

**2006 No. 1026**

**SOCIAL SECURITY**

**The Social Security (Persons from Abroad) Amendment  
Regulations 2006**

<i>Made</i>	- - - -	<i>3rd April 2006</i>
<i>Laid before Parliament</i>		<i>7th April 2006</i>
<i>Coming into force</i>	- -	<i>30th April 2006</i>

**ARRANGEMENT OF REGULATIONS**

1. Citation and commencement
2. Amendment of the Council Tax Benefit Regulations 2006
3. Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
4. Amendment of the Housing Benefit Regulations 2006
5. Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
6. Amendment of the Income Support (General) Regulations 1987
7. Amendment of the Jobseeker's Allowance Regulations 1996
8. Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005
9. Amendment of the State Pension Credit Regulations 2002
10. Nationals of Norway, Iceland, Liechtenstein and Switzerland
11. Revocations and savings

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), 138(1)(a) and (4) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 4(5) and (12), 35(1) and 36(2) and (4) of, and paragraph 11 of Schedule 1 to, the Jobseekers Act 1995(b) and sections 1(5)(a) and 17(1) of the State Pension Credit Act 2002(c).

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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. Sections 137(1) and 138(4) are cited because of the meaning given to the word "prescribed". Section 138(1) was substituted by section 70(1) of the Social Security Act 1998 (c.14). Section 175(1), (3) and (4) is applied to provisions of the State Pension Credit Act 2002 (c.16) by section 19(1) of that Act.
- (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 because of the meaning given to the word "regulations".

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(a).

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

### **Citation and commencement**

1. These Regulations shall be cited as the Social Security (Persons from Abroad) Amendment Regulations 2006 and shall come into force on 30th April 2006.

### **Amendment of the Council Tax Benefit Regulations 2006**

2.—(1) The Council Tax Benefit Regulations 2006(c) are amended as follows.

(2) In regulation 7 (persons from abroad)—

(a) for paragraphs (2), (3) and (4) substitute—

“(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

(4) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(d);
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. 2004/38/EC(e); or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(4A) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

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(a) 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).

(b) See section 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.

(c) S.I. 2006/215.

(d) S.I. 2006/1003.

(e) OJ L 158, 30.4.04, p. 77.

- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004<sup>(a)</sup>;
  - (g) a refugee;
  - (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971<sup>(b)</sup>, or to remain in the United Kingdom by the Secretary of State;
  - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
  - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; or
  - (k) in receipt of income support or on an income-based jobseeker’s allowance.”;
- (b) in paragraph (6), omit the definition of “a European Economic Area State”.

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

**3.—**(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(c)</sup> are amended as follows.

(2) In regulation 7 (persons from abroad)—

(a) for paragraphs (2), (3) and (4) substitute—

“(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

(4) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006<sup>(d)</sup>;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. 2004/38/EC<sup>(e)</sup>; or

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(a) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(b) 1971 c.77.

(c) S.I. 2006/216.

(d) S.I. 2006/1003.

(e) OJ L 158, 30.4.04, p. 77.

- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(4A) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
  - (b) a self-employed person for the purposes of that Directive;
  - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
  - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
  - (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(a);
  - (g) a refugee;
  - (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(b), or to remain in the United Kingdom by the Secretary of State;
  - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
  - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; or
  - (k) on state pension credit.”;
- (b) in paragraph (6), omit the definition of “a European Economic Area State”.

#### **Amendment of the Housing Benefit Regulations 2006**

4.—(1) The Housing Benefit Regulations 2006(c) are amended as follows.

(2) In regulation 10 (persons from abroad)—

(a) for paragraphs (2) and (3) substitute—

“(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

(3A) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

(a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(d);

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(a) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(b) 1971 c.77.

(c) S.I. 2006/213.

(d) S.I. 2006/1003.

- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. 2004/38/EC<sup>(a)</sup>; or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(3B) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
- (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004<sup>(b)</sup>;
- (g) a refugee;
- (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971<sup>(c)</sup>, or to remain in the United Kingdom by the Secretary of State;
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
- (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; or
- (k) in receipt of income support or on an income-based jobseeker’s allowance.”;

(b) omit paragraph (5);

(c) in paragraph (6), omit the definition of “a European Economic Area State”.

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

**5.**—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(d)</sup> are amended as follows.

(2) In regulation 10 (persons from abroad)—

(a) for paragraphs (2), (3) and (4) substitute—

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(a) OJ L 158, 30.4.04, p. 77.  
 (b) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.  
 (c) 1971 c.77.  
 (d) S.I. 2006/214.

“(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

(4) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(a);
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. 2004/38/EC(b); or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(4A) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
- (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(c);
- (g) a refugee;
- (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(d), or to remain in the United Kingdom by the Secretary of State;
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(e) and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
- (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; or
- (k) on state pension credit.”;

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(a) S.I. 2006/1003.

(b) OJ L 158, 30.4.04, p. 77.

(c) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(d) 1971 c.77.

(e) 1999 c.33.



- (b) in paragraph (6), omit the definition of “a European Economic Area State”.

### **Amendment of the Income Support (General) Regulations 1987**

**6.**—(1) The Income Support (General) Regulations 1987<sup>(a)</sup> are amended as follows.

(2) In regulation 21 (special cases)—

(a) in paragraph (3)—

(i) for “Subject to paragraphs (3F) and (3G), in Schedule 7” substitute “In Schedule 7”;

(ii) for the definition of “person from abroad”, substitute—

““person from abroad” has the meaning given in regulation 21AA;”;

(b) omit paragraphs (3F) and (3G).

(3) After that regulation insert—

#### **“Special cases: supplemental – persons from abroad**

**21AA.**—(1) “Person from abroad” means, subject to the following provisions of this regulation, a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) No claimant shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

(3) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

(a) regulation 13 of the Immigration (European Economic Area) Regulations 2006<sup>(b)</sup>;

(b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the claimant is—

(i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or

(ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;

(c) Article 6 of Council Directive No. 2004/38/EC<sup>(c)</sup>; or

(d) Article 39 of the Treaty establishing the European Community (in a case where the claimant is a person seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(4) A claimant is not a person from abroad if he is—

(a) a worker for the purposes of Council Directive No. 2004/38/EC;

(b) a self-employed person for the purposes of that Directive;

(c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;

(d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

(e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;

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<sup>(a)</sup> S.I. 1987/1967; the relevant amending instruments are S.I. 1994/1807, 1996/1944, 1996/2006, 1998/563, 2000/636, 2000/979 and 2004/1232.

<sup>(b)</sup> S.I. 2006/1003.

<sup>(c)</sup> OJ L 158, 30.4.04, p. 77.

- (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(a);
- (g) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(b), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(c);
- (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(d), or to remain in the United Kingdom by the Secretary of State;
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; or
- (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.”.

#### **Amendment of the Jobseeker’s Allowance Regulations 1996**

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

(2) In regulation 85 (special cases)—

(a) in paragraph (4)—

- (i) for “Subject to paragraphs (4A) and (4B), in this regulation” substitute “In this regulation”;
- (ii) for the definition of “person from abroad”, substitute—  
““person from abroad” has the meaning given in regulation 85A;”;

(b) omit paragraphs (4A) and (4B).

(3) After that regulation insert—

#### **“Special cases: supplemental – persons from abroad**

**85A.**—(1) “Person from abroad” means, subject to the following provisions of this regulation, a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) No claimant shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

(3) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(f);  
or

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(a) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(b) Cmd. 9171.

(c) Cmnd. 3906.

(d) 1971 c.77.

(e) S.I. 1996/207; the relevant amending instruments are S.I. 1996/1516, 1996/2538, 1998/563, 2000/636, 2000/979 and 2004/1232.

(f) S.I. 2006/1003.



- (b) Article 6 of Council Directive No. 2004/38/EC(a).
- (4) A claimant is not a person from abroad if he is—
- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
  - (b) a self-employed person for the purposes of that Directive;
  - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
  - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
  - (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(b);
  - (g) 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);
  - (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(e), or to remain in the United Kingdom by the Secretary of State;
  - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; or
  - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.”.

#### **Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005**

**8.**—(1) The Social Fund Maternity and Funeral Expenses (General) Regulations 2005(f) are amended as follows.

(2) In regulation 7 (funeral payments: entitlement)—

- (a) in paragraph (9)(a) for “or Norway” substitute “, Norway or Switzerland”;
- (b) for paragraph (10) substitute—

“(10) This paragraph applies where the responsible person or his partner is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC(g);
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive; or

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(a) OJ L 158, 30.4.04, p. 77.

(b) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(c) Cmd. 9171.

(d) Cmnd. 3906.

(e) 1971 c.77.

(f) S.I. 2005/3061.

(g) OJ L 158, 30.4.04, p. 77.

- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive.”.

### **Amendment of the State Pension Credit Regulations 2002**

9.—(1) The State Pension Credit Regulations 2002(a) are amended as follows.

(2) For regulation 2 (persons not in Great Britain) substitute—

#### **“Persons not in Great Britain**

2.—(1) A person is to be treated as not in Great Britain if, subject to the following provisions of this regulation, he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

(3) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006(b);
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. 2004/38/EC(c); or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(4) A person is not to be treated as not in Great Britain if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
- (f) 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 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(d);

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(a) S.I. 2002/1792; the relevant amending instruments are S.I. 2003/2274 and 2004/1232.

(b) S.I. 2006/1003.

(c) OJ L 158, 30.4.04, p. 77.

(d) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

- (g) 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);
- (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(c), or to remain in the United Kingdom by the Secretary of State;
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(d) and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; or
- (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.”.

### **Nationals of Norway, Iceland, Liechtenstein and Switzerland**

**10.** The following provisions shall apply in relation to a national of Norway, Iceland, Liechtenstein or Switzerland or a member of his family (within the meaning of Article 2 of Council Directive No. 2004/38/EC(e)) as if such a national were a national of a member State—

- (a) regulation 7(4A)(a) to (e) of the Council Tax Benefit Regulations 2006(f);
- (b) regulation 7(4A)(a) to (e) of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(g);
- (c) regulation 10(3B)(a) to (e) of the Housing Benefit Regulations 2006(h);
- (d) regulation 10(4A)(a) to (e) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(i);
- (e) regulation 21AA(4)(a) to (e) of the Income Support (General) Regulations 1987(j);
- (f) regulation 85A(4)(a) to (e) of the Jobseeker’s Allowance Regulations 1996(k);
- (g) regulation 7(10) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005(l); and
- (h) regulation 2(4)(a) to (e) of the State Pension Credit Regulations 2002(m).

### **Revocations and savings**

**11.—(1)** The following Regulations are revoked—

- (a) the Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1994(n);
- (b) the Income-related Benefits (Montserrat) Regulations 1996(o);

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(a) Cmd. 9171.  
 (b) Cmnd. 3906.  
 (c) 1971 c.77.  
 (d) 1999 c.33.  
 (e) OJ L 158, 30.4.04, p. 77.  
 (f) S.I. 2006/215; as amended by regulation 2 of these Regulations.  
 (g) S.I. 2006/216; as amended by regulation 3 of these Regulations.  
 (h) S.I. 2006/213; as amended by regulation 4 of these Regulations.  
 (i) S.I. 2006/214; as amended by regulation 5 of these Regulations.  
 (j) S.I. 1987/1967; as amended by regulation 6 of these Regulations.  
 (k) S.I. 1996/207; as amended by regulation 7 of these Regulations.  
 (l) S.I. 2005/3061; as amended by regulation 8 of these Regulations.  
 (m) S.I. 2002/1792; as amended by regulation 9 of these Regulations.  
 (n) S.I. 1994/1807; as amended by S.I. 2006/217.  
 (o) S.I. 1996/2006.

(c) the Income-related Benefits and Jobseeker's Allowance (Amendment) Regulations 2000(a); and

(d) the Social Security (Habitual Residence) Amendment Regulations 2004(b).

(2) Nothing in these Regulations shall affect the continued operation of the transitional arrangements and savings provided for in—

(a) regulation 12 of the Social Security (Persons From Abroad) Miscellaneous Amendments Regulations 1996(c);

(b) regulation 6 of the Social Security (Habitual Residence) Amendment Regulations 2004(d); or

(c) paragraph 6 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(e).

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

*Stephen C. Timms*

Minister of State,

Department for Work and Pensions

3rd April 2006

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(a) S.I. 2000/979; as amended by S.I. 2006/217.

(b) S.I. 2004/1232; as amended by S.I. 2006/217.

(c) S.I. 1996/30; the relevant amending instruments are S.I. 2000/636 and 2006/217.

(d) S.I. 2004/1232; as amended by S.I. 2006/217.

(e) S.I. 2006/217.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Council Tax Benefit Regulations 2006 (S.I. 2006/215), the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216), 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 Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) and the State Pension Credit Regulations 2002 (S.I. 2002/1792) ("the income-related benefit regulations"). These Regulations also amend the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (S.I. 2005/3061) ("the social fund regulations").

The amendments are made in consequence of Council Directive No. 2004/38/EC (OJ L 158, 30.4.04, p. 77) ("the Directive"), the provisions of which are to be transposed by the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003).

The income-related benefit regulations provide that a claimant is ineligible for benefit where he or she is a "person from abroad", that is to say where he or she is not habitually resident in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland. A person who does not have a right to reside in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland cannot be treated as habitually resident. These Regulations: (a) restate more simply the definition of "person from abroad"; (b) set out afresh the categories of persons who are excluded from that definition so as to reflect the terms of the Directive; and (c) modify the right to reside requirement in the habitual residence test to take account of Article 24(2) of the Directive.

Article 24(2) provides that member States are not obliged to confer entitlement to social assistance during the first three months of residence or, in a case where persons enter the host member State in order to seek employment, for any longer period in which they can show that they are continuing to seek employment and that they have a genuine chance of being engaged. The Regulations apply Article 24(2) by providing that where a person's right of residence is of a specified type, he or she is not to be treated as habitually resident for the purpose of entitlement to income support, jobseeker's allowance, housing benefit, council tax benefit and state pension credit.

The Regulations also amend the social fund regulations to update the terminology there to reflect the Directive. They also add Switzerland to the list of places where a funeral can take place for the purposes of the social fund regulations.

Regulation 10 ensures that a national of Norway, Iceland, Liechtenstein or Switzerland is treated as a national of a member State in certain circumstances.

Regulation 11 revokes redundant amending Regulations while preserving relevant transitional and savings provisions.

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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