STATUTORY RULES OF NORTHERN IRELAND

2006 No. 178

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Persons from Abroad) (Amendment) Regulations (Northern Ireland) 2006

Made - - - -	*3rd April 2006*
Coming into operation	*30th April 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 131(1) and (2), 133(2), 134(1)(a) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Articles 6(5) and (12) and 36(2) of, and paragraph 11 of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), and sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(**4**).

Regulation 3 of these Regulations is made with the consent of the Department of Finance and Personnel(**5**).

The Social Security Advisory Committee has agreed that proposals in respect of regulation 3 should not be referred to it(**6**).

Citation, commencement and interpretation

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

(2) In these Regulations—

(**1**) 1992 c. 7; section 133(2)(d) was substituted by paragraph 18(3) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I.1995/2705) (N.I. 15)); section 134(1) was substituted by Article 66(1) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) S.I. 1995/2705 (N.I. 15); Article 6 was amended by paragraph 6 of Schedule 7, and paragraph 27(2) of Schedule 8, to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 2(3) of the Schedule to S.R. 2006 No. 37; Article 36(2)(a) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**3**) *See* Article 8(b) of S.R. 1999 No. 481

(**4**) 2002 c. 14 (N.I.)

(**5**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see also* Article 6(b) of S.R. 1999 No. 481

(**6**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**7**);

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**8**);

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**9**);

"the State Pension Credit Regulations" means the State Pension Credit Regulations (Northern Ireland) 2003(**10**);

"the Social Fund Regulations" means the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005(**11**).

(3) The Interpretation Act (Northern Ireland) 1954(**12**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 21 (special cases)—

(a) in paragraph (3)(**13**)—

(i) for "Subject to paragraphs (3D) and (3E), in Schedule 7" there shall be substituted "In Schedule 7", and

(ii) for the definition of "person from abroad" there shall be substituted the following definition—

""person from abroad" has the meaning given in regulation 21AA;"; and

(b) paragraphs (3D)(**14**) and (3E)(**15**) shall be omitted.

(3) After regulation 21 there shall be inserted the following regulation—

"**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).

(**7**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1994 No. 80, S.R. 1996 Nos. 11, 334, 375, 405 and 448, S.R. 1998 No. 81, S.R. 2000 Nos. 71 and 125, S.R. 2003 No. 197 and S.R. 2004 No. 197

(**8**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1994 No. 266, S.R. 1995 No. 86, S.R. 1996 Nos. 375 and 405, S.R. 1998 No. 81, S.R. 2000 Nos. 71 and 125, S.R. 2004 No. 197 and S.R. 2005 Nos. 458, 536 and 580

(**9**) S.R. 1996 No.198; relevant amending regulations are S.R. 1996 Nos. 356 and 503, S.R. 1998 No. 81, S.R. 2000 Nos. 71 and 125, S.R. 2004 No. 197 and S.R. 2005 Nos. 458, 536 and 580

(**10**) S.R. 2003 No. 28; relevant amending regulations are S.R. 2003 No. 421 and S.R. 2004 No. 197

(**11**) S.R. 2005 No. 506

(**12**) 1954 c. 33 (N.I.)

(**13**) Regulation 21(3) was amended by regulation 2(1) of S.R. 1994 No. 266, regulation 2(6)(a) of S.R. 1995 No. 86, regulation 5(6)(b) of S.R. 1996 No. 405, regulations 5(2)(b) and 11(3) of S.R. 1998 No. 81, regulation 5(4) of S.R. 2000 No. 71, regulation 2 of S.R. 2000 No. 125, regulation 3(a) and (b) of S.R. 2004 No. 197, paragraph 5(a) of Schedule 1 to S.R. 2005 No. 458, paragraph 12(3) of Schedule 3 to S.R. 2005 No. 536 and regulation 3(2)(b) of S.R. 2005 No. 580

(**14**) Paragraph (3D) was inserted by regulation 3(3) of S.R. 1996 No. 375

(**15**) Paragraph (3E) was inserted by regulation 3(c) of S.R. 2004 No. 197

(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(**16**);

(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(**17**); 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;

(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(**18**);

(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(**19**), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(**20**);

(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(**21**), 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 Northern Ireland who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.".

(**16**) S.I. 2006/1003
(**17**) O.J. No. L158, 30.4.04, p.77
(**18**) S.I. 2004/1219
(**19**) Cmd. 9171
(**20**) Cmnd. 3906
(**21**) 1971 c. 77

Amendment of the Housing Benefit Regulations

3.—(1) The Housing Benefit Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 7A(**22**) (persons from abroad)—

(a) for paragraph (4)(**23**) there shall be substituted the following paragraph—

"(4) 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.";

(b) paragraph (4B)(**24**) shall be omitted;

(c) for paragraph (5)(**25**) there shall be substituted the following paragraphs—

"(5) 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 (5ZA).

(5ZA) 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) 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; 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).

(5ZB) 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

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

(**23**) Paragraph (4) was amended by regulation 4(3)(b) of S.R. 1996 No. 405, regulation 2(b) of S.R. 1996 No. 448, regulation 11(3) and (4)(a) of S.R. 1998 No. 81, regulation 6(3)(a) of S.R. 2000 No. 71, regulation 4 of S.R. 2000 No. 125 and regulation 2(a) of S.R. 2004 No. 197

(**24**) Paragraph (4B) was inserted by regulation 2(b) of S.R. 2004 No. 197

(**25**) Paragraph (5) was substituted by regulation 5(b) of S.R. 1996 No. 11 and amended by regulation 4 of S.R. 1996 No. 334, regulation 2 of S.R. 1996 No. 375, regulation 6(3)(a) of S.R. 2000 No. 71 and regulation 5 of S.R. 2003 No. 197

regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004;

(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, 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 Northern Ireland 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 a person on an income-based jobseeker's allowance."; and

(d) in paragraph (7)(**26**) the definition of "European Economic Area State" shall be omitted.

(3) In regulation 7A(5ZB) (persons from abroad), as substituted by paragraph (2)(c), for sub-paragraph (k) there shall be substituted the following sub-paragraph—

"(k) on state pension credit.".

(4) The amendment made by paragraph (3) is to the Regulations as modified in their application to persons to whom regulation 2 of the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003(**27**) applies.

Amendment of the Jobseeker's Allowance Regulations

4.—(1) The Jobseeker's Allowance Regulations shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 85 (special cases)—

(a) in paragraph (4)(**28**)—

(i) for "Subject to paragraphs (4A) and (4B), in this regulation" there shall be substituted "In this regulation", and

(ii) for the definition of "person from abroad" there shall be substituted the following definition—

""person from abroad" has the meaning given in regulation 85A;"; and

(b) paragraphs (4A)(**29**) and (4B)(**30**) shall be omitted.

(3) After regulation 85 there shall be inserted the following regulation—

(**26**) Paragraph (7) was amended by regulation 5(d) of S.R. 1996 No. 11, regulation 2(c) of S.R. 1996 No. 448 and regulation 6(3)(c) of S.R. 2000 No. 71

(**27**) S.R. 2003 No. 197

(**28**) Paragraph (4) was amended by regulation 8(1)(b) of S.R. 1996 No. 356, regulation 5(2)(c) and 11(3) of S.R. 1998 No. 81, regulation 10(3)(a) and (b) of S.R. 2000 No. 71, regulation 3 of S.R. 2000 No. 125, regulation 4(a) and (b) of S.R. 2004 No. 197, paragraph 4(b) of Schedule 3 to S.R. 2005 No. 458, paragraph 23(5) of Schedule 3 to S.R. 2005 No. 536 and regulation 5(2)(b) of S.R. 2005 No. 580

(**29**) Paragraph (4A) was inserted by regulation 2(9)(b) of S.R. 1996 No. 503

(**30**) Paragraph (4B) was inserted by regulation 4(c) of S.R. 2004 No. 197