

2000 No. 71

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Immigration and Asylum) Consequential
Amendments Regulations (Northern Ireland) 2000**

Made 9th March 2000

Coming into operation 3rd April 2000

The Department for Social Development, in exercise of the powers conferred by sections 64(1), 68(4), 70(4), 71(6), 122(1)(a) and (d), 131(1), 132(3), 133(2)(i) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), section 5(1)(a) and (b) and 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992(b), Articles 14(1) and (2) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(c) and sections 115(3), (4) and (8) and 123(5) and (6) of the Immigration and Asylum Act 1999(d), and now vested in it(e), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(f) in so far as regulations 2(1), (4)(a) and (6), 6 and 11(1), (2)(b), (4) to (7), (9) and (10) are concerned, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, the Immigration and Asylum Act 1999 and which is made before the end of the period of six months beginning with the coming into force of that Act(g), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 and shall come into operation on 3rd April 2000.

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

(3) In these Regulations—

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- (a) 1992 c. 7; section 68(4) was amended by regulation 2(2) of S.R. 1994 No. 370 and section 171(2) was substituted by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
 - (b) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
 - (c) S.I. 1995/2705 (N.I. 15)
 - (d) 1999 c. 33
 - (e) See Article 8(b) of S.R. 1999 No. 481
 - (f) See Article 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)) consent function transferred from the Department of the Environment for Northern Ireland to the Department of Finance and Personnel; see Article 6(b) of, and Part II of Schedule 4 to, S.R. 1999 No. 481
 - (g) See section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
 - (h) 1954 c. 33 (N.I.)

- “the Act” means the Immigration and Asylum Act 1999;
- “the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(a);
- “the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(b);
- “the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c);
- “the Persons from Abroad Regulations” means the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996(d);
- “the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(e).

Persons not excluded from specified benefits under section 115 of the Act

2.—(1) For the purposes of entitlement to income-based jobseeker’s allowance, income support, a social fund payment or housing benefit under the Contributions and Benefits Act, as the case may be, a person falling within a category or description of persons specified in Part I of the Schedule is a person to whom section 115 of the Act does not apply.

(2) For the purposes of entitlement to attendance allowance, severe disablement allowance, invalid care allowance, disability living allowance, a social fund payment or child benefit under the Contributions and Benefits Act, as the case may be, a person falling within a category or description of persons specified in Part II of the Schedule is a person to whom section 115 of the Act does not apply.

(3) For the purposes of entitlement to child benefit, attendance allowance or disability living allowance under the Contributions and Benefits Act, as the case may be, a person in respect of whom there is an order made under section 155 of the Social Security Administration (Northern Ireland) Act 1992 giving effect to a reciprocal agreement in respect of one of those benefits, as the case may be, is a person to whom section 115 of the Act does not apply.

(4) For the purposes of entitlement to—

- (a) income support, a social fund payment or housing benefit under the Contributions and Benefits Act, as the case may be, a person who is entitled to or is receiving benefit by virtue of regulation 11(1) or (2) of the Persons from Abroad Regulations is a person to whom section 115 of the Act does not apply;

(a) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, 1993 No. 373, 1994 No. 266 and 1996 No. 449

(b) S.R. 1987 No. 461; relevant amending regulations are S.R. 1993 No. 145, S.R. 1994 No. 266, S.R. 1996 Nos. 11, 405 and 448 and S.R. 1998 No. 81

(c) S.R. 1987 No. 465; relevant amending regulations are S.R. 1996 No. 449

(d) S.R. 1996 No.11; relevant amending rules are S.R. 1999 No. 371 (C. 28)

(e) S.R. 1996 No. 198; relevant amending regulations are S.R. 1996 Nos. 356 and 358 and S.R. 1999 No. 428

(b) attendance allowance, disability living allowance, invalid care allowance, severe disablement allowance, a social fund payment or child benefit under the Contributions and Benefits Act, as the case may be, a person who is entitled to or is receiving benefit by virtue of regulation 11(8) is a person to whom section 115 of the Act does not apply.

(5) For the purposes of entitlement to income support by virtue of regulation 70 of the Income Support Regulations (urgent cases), to jobseeker's allowance by virtue of regulation 147 of the Jobseeker's Allowance Regulations (urgent cases) or to a social fund payment under the Contributions and Benefits Act, as the case may be, a person to whom regulation 11(3) of these Regulations applies, is a person to whom section 115 of the Act does not apply.

(6) For the purposes of entitlement to housing benefit or a social fund payment under the Contributions and Benefits Act, as the case may be, a person to whom regulation 11(4) applies, is a person to whom section 115 of the Act does not apply.

Amendment of the Social Security (Invalid Care Allowance) Regulations

3. In regulation 9 of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(a) (conditions relating to residence and presence in Northern Ireland)—

(a) in paragraph (1) for sub-paragraph (aa)(b) there shall be substituted the following sub-paragraph—

“(aa) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or section 115 of that Act does not apply to him for the purposes of entitlement to invalid care allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000; and”;

(b) paragraph (1A)(c) shall be omitted.

Amendment of the Social Security (Severe Disablement Allowance) Regulations

4. In regulation 3 of the Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984(d) (conditions relating to residence and presence)—

(a) in paragraph (1)(a) for head (ia)(e) there shall be substituted the following head—

(a) S.R. 1976 No. 99; relevant amending regulations are S.R. 1996 Nos. 11 and 521 and S.R. 1998 No. 81
(b) Sub-paragraph (aa) was inserted by regulation 2(a) of S.R. 1996 No. 11
(c) Paragraph (1A) was inserted by regulation 2(b) of S.R. 1996 No. 11 and amended by regulation 11(1) and (2)(f) of S.R. 1998 No. 81
(d) S.R. 1984 No. 317; relevant amending regulations are S.R. 1996 No. 11 and S.R. 1998 No. 81
(e) Head (ia) was inserted by regulation 3(a) of S.R. 1996 No. 11

“(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or section 115 of that Act does not apply to him for the purposes of entitlement to severe disablement allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000;” and

(b) paragraph (1A)(a) shall be omitted.

Amendment of the Income Support Regulations

5.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (11).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the Contributions and Benefits Act”(b) there shall be inserted the following definition—

““the Immigration and Asylum Act” means the Immigration and Asylum Act 1999;” and

(b) the definition of “immigration authorities”(c) shall be omitted.

(3) In regulation 4ZA(3)(a)(d) (prescribed categories of person) for “regulation 70(3)(a)” there shall be substituted “paragraph 1 of Part I of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000”.

(4) In regulation 21(3) (special cases)—

(a) for the first definition of “person from abroad” there shall be substituted the following definition—

““partner of a person subject to immigration control” means a person—

(a) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or

(b) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000; and

(c) who is a member of a couple and his partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to that partner for the purposes of exclusion from entitlement to income support;” and

(a) Paragraph (1A) was inserted by regulation 3(b) of S.R. 1996 No. 11 and amended by regulation 11(1) and (2)(g) of S.R. 1998 No. 81

(b) The definition of “the Contributions and Benefits Act” was inserted by regulation 4(2)(a) of S.R. 1993 No. 373

(c) The definition of “immigration authorities” was inserted by regulation 5(2) of S.R. 1996 No. 405

(d) Regulation 4ZA was inserted by regulation 4 of S.R. 1996 No. 199

(b) in the second definition of “person from abroad”(a) the word “also” shall be omitted.

(5) For regulation 21A(b) (treatment of refugees) there shall be substituted the following regulation—

“**21A.**—(1) This paragraph applies to a person who has submitted a claim for asylum on or after 3rd April 2000 and who is notified that he has been recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(c) as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(d).

(2) Subject to paragraph (3), a person to whom paragraph (1) applies, who claims income support within 28 days of receiving the notification referred to in paragraph (1), shall have his claim for income support determined as if he had been recorded as a refugee on the date when he submitted his claim for asylum.

(3) The amount of support provided under section 95 or 98 of the Immigration and Asylum Act, including support provided by virtue of regulations made under Schedule 9 to that Act, by the Secretary of State in respect of essential living needs of the claimant and his dependants (if any) as specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act shall be deducted from any award of income support due to the claimant by virtue of paragraph (2).”.

(6) In regulation 40 (calculation of income other than earnings)—

(a) in paragraph (4) at the beginning there shall be inserted “Subject to paragraph (5),” and for the words from “paragraph (1)” to the end there shall be substituted—

“paragraph (1)—

(a) any payment to which regulation 35(2) or 37(2) (payments not earnings) applies; or

(b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”; and

(b) after paragraph (4) there shall be added the following paragraph—

“(5) In the case of a claimant who is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including

(a) The second definition of “person from abroad” was inserted by regulation 2(1) of S.R. 1994 No. 266 and amended by regulation 5(6)(b) of S.R. 1996 No. 405 and regulation 11(3) of S.R. 1998 No. 81
(b) Regulation 21A was inserted by regulation 2(3) of S.R. 1996 No. 449
(c) Cmnd. 9171
(d) Cmnd. 3906

support provided by virtue of regulations made under Schedule 9 to that Act, there shall not be included as income to be taken into account under paragraph (1) the amount of support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

(7) In regulation 70 (urgent cases)—

(a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) a claimant to whom paragraph (2A) applies (persons not excluded from income support under section 115 of the Immigration and Asylum Act);”;

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) This paragraph applies to a person not excluded from entitlement to income support under section 115 of the Immigration and Asylum Act by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 except for a person to whom paragraphs 3 and 4 of Part I of the Schedule to those Regulations applies.”; and

(c) paragraphs (3)(a), (3A) and (3B)(b) shall be omitted.

(8) In regulation 71 (applicable amounts in urgent cases)—

(a) in paragraph (1)(d)(c) for “paragraph 15” there shall be substituted “paragraph 14A”; and

(b) in paragraph (2) for the words from “regulation 70(3)” to the end there shall be substituted “regulation 70(2A) (urgent cases) applies shall be any period, or the aggregate of any periods, not exceeding 42 days during any one period of leave to which that regulation applies.”.

(9) In Schedule 1B(d) (prescribed categories of person)—

(a) after paragraph 18 there shall be inserted the following paragraph—

“18A. A person to whom regulation 21A (treatment of refugees) applies by virtue of regulation 21A(2) from the date his claim for asylum is made until the date the Secretary of State makes a decision on that claim.”; and

(b) in paragraph 21 for “regulation 70(3)” there shall be substituted “regulation 70(2A)”.

(10) In Schedule 7 (applicable amounts in special cases)—

(a) after paragraph 14 there shall be inserted the following paragraph—

(a) Paragraph (3) was amended by regulation 2(2) of S.R. 1993 No. 311 and regulation 4(3)(a) of S.R. 1996 No. 11
(b) Paragraphs (3A) and (3B) were inserted by regulation 2(3) of S.R. 1993 No. 311 and amended by regulation 4(3)(b) and (c) of S.R. 1996 No. 11 respectively
(c) Sub-paragraph (d) was added by regulation 26(b) of S.R. 1988 No. 146
(d) Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199

“Partner of a person subject to immigration control

14A. (a) A claimant who is the partner of a person subject to immigration control.

14A. (a) The amount applicable in respect of the claimant only under regulation 17(1)(a) plus that in respect of any child or young person who is a member of his family and who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to income support, any amounts which may be applicable to him under regulation 17(1)(b), (c) or (d) plus the amount applicable to him under regulation 17(1)(e), (f) and (g) or, as the case may be, regulation 19 or 21.

- (b) Where regulation 18 (polygamous marriages) applies and the claimant is a person—
- (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, or
 - (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments

(b) The amount determined in accordance with that regulation or regulation 19 or 21 in respect of the claimant and any partners of his and any child or young person for whom he or his partner is treated as responsible, who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, and to

- Regulations (Northern Ireland) 2000, and
- (iii) who is a member of a couple and one or more of his partners is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to that partner for the purposes of exclusion from entitlement to income support.
- whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to income support.”;

(b) for paragraph 15 there shall be substituted the following paragraph—

“Persons from abroad

15. Person from abroad.

Nil.”.

(11) In Schedule 9 (treatment of income in kind) in paragraph 21(a)—

(a) in sub-paragraph (1) for “Subject to sub-paragraph (2), except where” there shall be substituted “Subject to sub-paragraphs (2) and (3), except where regulation 40(4)(b)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act in the calculation of income other than earnings) or”; and

(b) after sub-paragraph (2) there shall be added the following sub-paragraph—

“(3) The first exception under sub-paragraph (1) shall not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act and the income in kind is support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

Amendment of the Housing Benefit Regulations

6.—(1) The Housing Benefit Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation) after the definition of “the Children Order”(c) there shall be inserted the following definition—

(a) Paragraph 21 was substituted by regulation 36(d) of S.R. 1988 No. 146
 (b) Regulation 40(4) is amended by regulation 5(6) of these Regulations
 (c) The definition of “the Children Order” was inserted by regulation 2(1) and (2)(b) of S.R. 1997 No. 331

“the Immigration and Asylum Act” means the Immigration and Asylum Act 1999;”.

(3) In regulation 7A(a) (persons from abroad)—

(a) paragraphs (2), (3)(b), (4)(a) to (d), (e)(iv) to (vi)(c), (f) and (g)(d), (4A)(e), (5)(a) to (c)(f) and (5A)(g) shall be omitted;

(b) in paragraph (6)(h) for “Paragraphs (3)(b) and (4A)” there shall be substituted “Paragraph 1 of Part I of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000”; and

(c) in paragraph (7) the definitions of “the Common Travel Area” and “the Convention relating to the Status of Refugees”(i) shall be omitted.

(4) In regulation 33(4) (calculation of income other than earnings) for the words from “paragraph (1)” to the end there shall be substituted—

“paragraph (1)—

(a) any payment to which regulation 28(2) (payments not earnings) applies; or

(b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

(5) In Schedule A1(j) (treatment of claims for housing benefit by refugees)—

(a) in paragraph 1—

(i) in sub-paragraph (1)(b) for the words from “his claim for housing benefit” to the end there shall be substituted “his claim for housing benefit shall be treated as having been made on the date specified in sub-paragraph (2).”;

(ii) in sub-paragraph (2) for heads (a) and (b) there shall be substituted “on the date on which his claim for asylum was recorded by the Secretary of State as having been made.”; and

(a) Regulation 7A was inserted by regulation 2(1) of S.R.1994 No. 80

(b) Sub-paragraph (a) was amended by regulation 4(3)(a) of S.R. 1996 No. 405

(c) Sub-paragraphs (d) and (e) were added by regulation 3(1)(a) of S.R. 1994 No. 266

(d) Sub-paragraphs (f) and (g) were added by regulation 5(a) of S.R. 1996 No. 11

(e) Paragraph (4A) was inserted by regulation 3(1)(b) of S.R. 1994 No. 266

(f) Paragraph (5) was substituted by regulation 5(b) of S.R. 1996 No. 11

(g) Paragraph (5A) was inserted by regulation 5(c) of S.R. 1996 No. 11

(h) Paragraph (6) was amended by regulation 3(1)(c) of S.R. 1994 No. 266

(i) The definitions of “the Common Travel Area” and “the Convention relating to the Status of Refugees” were inserted by regulation 5(d) of S.R. 1996 No. 11

(j) Schedule A1 was inserted by regulation 6 of S.R. 1996 No. 448

(b) for paragraph 2 there shall be substituted the following paragraph—

“Appropriate authority to whom a claim for housing benefit by a refugee shall be made and time for making a claim

2.—(1) A claim for housing benefit made by a refugee on or after 3rd April 2000 for the relevant period may be made to the appropriate authority for the dwelling which the claimant occupied as his home and in respect of which he was liable to make payments.

(2) Where the claimant has occupied more than one dwelling as his home in the relevant period, only one claim for housing benefit shall be made in respect of that period and such a claim shall be made to the appropriate authority for the dwelling occupied by the refugee and in respect of which he was liable to make payments when, after he is notified that he has been recorded by the Secretary of State as being a refugee, he makes a claim for housing benefit.

(3) A claim for housing benefit to which this paragraph refers, shall be made within 28 days of a claimant receiving notification from the Secretary of State that he has been recorded as a refugee.

(4) Regulation 72(14) (backdating of claims) shall not have effect with respect to claims to which this Schedule applies.”.

(6) In Schedule 4 (treatment of income in kind) in paragraph 23 after “income in kind” there shall be added “except where regulation 33(4)(b)(a) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies”.

Amendment of the Claims and Payments Regulations

7. In regulation 6(4D)(b) of the Claims and Payments Regulations (date of claim) for sub-paragraphs (a) and (b) there shall be substituted “on the date on which his claim for asylum was recorded by the Secretary of State as having been made.”.

Amendment of the Social Security (Attendance Allowance) Regulations

8. In regulation 2 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(c) (conditions as to residence and presence in Northern Ireland)—

(a) in paragraph (1)(a) for head (ia)(d) there shall be substituted the following head—

“(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or section 115 of that Act does not apply to him for the purposes of entitlement to attendance allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum)

(a) Regulation 33(4) is amended by regulation 6(4) of these Regulations

(b) Paragraph (4D) was inserted by regulation 3(4)(a) of S.R. 1996 No. 449

(c) S.R. 1992 No. 20; relevant amending regulations are S.R. 1996 No.11 and S.R. 1998 No. 81

(d) Head (ia) was inserted by regulation 8(a) of 1996 No. 11

Consequential Amendments Regulations (Northern Ireland) 2000,”; and

(b) paragraph (1A)(a) shall be omitted.

Amendment of the Social Security (Disability Living Allowance) Regulations

9. In regulation 2 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(b) (conditions as to residence and presence in Northern Ireland)—

(a) in paragraph (1)(a) for head (ia)(c) there shall be substituted the following head—

“(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or section 115 of that Act does not apply to him for the purposes of entitlement to disability living allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000,”; and

(b) paragraph (1A)(d) shall be omitted.

Amendment of the Jobseeker’s Allowance Regulations

10.—(1) The Jobseeker’s Allowance Regulations shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 1(2) (interpretation) after the definition of “the Child Support Order” there shall be inserted the following definition—

“ “the Immigration and Asylum Act” means the Immigration and Asylum Act 1999(e);”.

(3) In regulation 85(4) (special cases)—

(a) for the first definition of “person from abroad” there shall be substituted the following definition—

“ “partner of a person subject to immigration control” means a person—

(a) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, or

(b) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000, and

(a) Paragraph (1A) was inserted by regulation 8(b) of S.R. 1996 No. 11 and amended by regulation 11(1) and (2)(d) of S.R. 1998 No. 81

(b) S.R. 1992 No. 32; relevant amending regulations are S.R. 1996 No. 11 and S.R. 1998 No. 81

(c) Head (ia) was inserted by regulation 9(a) of S.R. 1996 No. 11

(d) Paragraph (1A) was inserted by regulation 9(b) of S.R. 1996 No. 11 and amended by regulation 11(1) and (2)(e) of S.R. 1998 No. 81

(e) 1999 c. 33

- (c) who is a member of a couple and his partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to that partner for the purposes of exclusion from entitlement to income-based jobseeker's allowance;"; and
- (b) in the second definition of "person from abroad"(a) the word "also" shall be omitted.
- (4) In regulation 103(6)(b) (calculation of income other than earnings) for the words from "paragraph (1)" to the end there shall be substituted—
"paragraph (1)—
(a) any payment to which regulation 98(2)(a) to (e) or 100(2) (payments not earnings) applies, or
(b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.".
- (5) In regulation 147 (urgent cases)—
(a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
“(a) a claimant to whom paragraph (2A) applies (persons not excluded from income-based jobseeker's allowance under section 115 of the Immigration and Asylum Act);”;
(b) after paragraph (2) there shall be inserted the following paragraph—
“(2A) This paragraph applies to a person not excluded from entitlement to income-based jobseeker's allowance under section 115 of the Immigration and Asylum Act by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 except for a person to whom paragraphs 3 and 4 of Part I of the Schedule to those Regulations applies.”; and
(c) paragraphs (3) to (5)(c), shall be omitted.
- (6) In regulation 148(1)(d) (applicable amount in urgent cases) for "paragraph 14" there shall be substituted "paragraph 13A".
- (7) In Schedule 4 (applicable amounts in special cases)—
(a) after paragraph 13 there shall be inserted the following paragraph—

(a) The second definition of "Person from abroad" was amended by regulation 8(1)(b) of S.R. 1996 No. 356 and regulation 11(3) of S.R. 1998 No. 81
(b) Paragraph (6) was amended by regulation 23 of S.R. 1996 No. 358
(c) Paragraphs (3) to (5) were substituted by regulation 8(2) of S.R. 1996 No. 356

“Partner of a person subject to immigration control

13A. (a) A claimant who is the partner of a person subject to immigration control.

13A. (a) The amount applicable in respect of the claimant only under regulation 83(a) plus that in respect of any child or young person who is a member of his family and who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, and to whom section 115 of that Act does not apply for the purposes of entitlement to income-based jobseeker’s allowance, any amounts which may be applicable to him under regulation 83(b), (d) or (e) plus the amount applicable to him under regulation 87(2) or (3) or, as the case may be, regulation 85 or 86.

- (b) Where regulation 84 (polygamous marriages) applies and the claimant is a person—
 - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, or
 - (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential

(b) The amount determined in accordance with that regulation or regulation 85 or 86 in respect of the claimant and any partners of his and any child or young person for whom he or his partner is treated as responsible, who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, and to whom section 115 of that

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Ireland) 2000, and
(iii) who is a member of a
couple and one or more
of his partners is
subject to immigration
control within the
meaning of section
115(9) of that Act and
section 115 of that Act
applies to that partner
for the purposes of
exclusion from
entitlement to income-
based jobseeker's
allowance.

Act does not apply
for the purposes of
exclusion from
entitlement to
income-based
jobseeker's
allowance.”;

(b) for paragraph 14 there shall be substituted the following paragraph—

“Persons from abroad

14. Person from abroad.

Nil.”.

(8) In Schedule 6 (treatment of income in kind) in paragraph 22—

(a) in sub-paragraph (1) for “Subject to sub-paragraph (2), except where” there shall be substituted “Subject to sub-paragraphs (2) and (3), except where regulation 103(6)(b)(a) (provision of support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act in the calculation of income other than earnings) or”; and

(b) after sub-paragraph (2) there shall be added the following sub-paragraph—

“(3) The first exception under sub-paragraph (1) shall not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act and the income in kind is support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

Transitional arrangements and savings

11.—(1) Paragraph (2) shall apply where, in relation to a claim for income support, a social fund payment or housing benefit, as the case may be, a person has submitted a claim for asylum on or before 2nd April 2000

(a) Regulation 103(6)(b) is inserted by regulation 10(4) of these Regulations

and is notified that he has been recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951^(a) as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967^(b).

(2) Where this paragraph applies—

(a) regulation 21A of the Income Support Regulations (treatment of refugees) shall continue to have effect as if regulation 5(5) of these Regulations had not been made;

(b) paragraphs 1 and 2 of Schedule A1 to the Housing Benefit Regulations (treatment of claims for housing benefit by refugees) shall continue to have effect as if regulation 6(5) of these Regulations had not been made; and

(c) regulation 6(4D) of the Claims and Payments Regulations shall continue to have effect as if regulation 7 of these Regulations had not been made.

(3) Regulation 70 of the Income Support Regulations or regulation 147 of the Jobseeker's Allowance Regulations, as the case may be, shall apply to a person who is an asylum seeker within the meaning of paragraph (5) who has not ceased to be an asylum seeker by virtue of paragraph (6).

(4) For the purposes of regulation 7A of the Housing Benefit Regulations, a person who is an asylum seeker within the meaning of paragraph (5) who has not ceased to be an asylum seeker by virtue of paragraph (6), is not a person from abroad within the meaning of paragraph (1) of that regulation.

(5) An asylum seeker within the meaning of this paragraph is a person who—

(a) submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum on or before 2nd April 2000 to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made before that date; or

(b) on or before 2nd April 2000 becomes, while present in Northern Ireland, an asylum seeker when—

(i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change of circumstances that he would not normally order the return of a person to that country;

(ii) he submits, within a period of three months from the date on which that declaration was made, a claim for asylum to the Secretary of State under the Convention, and

(a) Cmnd. 9171

(b) Cmnd. 3906

(iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made; and

(c) in the case of a claim for income-based jobseeker's allowance, holds a work permit or has written authorisation from the Secretary of State permitting him to work in the United Kingdom.

(6) A person ceases to be an asylum seeker for the purposes of this paragraph when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.

(7) In paragraph (5) "the Common Travel Area" means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively and "the Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.

(8) Where, before the coming into operation of these Regulations, a person has claimed benefit to which he is entitled or is receiving benefit by virtue of regulation 11(3) of the Persons from Abroad Regulations or regulation 16B(g) of the Child Benefit (General) Regulations (Northern Ireland) 1979(a), as the case may be, those provisions shall continue to have effect, for the purposes of entitlement to attendance allowance, disability living allowance, invalid care allowance, severe disablement allowance or child benefit, as the case may be, until such time as—

(a) his claim for asylum (if any) is recorded by the Secretary of State as having been decided or abandoned; or

(b) his entitlement to that benefit is revised or superseded under Article 10 or 11 of the Social Security (Northern Ireland) Order 1998(b), if earlier,

as if regulations 3, 4, 8, 9 and 12(2) or (3) of these Regulations, as the case may be, had not been made.

(9) In regulation 11(1) of the Persons from Abroad Regulations after "shall have effect" there shall be inserted "(both as regards him and as regards persons who are members of his family at the coming into operation of these Regulations)".

(10) Notwithstanding the amendments in regulations 5 and 6 of these regulations, regulation 11(1) and (2) of the Persons from Abroad Regulations shall continue to have effect as they had effect before those amendments came into operation.

Revocations

12.—(1) The provisions specified in paragraphs (2) and (3) are revoked.

(a) S.R. 1979 No. 5; regulation 16B was inserted by S.R. 1996 No. 422 and amended by S.R. 1998 No. 81 and paragraph (g) was added by regulation 2(b) of S.R. 1996 No. 469 and amended by Article 7(4) of S.R. 1999 No. 310 (C. 23)

(b) S.I. 1998/1506 (N.I. 10); paragraph (4) of Article 11 was repealed by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(2) Regulation 11(3) of the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996.

(3) Regulation 16B of the Child Benefit (General) Regulations (Northern Ireland) 1979.

Sealed with the Official Seal of the Department for Social Development on 9th March 2000.

(L.S.)

John O'Neill
Senior Officer of the Department
for Social Development

The Department of Finance and Personnel hereby consents to regulations 2(1), (4)(a) and (6), 6 and 11(1), (2)(b), (4) to (7), (9) and (10) of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 9th March 2000.

(L.S.)

J. G. Sullivan
Senior Officer of the Department
of Finance and Personnel

**Persons not excluded from certain benefits under section 115 of the
Immigration and Asylum Act 1999**

PART I

*Persons not excluded under section 115 of the Immigration and Asylum Act from
entitlement to income-based jobseeker's allowance, income support, a social fund
payment or housing benefit*

1. A person who—

- (a) has limited leave (as defined in section 33(1) of the Immigration Act 1971^(a)) to enter or remain in the United Kingdom which was given in accordance with the immigration rules (as defined in that section) relating to—
 - (i) there being or there needing to be, no recourse to public funds, or
 - (ii) there being no charge on public funds, during that period of limited leave; and
- (b) having, during any one period of limited leave (including any such period as extended), supported himself without recourse to public funds, other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted, provided there is a reasonable expectation that his supply of funds will be resumed.

2. A person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation and who has not been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later and the person or persons who gave the undertaking to provide for his maintenance and accommodation has, or as the case may be, have died.

3. A person who—

- (a) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation; and
- (b) has been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later.

4. A person who is a national of a state which has ratified the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953^(b)) or a state which has ratified the Council of Europe Social Charter (signed in Turin on 18th October 1961^(c)) and who is lawfully present in the United Kingdom.

(a) 1971 c. 77
(b) Cmnd. 9512
(c) Cmnd. 2643

PART II

Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to attendance allowance, severe disablement allowance, invalid care allowance, disability living allowance, a social fund payment or child benefit

1. A member of a family of a national of a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(a).
2. A person who is lawfully working in Northern Ireland and is a national of a State with which the Community has concluded an agreement under Article 310(b) of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts(c) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.
3. A person who is a member of a family of, and living with, a person specified in paragraph 2.
4. A person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation.

(a) O.J. No. L1, 3.1.1994, p. 3
(b) Article 310 EC (ex Article 238)
(c) O.J. No. 340, 10.11.97, p. 1

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984, the Income Support (General) Regulations (Northern Ireland) 1987, the Housing Benefit (General) Regulations (Northern Ireland) 1987, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 and the Jobseeker's Allowance Regulations (Northern Ireland) 1996.

Regulation 1 makes provision relating to citation, commencement and interpretation.

Regulation 2 and the Schedule make provision for certain people not to be excluded from entitlement to benefits under section 115 of the Immigration and Asylum Act 1999 who would otherwise be excluded under that section.

Regulations 3 to 10 make consequential amendments to the Regulations referred to above.

Regulation 11 makes provision for transitional arrangements and savings.

Regulation 12 makes provision for revocations.

These Regulations are made by virtue of, or consequential upon, provisions in the Immigration and Asylum Act 1999 (c. 33) which includes provision for new arrangements for the support of asylum seekers. The Regulations are made before the end of the period of six months beginning with the coming into force of the relevant provisions of that Act and are, accordingly exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from reference to the Social Security Advisory Committee.

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