

2012 No. 380

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Habitual Residence) (Amendment)
Regulations (Northern Ireland) 2012**

Made - - - - *17th October 2012*

Coming into operation - *8th November 2012*

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), 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), Articles 6(5) and (12) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(b), and now vested in it(c), sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(d) and sections 4(3) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007(e).

Regulations 5 and 6 are made with the consent of the Department of Finance and Personnel(f).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 5 and 6 should not be referred to it(g).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation on 8th November 2012.

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

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- (a) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(b) S.I. 1995/2705 (N.I. 15); 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)
(c) See Article 8(b) of S.R. 1999 No. 481
(d) 2002 c. 14 (N.I.)
(e) 2007 c. 2 (N.I.)
(f) 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
(g) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(h) 1954 c. 33 (N.I.)

Amendment of the Income Support (General) Regulations

2. In regulation 21AA(3) of the Income Support (General) Regulations (Northern Ireland) 1987(a) (special cases: supplemental – persons from abroad)—

(a) after sub-paragraph (b) insert—

“(bb) regulation 15A(1) of those Regulations(b), but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations(c);”;

(b) at the end of sub-paragraph (c) omit “or”;

(c) at the end of sub-paragraph (d) add “; or” and the following sub-paragraph—

“(e) Article 20 of the Treaty on the Functioning of the European Union(d) (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

Amendment of the Jobseeker’s Allowance Regulations

3. In regulation 85A(3) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(e) (special cases: supplemental – persons from abroad)—

(a) after sub-paragraph (a) omit “or” and insert the following sub-paragraph—

“(aa) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;”;

(b) at the end of sub-paragraph (b) add “; or” and the following sub-paragraph—

“(c) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

Amendment of the State Pension Credit Regulations

4. In regulation 2(3) of the State Pension Credit Regulations (Northern Ireland) 2003(f) (persons not in Northern Ireland)—

(a) after sub-paragraph (b) insert—

“(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;”;

(b) at the end of sub-paragraph (c) omit “or”;

(c) at the end of sub-paragraph (d) add “; or” and the following sub-paragraph—

(a) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178 and amended by regulation 2 of S.R. 2006 No. 379, regulation 2 of S.R. 2006 No. 523, regulation 2 of S.R. 2009 No. 68 and regulation 7(3) of S.R. 2011 No. 357

(b) Regulation 15A was inserted by paragraph 9 of Schedule 1 to S.I. 2012/1547 and paragraph (1) was amended by paragraph 2 of the Schedule to S.I. 2012/2560

(c) Regulation 15A(4A) was inserted by paragraph 2 of the Schedule to S.I. 2012/2560

(d) OJ C 83/56, 30.3.2010

(e) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178 and amended by regulation 4 of S.R. 2006 No. 379, regulation 3 of S.R. 2006 No. 523, regulation 3 of S.R. 2009 No. 68 and regulation 10(5) of S.R. 2011 No. 357

(f) S.R. 2003 No. 28; regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178 and amended by regulation 5 of S.R. 2006 No. 379, regulation 4 of S.R. 2006 No. 523, regulation 4 of S.R. 2009 No. 68 and regulation 14(3) of S.R. 2011 No. 357

“(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

Amendment of the Housing Benefit Regulations

5. In regulation 10(4) of the Housing Benefit Regulations (Northern Ireland) 2006(a) (persons from abroad)—

(a) after sub-paragraph (b) insert—

“(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;”;

(b) at the end of sub-paragraph (c) omit “or”;

(c) at the end of sub-paragraph (d) add “; or” and the following sub-paragraph—

“(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

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

6. In regulation 10(4) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(b) (persons from abroad)—

(a) after sub-paragraph (b) insert—

“(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;”;

(b) at the end of sub-paragraph (c) omit “or”;

(c) at the end of sub-paragraph (d) add “; or” and the following sub-paragraph—

“(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

Amendment of the Employment and Support Allowance Regulations

7. In regulation 70(3) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(c) (special cases: supplemental – persons from abroad)—

(a) after sub-paragraph (b) insert—

“(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;”;

(b) at the end of sub-paragraph (c) omit “or”;

(a) S.R. 2006 No. 405; regulation 10 was amended by regulation 5 of the S.R. 2006 No. 523, regulation 3(6) of S.R. 2008 No. 378, regulation 5 of S.R. 2009 No. 68 and regulation 19(3) of S.R. 2011 No. 357
(b) S.R. 2006 No. 406; regulation 10 was amended by regulation 6 of S.R. 2006 No. 523, regulation 6 of S.R. 2009 No. 68 and regulation 20(3) of S.R. 2011 No. 357
(c) S.R. 2008 No. 280; regulation 70 was amended by regulation 7 of S.R. 2009 No. 68 and regulation 21(7) of S.R. 2011 No. 357

(c) at the end of sub-paragraph (d) add “; or” and the following sub-paragraph—

“(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).”.

Sealed with the Official Seal of the Department for Social Development on 17th October 2012

(L.S.)

Will Haire

A senior officer of the Department for Social Development

The Department of Finance and Personnel consents to regulations 5 and 6.

Sealed with the Official Seal of the Department of Finance and Personnel on 17th October 2012

(L.S.)

Jack Layberry

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003, the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 ("the income-related benefit regulations").

The income-related benefit regulations provide that a claimant is ineligible for benefit where he or she is a "person from abroad" or, for the purposes of the State Pension Credit Regulations (Northern Ireland) 2003, a "person not in Northern Ireland". A person is a person from abroad or a person not in Northern Ireland 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. The income-related benefit regulations provide 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 purposes of those benefits. These Regulations add to the specified types, the right of residence of a person who requires that right in order that a British citizen is not deprived of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen. That right is recognised in the judgment of the Court of Justice of the European Union in the case of *C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* as arising from Article 20 of the Treaty on the Functioning of the European Union and in regulation 15A(1) of the Immigration (European Economic Area) Regulations 2006 where the claimant satisfies the criteria in regulation 15A(4A) of those Regulations.

In so far as these Regulations are required, for the purposes of regulations 5 and 6, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

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STATUTORY RULES OF NORTHERN IRELAND

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£4.00

N5595 10/2012 425595T 19585

ISBN 978-0-337-98926-1



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