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STATUTORY RULES OF NORTHERN IRELAND

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**2021 No. 269**

**SOCIAL SECURITY**

**The Social Security (Habitual Residence and Past Presence)  
(Amendment) Regulations (Northern Ireland) 2021**

*Made - - - - 24th September 2021*

*Coming into operation 25th September 2021*

The Department for Communities<sup>(1)</sup> makes the following Regulations in exercise of the powers conferred by sections 64(1), 70(4), 71(6), 122(1)(a) and (d), 133(2)(a) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(2)</sup>, Article 36(2)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995<sup>(3)</sup>, and now vested in it<sup>(4)</sup>, sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002<sup>(5)</sup>, section 25(2) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007<sup>(6)</sup> and Articles 9(5), 48(1) and (2)(a), 82(3), 97(1) and 99(1)(a) of the Welfare Reform (Northern Ireland) Order 2015<sup>(7)</sup>.

Regulation 2 is made with the consent of the Department of Finance<sup>(8)</sup>, in so far as it relates to the provisions referred to in paragraph (5)(d) and (e) of that regulation.

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2021 and shall come into operation on 25th September 2021.

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- (1) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))  
(2) 1992 c. 7; section 64(1) was amended by paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1) and paragraph 4(2) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)); section 122(1) was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21)  
(3) 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)  
(4) See Article 8(b) of S.R. 1999 No. 481  
(5) 2002 c. 14 (N.I.)  
(6) 2007 c. 2 (N.I.); section 25(2) was amended by Article 57(2)(b) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))  
(7) S.I. 2015/2006 (N.I. 1)  
(8) 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 and section 1(4) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

### Amendment of income-related benefit legislation

2.—(1) The provisions specified in paragraph (5) are amended in accordance with paragraphs (2) to (4).

(2) Before sub-paragraph (za)(9) insert—

“(zza) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971(10), where such leave is granted by virtue of—

- (i) the Afghan Relocations and Assistance Policy; or
- (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);

(zzb) a person in Northern Ireland not coming within sub-paragraph (zza) or (h)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021;”.

(3) At the end of sub-paragraph (h)(ii)(11) omit “or”.

(4) After sub-paragraph (h)(iii) add—

“or

(iv) granted under the Afghan Citizens Resettlement Scheme(12);”.

(5) The provisions referred to in paragraph (1) are—

- (a) regulation 21AA(4) of the Income Support (General) Regulations (Northern Ireland) 1987(13) (special cases: supplemental—persons from abroad);
- (b) regulation 85A(4) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(14) (special cases: supplemental—persons from abroad);
- (c) regulation 2(4) of the State Pension Credit Regulations (Northern Ireland) 2003(15) (persons not in Northern Ireland);
- (d) regulation 10(5) of the Housing Benefit Regulations (Northern Ireland) 2006(16) (persons from abroad);
- (e) regulation 10(5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(17) (persons from abroad);
- (f) regulation 70(4) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(18) (special cases: supplemental – persons from abroad).

### Amendment of the Universal Credit Regulations

3.—(1) Regulation 9(4) of the Universal Credit Regulations (Northern Ireland) 2016(19) (persons treated as not being in Northern Ireland) is amended in accordance with paragraphs (2) and (3).

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(9) Sub-paragraphs (za) to (zc) were substituted for sub-paragraphs (a) to (f) by regulations 2 to 7 respectively of S.R. 2014 No. 133

(10) 1971 c. 77; see Part 7 of the Immigration Rules; the scheme is contained in Rules 276BA1 to 276BS2

(11) Sub-paragraph (h) was substituted by regulations 3(4)(a), 5, 8(a), 9(2)(a), 10(2)(a) and 11(22)(a) respectively of S.R. 2013 No. 246

(12) <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>

(13) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(14) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(15) S.R. 2003 No. 28; regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178; relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(16) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(17) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(18) S.R. 2008 No. 280 relevant amending Regulations are S.R. 2013 No. 246 and S.R. 2014 No. 133

(19) S.R. 2016 No. 216; to which there are amendments not relevant to these Regulations

(2) Before sub-paragraph (a) insert—

“(za) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971, where such leave is granted by virtue of—

- (i) the Afghan Relocations and Assistance Policy, or
- (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),

(zb) a person in Northern Ireland not coming within sub-paragraph (za) or (e)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021,”.

(3) In sub-paragraph (e)—

- (a) at the end of head (ii) omit “or”;
- (b) after head (iii) add—

“or

(iv) granted under the Afghan Citizens Resettlement Scheme.”.

#### **Amendment of disability and carers benefit legislation**

4.—(1) The provisions specified in paragraph (4) are amended in accordance with paragraphs (2) and (3).

(2) For the heading substitute “Refugees and certain persons with leave to enter or remain in the United Kingdom”.

(3) In paragraph (1)—

- (a) at the end of sub-paragraph (a) omit “or”;
- (b) after sub-paragraph (b) add—

“(c) leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—

- (i) the Afghan Relocations and Assistance Policy; or
- (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);

(d) been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (c); or

(e) leave granted under the Afghan Citizens Resettlement Scheme.”.

(4) The provisions referred to in paragraph (1) are—

- (a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976<sup>(20)</sup> (refugees);
- (b) regulation 2C of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992<sup>(21)</sup> (refugees);
- (c) regulation 2C of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992<sup>(22)</sup> (refugees);

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<sup>(20)</sup> S.R. 1976 No. 99; regulation 9C was inserted by regulation 2(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2016 No. 229

<sup>(21)</sup> S.R. 1992 No. 20; regulation 2C was inserted by regulation 7(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2016 No. 229

<sup>(22)</sup> S.R. 1992 No. 32; regulation 2C was inserted by regulation 8(3) of S.R. 2017 No. 218; relevant amending Regulations are S.R. 2016 No. 229

- (d) regulation 23A(1) of the Personal Independence Payment Regulations (Northern Ireland) 2016~~(23)~~ (refugees).
- (5) In regulation 9C of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976 (refugees) after paragraph (1) insert—
- “(1A) Regulation 9(1)(a) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.
- (6) In regulation 2C of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (refugees) after paragraph (1) insert—
- “(1A) Regulation 2(1)(a)(i) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.
- (7) In regulation 2C of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (refugees) after paragraph (1) insert—
- “(1A) Regulation 2(1)(a)(i) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.
- (8) In regulation 23A(1) of the Personal Independence Payment Regulations (Northern Ireland) 2016 (refugees) after paragraph (1) insert—
- “(1A) Regulation 16(c) shall not apply in relation to a claim for personal independence payment where paragraph (1)(c), (d) or (e) applies to C.”.

Sealed with the Official Seal of the Department for Communities on 24th September 2021

(L.S.)

*Anne McCleary*  
A senior officer of the Department for  
Communities

The Department of Finance hereby consents to regulation 2, in so far as it relates to the provisions referred to in paragraph (5)(d) and (e) of that regulation

Sealed with the Official Seal of the Department of Finance on 24th September 2021

(L.S.)

*Patrick Neeson*  
A senior officer of the Department of Finance

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 1 provides for citation and commencement.

Regulations 2 and 3 enable certain persons to access income-related benefits upon arrival in Northern Ireland from Afghanistan, provided they meet the other relevant entitlement conditions.

Those 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 State Pension Credit Regulations"), 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, the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Universal Credit Regulations (Northern Ireland) 2016 ("the Universal Credit Regulations") - "the income-related benefit regulations".

The income-related benefit regulations provide that a person is ineligible for benefit where he or she is a "person from abroad", "a person not in Northern Ireland" (for the purposes of the State Pension Credit Regulations), or "a person treated as not being in Northern Ireland" (for the purposes of the Universal Credit Regulations); that is to say where he or she is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, subject to a list of exceptions. The amendments made by these Regulations insert a new category of persons into the list of persons who are exempted from having to satisfy the habitual residence test. Those persons are those to whom leave is granted under the immigration rules by virtue of the Afghan Relocations and Assistance Policy or the previous scheme for locally-employed staff in Afghanistan (otherwise known as the ex-gratia scheme) or to whom leave is granted under the Afghan Citizens Resettlement Scheme. A further category of persons not coming within the schemes is also inserted, provided that they arrived in Northern Ireland from Afghanistan in connection with the fall of the Afghan government that took place on 15th August 2021.

Regulation 4 enables certain persons to access disability and carer's benefits upon arrival in Northern Ireland from Afghanistan, provided they meet the other relevant entitlement conditions.

That regulation amends the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 and the Personal Independence Payment Regulations (Northern Ireland) 2016, to exempt those arriving under a Home Office scheme from the past presence test and the habitual residence test. These are the tests which normally have to be fulfilled in order to claim Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment respectively. The past presence test normally requires that an individual has been present in Northern Ireland for a specified period of time to be eligible for those benefits.

These Regulations 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, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.