STATUTORY RULES OF NORTHERN IRELAND

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(**1**), section 5(1)(*a*) and (*b*) and 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992(**2**), Articles 14(1) and (2) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(**3**) and sections 115(3), (4) and (8) and 123(5) and (6) of the Immigration and Asylum Act 1999(**4**), and now vested in it(**5**), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(**6**) 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(**7**), 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.

(**1**) 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)

(**2**) 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

(**3**) S.I. 1995/2705 (N.I. 15)

(**4**) 1999 c. 33

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

(**6**) *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

(**7**) *See* section 150(5)(*b*) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

(2) The Interpretation Act (Northern Ireland) 1954(**8**) shall apply to these Regulations as it applies to an Act of the Assembly.

(3) In these Regulations—

"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(**9**);

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**10**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**11**);

"the Persons from Abroad Regulations" means the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996(**12**);

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**13**).

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;

(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.

(**8**) 1954 c. 33 (N.I.)
(**9**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, 1993 No. 373, 1994 No. 266 and 1996 No. 449
(**10**) 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
(**11**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1996 No. 449
(**12**) S.R. 1996 No.11; relevant amending rules are S.R. 1999 No. 371 (C. 28)
(**13**) S.R. 1996 No. 198; relevant amending regulations are S.R. 1996 Nos. 356 and 358 and S.R. 1999 No. 428

(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(**14**) (conditions relating to residence and presence in Northern Ireland)—

(a) in paragraph (1) for sub-paragraph (*aa*)(**15**) 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"; and

(b) paragraph (1A)(**16**) 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(**17**) (conditions relating to residence and presence)—

(a) in paragraph (1)(*a*) for head (ia)(**18**) 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 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)(**19**) 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)—

(**14**) S.R. 1976 No. 99; relevant amending regulations are S.R. 1996 Nos. 11 and 521 and S.R. 1998 No. 81
(**15**) Sub-paragraph (*aa*) was inserted by regulation 2(*a*) of S.R. 1996 No. 11
(**16**) 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
(**17**) S.R. 1984 No. 317; relevant amending regulations are S.R. 1996 No. 11 and S.R. 1998 No. 81
(**18**) Head (ia) was inserted by regulation 3(*a*) of S.R. 1996 No. 11
(**19**) 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

(a) after the definition of "the Contributions and Benefits Act"(**20**) 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"(**21**) shall be omitted.

(3) In regulation 4ZA(3)(*a*)(**22**) (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

(b) in the second definition of "person from abroad"(**23**) the word "also" shall be omitted.

(5) For regulation 21A(**24**) (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(**25**) as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(**26**).

(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)—

(**20**) The definition of "the Contributions and Benefits Act" was inserted by regulation 4(2)(*a*) of S.R. 1993 No. 373
(**21**) The definition of "immigration authorities" was inserted by regulation 5(2) of S.R. 1996 No. 405
(**22**) Regulation 4ZA was inserted by regulation 4 of S.R. 1996 No. 199
(**23**) 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
(**24**) Regulation 21A was inserted by regulation 2(3) of S.R. 1996 No. 449
(**25**) Cmnd. 9171
(**26**) Cmnd. 3906

(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 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)(**27**), (3A) and (3B)(**28**)shall be omitted.

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

(a) in paragraph (1)(*d*)(**29**) 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(**30**) (prescribed categories of person)—

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

(**27**) 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
(**28**) 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
(**29**) Sub-paragraph (*d*) was added by regulation 26(*b*) of S.R. 1988 No. 146
(**30**) Schedule 1B was inserted by Schedule 1 to S.R. 1996 No. 199