

2019 No. 90

EXITING THE EUROPEAN UNION

SOCIAL SECURITY

**The Social Security (Income-related Benefits) (Updating and
Amendment No. 2) (EU Exit) Regulations (Northern Ireland)
2019**

Made - - - - *17th April 2019*

Coming into operation - *7th May 2019*

The Department for Communities(**a**) makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 133(2)(a) and (i) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**), Article 36(2) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(**c**), and now vested in it(**d**), sections 1(5)(a) and 19(2) of the State Pension Credit Act (Northern Ireland) 2002(**e**) and section 25(2) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(**f**).

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

Citation and commencement

1. These Regulations may be cited as the Social Security (Income-related Benefits) (Updating and Amendment No. 2) (EU Exit) Regulations (Northern Ireland) 2019 and shall come into operation on 7th May 2019.

Amendment of the Income Support (General) Regulations

2. In regulation 21AA of the Income Support (General) Regulations (Northern Ireland) 1987(**h**) (special cases: supplemental—persons from abroad)—

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- (a) *See* section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(b) 1992 c. 7; section 122(1) was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21) and section 171(1) was amended by paragraph 5 of Schedule 4 to that Act
(c) S.I. 1995/2705 (N.I. 15); 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)
(d) *See* Article 8(b) of S.R. 1999 No. 481
(e) 2002 c. 14 (N.I.)
(f) 2007 c. 2 (N.I.); section 25(2) was amended by Article 57(2)(b) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))
(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 and section 1(4) of the Departments Act (Northern Ireland) 2016
(h) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178 and amended by S.R. 2012 No. 380 and S.R. 2014 No. 133

- (a) in paragraph (2) after “paragraph (3)” insert “or (3A)”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006”(a) substitute “Immigration (European Economic Area) Regulations 2016”(b);
 - (ii) for sub-paragraph (bb)(c) substitute—
 - “(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;”(d);
- (c) after paragraph (3) insert—
 - “(3A) A right to reside falls within this paragraph if it is one which exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971(e) by virtue of—
 - (a) Appendix EU to the immigration rules(f) made under section 3(2) of that Act; or
 - (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;
- (d) in paragraph (4)(za)(g) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

Amendment of the Jobseeker’s Allowance Regulations

3. In regulation 85A of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(h) (special cases: supplemental—persons from abroad)—

- (a) in paragraph (2)(b) after “paragraph (3)” insert “or (3A)”;
- (b) in paragraph (3)(i)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”;
 - (ii) for sub-paragraph (aa) substitute—
 - “(aa) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;”;
- (c) after paragraph (3) insert—
 - “(3A) A right to reside falls within this paragraph if it is one which exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—
 - (a) Appendix EU to the immigration rules made under section 3(2) of that Act; or
 - (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;

(a) S.I. 2006/1003
 (b) S.I. 2016/1052
 (c) Paragraph (3)(bb) was inserted by regulation 2(a) of S.R. 2012 No. 380
 (d) The definition of “primary carer” in regulation 16 was amended by S.I. 2018/801; there are other amendments but none is relevant
 (e) 1971 c. 77
 (f) The immigration rules were laid before Parliament on 23rd May 1994 (HC 395); Appendix EU was laid before Parliament on 20th July 2018 as part of a command paper that amended the immigration rules entitled “Statement of Changes in Immigration Rules” (CM 9675); Appendix EU was amended in respect of the Zambrano right to reside by a further command paper entitled “Statement of Changes in Immigration Rules” laid before Parliament on 7th March 2019 (HC 1919)
 (g) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 2 of S.R. 2014 No. 133
 (h) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178 and amended by S.R. 2012 No. 380 and S.R. 2014 No. 133
 (i) Sub-paragraph (a) was amended, and sub-paragraph (aa) was added, by regulation 3(a) of S.R. 2012 No. 380

- (d) in paragraph (4)(za)(a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

Amendment of the State Pension Credit Regulations

4. In regulation 2(b) of the State Pension Credit Regulations (Northern Ireland) 2003(c) (persons not in Northern Ireland)—

- (a) in paragraph (2) after “paragraph (3)” insert “or (3A)”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”;
 - (ii) for sub-paragraph (bb)(d) substitute—

“(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;”;
- (c) after paragraph (3) insert—

“(3A) A right to reside falls within this paragraph if it is one which exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

 - (a) Appendix EU to the immigration rules made under section 3(2) of that Act; or
 - (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;
- (d) in paragraph (4)(za)(e) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

Amendment of the Housing Benefit Regulations

5. In regulation 10 of the Housing Benefit Regulations (Northern Ireland) 2006(f) (persons from abroad)—

- (a) in paragraph (3) after “paragraph (4)” insert “or (4A)”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”;
 - (ii) for sub-paragraph (bb)(g) substitute—

“(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;”;
- (c) after paragraph (4) insert—

“(4A) A right to reside falls within this paragraph if it is one which exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

 - (a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(a) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 3 of S.R. 2014 No. 133
(b) Regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178
(c) S.R. 2003 No. 28; relevant amending Regulations are S.R. 2006 No. 178, S.R. 2012 No. 380 and S.R. 2014 No. 133
(d) Sub-paragraph (bb) was inserted by regulation 4(a) of S.R. 2012 No. 380
(e) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 4 of S.R. 2014 No. 133
(f) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2012 No. 380 and S.R. 2014 No. 133
(g) Sub-paragraph (bb) was inserted by regulation 5(a) of S.R. 2012 No. 380

- (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;
- (d) in paragraph (5)(za)(a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

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

6. In regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(b) (persons from abroad)—

- (a) in paragraph (3) after “paragraph (4)” insert “or (4A)”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”;
 - (ii) for sub-paragraph (bb)(c) substitute—
 - “(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;”;
- (c) after paragraph (4) insert—
 - “(4A) A right to reside falls within this paragraph if it is one which exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—
 - (a) Appendix EU to the immigration rules made under section 3(2) of that Act; or
 - (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;
- (d) in paragraph (5)(za)(d) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

Amendment of the Employment and Support Allowance Regulations

7. In regulation 70 of the Employment and Support Allowance Regulations (Northern Ireland) 2008(e) (special cases: supplemental – persons from abroad)—

- (a) in paragraph (2) after “paragraph (3)” insert “or (3A)”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”;
 - (ii) for sub-paragraph (bb)(f) substitute—
 - “(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;”;
- (c) after paragraph (3) insert—
 - “(3A) A right to reside falls within this paragraph if the right exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 5 of S.R. 2014 No. 133
 (b) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2012 No. 380 and S.R. 2014 No. 133
 (c) Sub-paragraph (bb) was inserted by regulation 6(a) of S.R. 2012 No. 380
 (d) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 6 of S.R. 2014 No. 133
 (e) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2012 No. 380 and S.R. 2014 No. 133
 (f) Sub-paragraph (bb) was inserted by regulation 7(a) of S.R. 2012 No. 380

- (a) Appendix EU to the immigration rules made under section 3(2) of that Act; or
- (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”;
- (d) in paragraph (4)(za)(a) for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.

Sealed with the Official Seal of the Department for Communities on 17th April 2019
(L.S.)

Anne McCleary
A senior officer of the Department for Communities

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

Sealed with the Official Seal of the Department of Finance on 17th April 2019
(L.S.)

Emer Morelli
A senior officer of the Department of Finance

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 (together the “income-related benefit regulations”).

The income-related benefit regulations provide that a claimant is ineligible for benefits 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 (as the case may be) 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 the income-related benefit regulations to reflect that a new right to reside has been created for nationals of European Economic Area states (“EEA nationals”) in Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971, in the form of limited leave to enter, or remain in, the United Kingdom. The effect of these Regulations is that this new right to reside is not a relevant right to reside for the purposes of establishing habitual residence.

These Regulations also reflect the change to the immigration rules that enables a non-EEA national carer of a British Citizen in the situation described in regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 (a “Zambrano carer”) to be granted limited leave to enter, or remain in, the United Kingdom under Appendix EU. This continues to be a right to reside that is not relevant for the purposes of establishing habitual residence.

(a) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulation 7 of S.R. 2014 No. 133

These Regulations also update provisions in the income-related benefit regulations that refer to the Immigration (European Economic Area) Regulations 2006 so that instead they refer to the Immigration (European Economic Area) Regulations 2016, as the latter revoked the former.

These Regulations 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, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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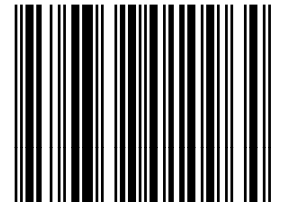
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