

2004 No. 1232

SOCIAL SECURITY

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

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| <i>Made</i> - - - - | <i>28th April 2004</i> |
| <i>Laid before Parliament</i> | <i>30th April 2004</i> |
| <i>Coming into force</i> - - | <i>1st May 2004</i> |

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(a), (d) and (e), 131(3)(b), 135(1) and (2), 137(1) and (2)(i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 4(5), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(b) and section 1(5)(a) and 17(1) of the State Pension Credit Act 2002(c) and of all other powers enabling him in that behalf, after consultation with such organisations appearing to him to be representative of the authorities concerned in so far as they relate to housing benefit and council tax benefit(d) and after reference to the Social Security Advisory Committee(e), hereby makes the following Regulations:

Citation, commencement and interpretation

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

(2) In these Regulations—

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(f);

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

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

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- (a) 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”.
- (b) 1995 c.18; section 35(1) is cited because of the meaning given to the words “applicable amount”, “prescribed” and “regulations”.
- (c) 2002 c.16; section 17(1) is cited for the meaning given to the word “prescribed”.
- (d) 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.
- (e) See section 172(1) of the Social Security Administration Act 1992 (c.5); paragraph 67 of Schedule 2 to the Jobseekers Act 1995 added that Act to the list of “relevant enactments” in respect of which regulations must normally be referred to the Committee.
- (f) S.I. 1992/1814; regulation 4A was inserted by S.I. 1994/470 and amended by S.I. 1994/1807, 1996/1944, 1996/2432, 1998/563, 2000/636 and 2000/979. Paragraph (5) was substituted by S.I. 1996/30 and amended by S.I. 1996/1510 and 2006 and 2000/636.
- (g) S.I. 1987/1971; regulation 7A was inserted by S.I. 1994/470 and amended by S.I. 1994/1807, 1996/1944, 1996/2432, 1998/563, 2000/636 and 2000/979. Paragraph (5) was substituted by S.I. 1996/30 and amended by S.I. 1996/1510 and 2006 and 2000/636.
- (h) S.I. 1987/1967; the relevant amending instruments are S.I. 1994/1807, 1996/1944, 1996/2006, 1998/563, 2000/636 and 2000/979.

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(a);

“the State Pension Credit Regulations” means the State Pension Credit Regulations 2002(b).

Amendment of the Council Tax Benefit Regulations and of the Housing Benefit Regulations

2. In both regulation 4A of the Council Tax Benefit Regulations and regulation 7A of the Housing Benefit Regulations (persons from abroad)—

(a) in paragraph (4)(e)(i) 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(c) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(d).”;

(b) after paragraph (4) insert 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), for “Subject to paragraph (3F)” substitute “Subject to paragraphs (3F) and (3G)”;

(b) in the definition of “person from abroad” in paragraph (3) in sub-paragraph (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(e) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(f).”;

(c) after paragraph (3F) insert the following paragraph—

“(3G) 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), for “Subject to paragraph (4A)” substitute “Subject to paragraphs (4A) and (4B)”;

(b) in the definition of “person from abroad” in paragraph (4) in sub-paragraph (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(g)

(a) S.I. 1996/207; the relevant amending instruments are S.I. 1996/1516, 1996/2538, 1998/563, 2000/636 and 2000/979.

(b) S.I. 2002/1792; the relevant amending instruments are S.I. 2003/352 and 2003/2274.

(c) S.I. 2000/2326.

(d) S.I. 2004/1219.

(e) S.I. 2000/2326.

(f) S.I. 2004/1219.

(g) S.I. 2000/2326.

pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(a).”;

(c) after paragraph (4A) insert 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 (persons not in Great Britain)—

(a) at the beginning insert “-(1) Subject to paragraph (2),”;

(b) in sub-paragraph (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(b) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(c).”

(c) after sub-paragraph (e) insert the following paragraph—

“(2) For the purposes of treating a person as not in Great Britain 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 Act 1995(d).

(2) Where this paragraph applies—

(a) regulation 4A of the Council Tax Benefit Regulations and 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.

(a) S.I. 2004/1219.

(b) S.I. 2000/2326.

(c) S.I. 2004/1219.

(d) 1995 c.18. See S.I. 1996/207, 2000/724, 2001/1029 and 2003/511.

(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, council tax benefit, jobseeker’s allowance and state pension credit.

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

28th April 2004

Maria Eagle
Parliamentary Under-Secretary of State,
Department for Work and Pensions

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 Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) and the State Pension Credit Regulations 2002 (S.I. 2002/1792) (“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, council tax 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 with the 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, council tax 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 these Regulations, 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.

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

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