where he or she is habitually resident. However, certain categories of people are exempt from this habitual residence test.

These Regulations amend some of the categories of person who are exempt from the habitual residence test. They are made in consequence of amendments made to the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) by the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013 (S.I. 2013/2032) (together, "the Immigration Regulations") which transpose Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. These Regulations ensure consistency between the income-related benefit Regulations and the Immigration Regulations.

Regulation 8 makes consequential revocations.

In so far as these Regulations are required, for the purposes of regulations 5 and 6, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

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