

2020 No. 683

SOCIAL SECURITY

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

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| <i>Made</i> - - - - | <i>2nd July 2020</i> |
| <i>Laid before Parliament</i> | <i>3rd July 2020</i> |
| <i>Coming into force</i> - - | <i>24th August 2020</i> |

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a) and (d), 137(1) and (2)(a) and (i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 35(1) and 36(2) and (4)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers Act 1995(b), sections 1(5)(a) and 17(1) of the State Pension Credit Act 2002(c), sections 24(1) and 25(2), (3) and (5)(a) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act 2007(d) and sections 4(5)(a), 40 and 42(1), (2) and (3)(a) of the Welfare Reform Act 2012(e).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992(f), the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

In relation to regulations 5 and 6, the Secretary of State has consulted with organisations appearing to the Secretary of State to be representative of the authorities concerned(g).

Citation and commencement

1. These Regulations may be cited as the Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 and come into force on 24th August 2020.

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- (a) 1992 c. 4; section 137(1) is cited because of the meaning given to the word “prescribed”. 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. There are amendments to section 137 and section 175(1) but none is relevant.
- (b) 1995 c. 18; section 35(1) is cited because of the meaning given to the words “applicable amount”, “prescribed” and “regulations”. Paragraph 11 of Schedule 1 was amended by part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).
- (c) 2002 c. 16; section 17(1) is cited because of the meaning given to the words “prescribed” and “regulations”. There are amendments to section 17(1) but none is relevant.
- (d) 2007 c. 5; section 24(1) is cited because of the meaning given to the words “prescribed” and “regulations”. There are amendments to section 24(1) but none is relevant.
- (e) 2012 c. 5. Section 40 is cited because of the meaning given to the word “prescribed”. There are amendments to section 40 but none is relevant.
- (f) 1992 c. 5. The amendments to section 173 are not relevant to these Regulations.
- (g) See section 176(1) of the Social Security Administration Act 1992 (c. 5). The amendments to section 176 are not relevant to these Regulations.

Income Support (General) Regulations 1987

- 2.—(1) The Income Support (General) Regulations 1987(a) are amended as follows.
- (2) In regulation 21AA (special cases: supplemental – persons from abroad)(b)—
- (a) after paragraph (3A) insert—

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

 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016(c) if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).”;
 - (b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
 - (c) after paragraph (4)(zc) insert—

“(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
 - (d) after paragraph (4) insert—

“(5) In this regulation—

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

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

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

Jobseeker’s Allowance Regulations 1996

- 3.—(1) The Jobseeker’s Allowance Regulations 1996(e) are amended as follows.
- (2) In regulation 85A (special cases: supplemental – persons from abroad)(f)—
- (a) after paragraph (3A) insert—

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

 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3A).”;

(a) S.I. 1987/1967.

(b) Regulation 21AA was added by S.I. 2006/1026. Relevant amending instruments are S.I. 2006/1981, S.I. 2006/2528, S.I. 2009/362, S.I. 2013/2536, S.I. 2014/902 and S.I. 2019/872.

(c) S.I. 2016/1052.

(d) The immigration rules were laid before Parliament on 23rd May 1994 (HC 395). Appendix EU was laid before Parliament on 20th July 2018 as part of a command paper that amended the immigration rules entitled “Statement of Changes in Immigration rules” (Cm 9675). Appendix EU was amended in respect of family members of persons of Northern Ireland as part of a command paper entitled “Statement of Changes in Immigration Rules” (CP 232) laid before Parliament on 14th May 2020. The amendments include a definition of a relevant person of Northern Ireland.

(e) S.I. 1996/207.

(f) Regulation 85A was inserted by S.I. 2006/1026. Relevant amending instruments are S.I. 2006/1981, S.I. 2006/2528, S.I. 2009/362, S.I. 2013/2536, S.I. 2014/902 and S.I. 2019/872. There are other amending instruments but none is relevant.

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

State Pension Credit Regulations 2002

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

(2) In regulation 2 (persons not in Great Britain)(b)—

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

(a) S.I. 2002/1792.

(b) Regulation 2 was substituted by S.I. 2006/1026. Relevant amending instruments are S.I. 2006/1981, S.I. 2006/2528, S.I. 2009/362, S.I. 2013/2536, S.I. 2014/902 and S.I.2019/872. There are other amending instruments but none is relevant.

Housing Benefit Regulations 2006

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

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

(a) after paragraph (3AA) insert—

“(3AB) Paragraph (3AA)(a) does not apply to a person who—

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

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

(b) in paragraph (3B)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;

(c) after paragraph (3B)(zc) insert—

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

(d) in paragraph (6)—

(i) before the definition of “refugee” insert—

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

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

(ii) after the definition of “*refugee*” insert—

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

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

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

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

(a) after paragraph (4ZA) insert—

“(4ZB) Paragraph (4ZA)(a) does not apply to a person who —

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

(b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (4).”;

(a) S.I. 2006/213.

(b) Regulation 10 was amended by S.I. 2006/1026, S.I. 2006/1981, S.I. 2006/2528, S.I. 2008/1082, S.I. 2013/2536, S.I. 2014/539 and S.I. 2019/872. There are other amending instruments but none is relevant.

(c) S.I. 2006/214.

(d) Regulation 10 was amended by S.I. 2006/1026, S.I. 2006/1981, S.I. 2006/2528, S.I. 2013/2536, S.I. 2014/902 and 2019/872. There are other amending instruments but none is relevant.

- (b) in paragraph (4A)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
- (c) after paragraph (4A)(zc) insert—
 - “(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (4ZA)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
- (d) in paragraph (6) —
 - (i) before the definition of “*refugee*” insert—
 - ““*EEA national*” has the meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;
 - “*family member*” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (4ZB) and (4A)(zd);”;
 - (ii) after the definition of “*refugee*” insert—
 - ““*relevant person of Northern Ireland*” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.”.

Employment and Support Allowance Regulations 2008

- 7.—(1) The Employment and Support Allowance Regulations 2008(a) are amended as follows.
- (2) In regulation 70 (special cases: supplemental – persons from abroad)(b)—
- (a) after paragraph (3A) insert—
 - “(3B) Paragraph (3A)(a) does not apply to a person who—
 - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
 - (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).”;
 - (b) in paragraph (4)(zb) omit the words “within the meaning of regulation 7(1)(a), (b) or (c) of those Regulations”;
 - (c) after paragraph (4)(zc) insert—
 - “(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;”;
 - (d) after paragraph (4) insert—
 - “(5) In this regulation—
 - “*EEA national*” has the meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;
 - “*family member*” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (3B) and (4)(zd);

(a) S.I. 2008/794.

(b) Regulation 70 was amended by S.I. 2009/362, S.I. 2013/2536, S.I. 2014/902 and S.I.2019/872. There are other amending instruments but none is relevant.

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

Universal Credit Regulations 2013

8.—(1) The Universal Credit Regulations 2013(a) are amended as follows.

(2) In regulation 9 (persons treated as not being in Great Britain)(b)—

(a) after paragraph (3) insert—

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

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

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

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

(c) after paragraph (4)(c) insert—

“(ca) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3)(c)(i), provided that the relevant person of Northern Ireland falls within paragraph (4)(a), or would do so but for the fact that they are not an EEA national;”;

(d) after paragraph (4) insert—

“(5) In this regulation—

“*EEA national*” has the meaning given in regulation 2(1) of the EEA Regulations;

“*family member*” has the meaning given in regulation 7(1)(a), (b) or (c) of the EEA Regulations, except that regulation 7(4) of the EEA Regulations does not apply for the purposes of paragraphs (3A) and (4)(ca);

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

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

Justin Tomlinson
Minister of State

2nd July 2020

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 State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and the Universal Credit Regulations 2013 (S.I. 2013/376) (together the “income-related benefit regulations”).

(a) S.I. 2013/376.

(b) Regulation 9 was amended by S.I. 2013/1508, S.I. 2015/546 and S.I. 2019/872. There are other amending instruments but none is relevant.

The income-related benefit regulations provide that a claimant is ineligible for benefits where they are a “person from abroad”, in the case of state pension credit, a “person not in Great Britain”, or in the case of universal credit, a “person to be treated as not being in Great Britain”. A person is a person from abroad, a person not in Great Britain or a person to be treated as not being in Great Britain (as the case may be) if he or she is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. No person shall be treated as habitually resident without a relevant right to reside in the place where he or she is habitually resident. However, certain categories of people are exempt from this habitual residence test.

These Regulations amend the income-related benefit regulations to reflect that family members of relevant persons of Northern Ireland can now apply for leave to enter, or remain in, the United Kingdom under Appendix EU to the immigration Rules made under section 3(2) of the Immigration Act 1971 (c.77) (“EUSS leave”).

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

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

The amendments add relevant definitions to the income related benefit regulations. They define “*EEA national*” and “*family member*” by reference to the EEA Regulations. They define a “*relevant person of Northern Ireland*” by reference to Appendix EU to the immigration rules.

An impact assessment has not been produced for this instrument as it has no impact on businesses or civil society organisations.

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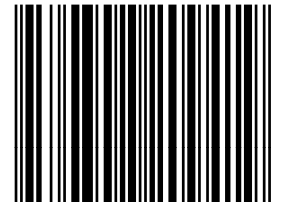
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