

2020 No. 149

SOCIAL SECURITY

The Social Security (Income-related Benefits) (Persons of Northern Ireland – Family Members) (Amendment) Regulations (Northern Ireland) 2020

Made - - - - *23rd July 2020*

Coming into operation - *24th August 2020*

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(1), (2)(a) and (3) 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.—(1) These Regulations may be cited as the Social Security (Income-related Benefits) (Persons of Northern Ireland – Family Members) (Amendment) Regulations (Northern Ireland) 2020 and shall come into operation on 24th August 2020.

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

Amendment of the Income Support (General) Regulations

2. In regulation 21AA of the Income Support (General) Regulations (Northern Ireland) 1987(**i**) (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 and section 1(7) of the Departments Act (Northern Ireland) 2016
(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) 1954 c.33 (N.I.)
(i) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178 and amended by S.R. 2014 No. 133 and S.R. 2019 No. 90

- (a) after paragraph (3A) insert—
 - “(3B) Paragraph (3A)(a) does not apply to a person who—
 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016^(a) if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).”;
- (b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
- (c) after paragraph (4)(zc) insert—
 - “(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
- (d) after paragraph (4) add—
 - “(5) In this regulation—
 - “EEA national” has the same meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;
 - “family member” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (3B) and (4)(zd);
 - “relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971^(b).”.

Amendment of the Jobseeker’s Allowance Regulations

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

- (a) after paragraph (3A) insert—
 - “(3B) Paragraph (3A)(a) does not apply to a person who—
 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3A).”;
- (b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
- (c) after paragraph (4)(zc) insert—
 - “(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
- (d) after paragraph (4) add—

(a) S.I. 2016/1052

(b) 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 family members of persons of Northern Ireland as part of a command paper entitled “Statement of Changes in Immigration Rules” (CP 232) laid before Parliament on 14th May 2020. The amendments include a definition of a relevant person of Northern Ireland

(c) S.R. 1996 No. 198; relevant amending Regulations are S.R. 2006 No. 178, S.R. 2014 No. 133 and S.R. 2019 No. 90

“(5) In this regulation—

“EEA national” has the meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;

“family member” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (3B) and (4)(zd);

“relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Amendment of the State Pension Credit Regulations

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

(a) after paragraph (3A) insert—

“(3B) Paragraph (3A)(a) does not apply to a person who—

(a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and

(b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).”;

(b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;

(c) after paragraph (4)(zc) insert—

“(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;

(d) after paragraph (4) add—

“(5) In this regulation—

“EEA national” has the meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;

“family member” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (3B) and (4)(zd);

“relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Amendment of the Housing Benefit Regulations

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

(a) after paragraph (4A) add—

“(4B) Paragraph (4A)(a) does not apply to a person who —

(a) has a right to reside granted by virtue of being a family member of a person of a relevant person of Northern Ireland; and

(a) S.R. 2003 No. 28; relevant amending Regulations are S.R. 2006 No. 178, S.R. 2014 No. 133 and S.R. 2019 No. 90

(b) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2014 No. 133 and S.R. 2019 No. 90

- (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3A).”;
- (b) in paragraph (5)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
- (c) after paragraph (5)(zc) insert
 - “(zd) a family member of a relevant person of Northern Ireland with a right to reside which falls within paragraph (4A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national”.
- (d) for paragraph (7) substitute—
 - “(7) In this regulation—
 - “EEA national” has the same meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;
 - “family member” has the same meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016, except that regulation 7(4) of those Regulations does not apply for the purposes of paragraph (4B) and (5)(zd) of this regulation;
 - “refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees;
 - “relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Amendment of the Housing Benefit (Persons who have attained 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) Regulations (Northern Ireland) 2006(a) (persons from abroad)—

- (a) after paragraph (4A) add—
 - “(4B) Paragraph (4A)(a) does not apply to a person who —
 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (4).”;
- (b) in paragraph (5)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
- (c) after paragraph (5)(zc) insert
 - “(zd) a family member of a relevant person of Northern Ireland with a right to reside which falls within paragraph (4A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
- (d) for paragraph (7) substitute—
 - “(7) In this regulation—
 - “EEA national” has the same meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;
 - “family member” has the same meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016, except that regulation 7(4)

(a) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2014 No. 133 and S.R. 2019 No. 90

of those Regulations does not apply for the purposes of paragraph (4B) and (5)(zd) of this regulation;

“refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees;

“relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Amendment of the Employment and Support Allowance Regulations

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

(a) after paragraph (3A) add—

“(3B) Paragraph (3A)(a) does not apply to a person who —

(a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and

(b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).”;

(b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;

(c) after paragraph (4)(zc) insert

“(zd) a family member of a relevant person of Northern Ireland with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national.”.

(d) after paragraph (5) add—

“(6) In this regulation—

“EEA national” has the same meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;

“family member” has the same meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016, except that regulation 7(4) of those Regulations does not apply for the purposes of paragraph (3B) and (4)(zd) of this regulation;

“relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Sealed with the Official Seal of the Department for Communities on 23rd July 2020

(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 23rd July 2020

(L.S.)

Emer Morelli

A senior officer of the Department of Finance

(a) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2014 No. 133 and S.R. 2019 No. 90

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 benefits regulations").

The income-related benefits regulations provide that a claimant is ineligible for benefits where they are 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 or a person to be treated as not being 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 family members of relevant persons of Northern Ireland can now apply for leave to enter, or remain, in the United Kingdom under Appendix EU to the immigration Rules made under section 3(2) of the Immigration Act 1971 (c.77) ("EUSS leave").

The amendments create an exception that where a family member of a relevant person of Northern Ireland has been granted limited EUSS leave, that leave is relevant for the purposes of establishing habitual residence. This is subject to the proviso that if the relevant person of Northern Ireland were an EEA national, the family member would have a right to reside not otherwise excluded by the income related benefits regulations.

The amendments provide that subject to certain conditions, a family member of a relevant person of Northern Ireland who has been granted limited EUSS leave will not be considered as being a person from abroad, a person not in Northern Ireland or a person to be treated as not being in Northern Ireland (as the case may be), thereby adding them to the list of persons exempt from the habitual residence test. The relevant conditions are that, at the point the family member makes a claim, the relevant person of Northern Ireland would be considered a qualified person under the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (the "EEA Regulations"), either as a worker or a self-employed person. Alternatively, where the family member would have a right to reside under the EEA regulations because of their relationship with a person of Northern Ireland, they will have access to income related benefits as long as that right to reside is not excluded by the relevant regulations. The relevant person of Northern Ireland is treated as if they are an EEA national and would therefore satisfy these conditions whether or not they are an EEA national (as defined in the EEA Regulations).

The amendments add and substitute relevant definitions in the income-related benefits regulations. They add definitions of an "*EEA national*" and "*family member*" by reference to the Immigration (EEA) Regulations. They define a "*relevant person of Northern Ireland*" by reference to Appendix EU to the immigration rules.

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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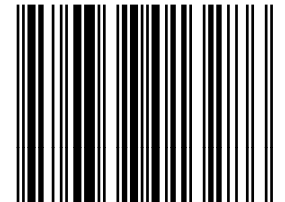
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.90

NI202007231008 07/2020 19585

<http://www.legislation.gov.uk/id/nisr/2020/149>

ISBN 978-0-33-801328-6



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