
STATUTORY INSTRUMENTS

2006 No. 2528

SOCIAL SECURITY

**The Social Security (Persons from Abroad)
Amendment (No. 2) Regulations 2006**

Made - - - - *14th September 2006*
Laid before Parliament *18th September 2006*
Coming into force - - *9th October 2006*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a), (d) and (e), 131(3)(b), 135(1) and (2), 137(1) and (2) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(1), sections 4(5) and (12), 35(1) and 36(2) of, and paragraph 11 of Schedule 1 to, the Jobseekers Act 1995(2) and sections 1(5) (a) and 17(1) of the State Pension Credit Act 2002(3).

He has consulted with such organisations which appear to him to be representative of the authorities concerned with these Regulations in so far as they relate to housing benefit and council tax benefit(4).

The Social Security Advisory Committee has agreed that the proposals to make these Regulations should not be referred to it(5).

Citation and commencement

1. These Regulations may be cited as the Social Security (Persons from Abroad) Amendment (No. 2) Regulations 2006 and shall come into force on 9th October 2006.

Amendment of the Income Support (General) Regulations 1987

2.—(1) The Income Support (General) Regulations 1987(6) are amended as follows.

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- (1) 1992 c.4; sections 123, 131, 135 and 137 were amended, with respect to council tax benefit, by Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraphs 1(1), 4, 8 and 9. Section 137(1) is cited because of the meaning given to the word “prescribed”. Section 175(1) and (3) is applied to provisions of the State Pension Credit Act 2002 (c.16) by section 19(1) of that Act.
- (2) 1995 c.18; section 35(1) is cited because of the meaning given to the words “applicable amount”, “prescribed” and “regulations”.
- (3) 2002 c.16; section 17(1) is cited because of the meaning given to the word “regulations”.
- (4) See section 176(1) of the Social Security Administration Act 1992 (c.5) which was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14).
- (5) See sections 170 and 173(1)(b) of the Social Security Administration Act 1992 (c.5); paragraph 67 of Schedule 2 to the Jobseekers Act 1995 (c.18) and paragraph 20 of Schedule 2 to the State Pension Credit Act 2002 (c.16) added those Acts respectively to the list of “the relevant enactments” in respect of which regulations must normally be referred to the Committee.
- (6) S.I. 1987/1967; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(2) In regulation 21AA(4) (special cases: supplemental – persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(7);
- (hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Jobseeker’s Allowance Regulations 1996

3.—(1) The Jobseeker’s Allowance Regulations 1996(8) are amended as follows.

(2) In regulation 85A(4) (special cases: supplemental – persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(9);
- (hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the State Pension Credit Regulations 2002

4.—(1) The State Pension Credit Regulations 2002(10) are amended as follows.

(2) In regulation 2(4) (persons not in Great Britain), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(11);
- (hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Housing Benefit Regulations 2006

5.—(1) The Housing Benefit Regulations 2006(12) are amended as follows.

(2) In regulation 10(3B) (persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(13);
- (hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

6.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(14) are amended as follows.

(2) In regulation 10(4A) (persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(15);
- (hh) a person who has humanitarian protection granted under those rules;”.

(7) 1971 c.77.

(8) S.I. 1996/207; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(9) 1971 c.77.

(10) S.I. 2002/1792; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(11) 1971 c.77.

(12) S.I. 2006/213; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(13) 1971 c.77.

(14) S.I. 2006/214; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(15) 1971 c.77.

Amendment of the Council Tax Benefit Regulations 2006

- 7.—(1) The Council Tax Benefit Regulations 2006(16) are amended as follows.
- (2) In regulation 7(4A) (persons from abroad), for sub-paragraph (h) substitute—
- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(17);
 - (hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

- 8.—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(18) are amended as follows.
- (2) In regulation 7(4A) (persons from abroad), for sub-paragraph (h) substitute—
- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(19);
 - (hh) a person who has humanitarian protection granted under those rules;”.

Signed on authority of the Secretary of State for Work and Pensions.

14th September 2006

James Purnell
Minister of State,
Department for Work and Pensions

(16) S.I. 2006/215; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(17) 1971 c.77.

(18) S.I. 2006/216; the relevant amending instruments are S.I. 2006/1026 and 2006/1981.

(19) 1971 c.77.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Council Tax Benefit Regulations 2006 (S.I. 2006/215) and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) ("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 Great Britain". A person is a person from abroad or a person not in Great Britain 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 persons are exempt from this habitual residence test.

These Regulations amend an existing category which exempts those with exceptional leave to enter the United Kingdom granted by an immigration officer, or to remain in the United Kingdom granted by the Secretary of State. The amended exemption defines exceptional leave by reference to it being leave to enter or remain granted outside of the rules made under section 3(2) of the Immigration Act 1971 ("the Immigration Rules"). It no longer refers to the person who grants the leave.

These Regulations also insert a new category of persons who are exempt from the habitual residence test, namely those who have humanitarian protection granted under the Immigration Rules. Prior to 9th October 2006, humanitarian protection was a type of exceptional leave to enter or remain granted outside the Immigration Rules. A person granted humanitarian protection was exempt from the habitual residence test because of the exceptional leave exemption previously mentioned. From 9th October 2006, the Immigration Rules are amended so that humanitarian protection is granted under those rules. Those amendments are made in consequence of Council Directive 2004/83/EC (OJ L 304, 30.9.04, p.12).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.