STATUTORY RULES OF NORTHERN IRELAND

1996 No. 11

SOCIAL SECURITY
HOUSING
RATES

The Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996

Made - - - -	*15th January 1996*
Coming into operation	*5th February 1996*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 64(1), 68(4)(*c*)(i), 70(4), 71(6), 122(1), 129(1) and (2), 131(1) and 133(2)(*a*) and (*i*) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and section 5(1)(*s*) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(**3**) in so far as relates to regulations 5 and 11 of these Regulations, and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(**4**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996 and shall come into operation on 5th February 1996.

(2) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(**1**) 1992 c. 7
(**2**) 1992 c. 8
(**3**) *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))
(**4**) *See* section 150(1)(*b*) of the Social Security Administration (Northern Ireland) Act 1992
(**5**) 1954 c. 33 (N.I.)

Amendment of the Social Security (Invalid Care Allowance) Regulations

2. In regulation 9 of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(**6**) (conditions relating to residence and presence in Northern Ireland)—

(a) in paragraph (1) after sub-paragraph (*a*) there shall be inserted the following sub-paragraph —

"(aa) subject to paragraph (1A), his right to reside or remain in Northern Ireland is not subject to any limitation or condition; and";

(b) after paragraph (1) there shall be inserted the following paragraph—

"(1A) For the purposes of paragraph (1)(*aa*), a person's right to reside or remain in Northern Ireland is not to be treated as if it were subject to a limitation or condition if—

(a) he is a person 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(**7**), as extended by Article I(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(**8**);

(b) he is a person who has been granted exceptional leave outside the provisions of the immigration rules within the meaning of the Immigration Act 1971(**9**) to remain in the United Kingdom by the Secretary of State;

(c) he is a national, or a member of the family of a national, of a State 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(**10**); or

(d) he is a person who is—

(i) lawfully working in Northern Ireland and is a national of a State with which the European Community has concluded an Agreement under Article 238(**11**) of the Treaty establishing the European Community(**12**) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families, or

(ii) a member of the family of, and living with, such a person.".

Amendment of the Social Security (Severe Disablement Allowance) Regulations

3. In regulation 3 of the Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984(**13**) (conditions relating to residence and presence)—

(a) in paragraph (1)(*a*) after head (i) there shall be inserted the following head—

"(ia) subject to paragraph (1A), his right to reside or remain in Northern Ireland is not subject to any limitation or condition,";

(b) after paragraph (1) there shall be inserted the following paragraph—

"(1A) For the purposes of paragraph (1)(*a*)(ia), a person's right to reside or remain in Northern Ireland is not to be treated as if it were subject to a limitation or condition if—

(**6**) S.R. 1976 No. 99; relevant amending regulations are S.R. 1977 No. 73 and S.R. 1992 No. 6
(**7**) Cmnd. 9171
(**8**) Cmnd. 3906
(**9**) 1971 c. 77
(**10**) O.J. No. L 1, 3.1.94, p. 7
(**11**) Article 238 is amended by article G(84) of the Treaty on European Union
(**12**) The title of the Treaty of Rome was amended by article G(1) of the Treaty on European Union
(**13**) S.R. 1984 No. 317; relevant amending regulations are S.R. 1991 No. 333, S.R. 1992 No. 114 and S.R. 1994 No. 462

(a) he is a person 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, as extended by Article I(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;

(b) he is a person who has been granted exceptional leave outside the provisions of the immigration rules within the meaning of the Immigration Act 1971 to remain in the United Kingdom by the Secretary of State;

(c) he is a national, or a member of the family of a national, of a State 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; or

(d) he is a person who is—

(i) lawfully working in Northern Ireland and is a national of a State with which the European Community has concluded an Agreement under Article 238 of the Treaty establishing the European Community providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families, or

(ii) a member of the family of, and living with, such a person.".

Amendment of the Income Support (General) Regulations

4.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(**14**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 21(3) (special cases) in the first definition of "person from abroad" after paragraph (*h*)(**15**) there shall be added the following paragraphs—

"(i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking given by another person in writing in pursuance of immigration rules within the meaning of the 1971 Act, to be responsible for his maintenance and accommodation; and he has not been resident in the United Kingdom for a period of at least 5 years beginning with the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later; or

(j) while he is a person to whom any of the definitions in paragraphs (*a*) to (*i*) of this definition applies, submits a claim to the Secretary of State, which is not finally determined, for asylum under the Convention(**16**).".

(3) In regulation 70 (urgent cases)—

(a) in paragraph (3)—

(i) for sub-paragraph (*c*) there shall be substituted the following sub-paragraph—

"(c) is a person to whom paragraph (*i*) of that definition (sponsored immigrant) applies and the person who gave the undertaking to provide for his maintenance and accommodation has died;";

(ii) sub-paragraphs (*e*) to (*j*) shall be omitted;

(b) in paragraph (3A)—

(i) for sub-paragraph (*a*) there shall be substituted the following sub-paragraphs—

(**14**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1993 Nos. 120 and 311
(**15**) Paragraph (*h*) is inserted by S.R. 1993 No. 120
(**16**) The Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention

"(a) is an asylum seeker when he 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 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; or

(aa) 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 that person is a national is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country,

(ii) he submits, within a period of 3 months from the day that declaration was made, a claim for asylum to the Secretary of State under the Convention, and

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

(ii) for sub-paragraph (*b*) there shall be substituted the following sub-paragraph—

"(b) ceases to be an asylum seeker—

(i) in the case of a claim for asylum which, on or after 5th February 1996, is recorded by the Secretary of State as having been determined (other than on appeal) or abandoned, on the date on which it is so recorded, or

(ii) in the case of a claim for asylum which is recorded as determined before 5th February 1996 and in respect of which there is either an appeal pending on 5th February 1996 or an appeal is made within the time limits specified in rule 5 of the Asylum Appeals (Procedure) Rules 1993(**17**) (notice of appeal), on the date on which that appeal is determined.";

(c) in paragraph (3B) at the end there shall be added "; and "the Common Travel Area" means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively".

(4) In regulation 71(2) (applicable amounts in urgent cases) sub-paragraphs (*b*) to (*f*) shall be omitted.

Amendment of the Housing Benefit (General) Regulations

5. In regulation 7A of the Housing Benefit (General) Regulations (Northern Ireland) 1987(**18**) (persons from abroad)—

(a) in paragraph (4) after sub-paragraph (*e*)(**19**) there shall be added the following sub-paragraphs—

"(f) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking given by another person in writing in pursuance of immigration rules within the meaning of the 1971 Act, to be responsible for his maintenance and accommodation; and he has not been resident in the United Kingdom for a period of at least 5 years beginning with

(**17**) S.I. 1993/1661
(**18**) S.R. 1987 No. 461; regulation 7A is inserted by S.R. 1994 No. 80 and amended by S.R. 1994 No. 266
(**19**) Sub-paragraph (*e*) is added by S.R. 1994 No. 266

the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later, or

(g) while he is a person to whom any of the definitions in paragraph (2) or sub-paragraphs (*a*) to (*d*) and (*f*) applies, submits a claim to the Secretary of State, which is not finally determined, for asylum under the Convention relating to the Status of Refugees.";

(b) for paragraph (5) there shall be substituted the following paragraph—

"(5) This paragraph applies to a person who—

(a) is an asylum seeker and for this purpose a person is an asylum seeker when he 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 to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees 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;

(b) becomes, while present in Northern Ireland, an asylum seeker and for this purpose a person is an asylum seeker when—

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

(ii) he submits, within a period of 3 months from the day that declaration was made, a claim for asylum to the Secretary of State under the Convention relating to the Status of Refugees, and

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

(c) is a person to whom paragraph (4)(*f*) (sponsored immigrant) applies and the person who gave the undertaking to provide for his maintenance and accommodation has died; or

(d) is in receipt of income support.";

(c) after paragraph (5) there shall be inserted the following paragraph—

"(5A) For the purposes of paragraph (5)(*a*) and (*b*), a person ceases to be an asylum seeker—

(a) in the case of a claim for asylum which, on or after 5th February 1996, is recorded by the Secretary of State as having been determined (other than on appeal) or abandoned, on the date on which it is so recorded; or

(b) in the case of a claim for asylum which is recorded as determined before 5th February 1996 and in respect of which there is either an appeal pending on 5th February 1996 or an appeal is made within the time limits specified in rule 5 of the Asylum Appeals (Procedure) Rules 1993 (notice of appeal), on the date on which that appeal is determined.";

(d) in paragraph (7) after the definition of "the 1971 Act" there shall be inserted the following definitions—

""the Common Travel Area" means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively;

"the Convention relating to the Status of Refugees" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended