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STATUTORY INSTRUMENTS

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**2012 No. 2587**

**SOCIAL SECURITY**

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

*Made* - - - - *11th October 2012*  
*Laid before Parliament* *17th October 2012*  
*Coming into force* - - *8th November 2012*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a), (d) and (e), 131(3)(b), 135(1) and (2), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1), sections 4(5) and (12), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(2), sections 1(5)(a) and 17(1) of the State Pension Credit Act 2002(3) and sections 4(3), 24, 25(2), (3) and (5) of the Welfare Reform Act 2007(4).

He has consulted with such organisations which appear to him to be representative of the authorities concerned with these Regulations in so far as they relate to housing benefit and council tax benefit(5).

The Social Security Advisory Committee has agreed that the proposals to make these Regulations should not be referred to it(6).

**Citation and commencement**

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

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- (1) 1992 c.4; sections 123 and 131 were amended, with respect to council tax benefit, by Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraphs 1(1) and 4. Section 137(1) is cited because of the meaning given to the word “prescribed”. Section 175(1), (3) and (4) is applied to provisions of the State Pension Credit Act 2002 (c.16) by section 19(1) of that Act.
- (2) 1995 c.18; section 35(1) is cited because of the meaning given to the words “applicable amount”, “prescribed” and “regulations”.
- (3) 2002 c.16; section 17(1) is cited because of the meaning given to the word “regulations”.
- (4) 2007 c.5; section 24 is cited because of the meaning given to the word “regulations”.
- (5) See section 176(1) of the Social Security Administration Act 1992 (c.5) which was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992.
- (6) See sections 170, 172 and 173(1)(b) of the Social Security Administration Act 1992; paragraph 67 of Schedule 2 to the Jobseekers Act 1995, paragraph 20 of Schedule 2 to the State Pension Credit Act 2002 and paragraph 10 of Schedule 3 to the Welfare Reform Act 2007 added those Acts respectively to the list of “the relevant enactments” in respect of which regulations must normally be referred to the Committee.

### **Amendment of the Income Support (General) Regulations 1987**

**2.—**(1) Regulation 21AA of the Income Support (General) Regulations 1987<sup>(7)</sup> (special cases: supplemental – persons from abroad) is amended as follows.

(2) After paragraph (3)(b), insert—

“(bb) regulation 15A(1) of those Regulations<sup>(8)</sup>, 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;”.

(3) At the end of paragraph (3)(c), omit “or”.

(4) At the end of paragraph (3)(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 Jobseeker’s Allowance Regulations 1996**

**3.—**(1) Regulation 85A of the Jobseeker’s Allowance Regulations 1996<sup>(9)</sup> (special cases: supplemental – persons from abroad) is amended as follows.

(2) At the end of paragraph (3)(a), omit “or”.

(3) After paragraph (3)(a), insert—

“(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;”.

(4) At the end of paragraph (3)(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 2002**

**4.—**(1) Regulation 2 of the State Pension Credit Regulations 2002<sup>(10)</sup> (persons not in Great Britain) is amended as follows.

(2) After paragraph (3)(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;”.

(3) At the end of paragraph (3)(c), omit “or”.

(4) At the end of paragraph (3)(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).”.

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<sup>(7)</sup> S.I. 1987/1967; regulation 21AA was inserted by S.I. 2006/1026; there are other amending instruments but none is relevant.

<sup>(8)</sup> S.I. 2006/1003; regulation 15A(1) was inserted by S.I. 2012/1547 and regulation 15A(4A) was inserted by S.I. 2012/2560.

<sup>(9)</sup> S.I. 1996/207; regulation 85A was inserted by S.I. 2006/1026; there are other amending instruments but none is relevant.

<sup>(10)</sup> S.I. 2002/1792; regulation 2 was substituted by S.I. 2006/1026; there are other amending instruments but none is relevant.

### **Amendment of the Housing Benefit Regulations 2006**

5.—(1) Regulation 10 of the Housing Benefit Regulations 2006<sup>(11)</sup> (persons from abroad) is amended as follows.

(2) After paragraph (3A)(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;”.

(3) At the end of paragraph (3A)(c), omit “or”.

(4) At the end of paragraph (3A)(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 2006**

6.—(1) Regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(12)</sup> (persons from abroad) is amended as follows.

(2) After paragraph (4)(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;”.

(3) At the end of paragraph (4)(c), omit “or”.

(4) At the end of paragraph (4)(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 Council Tax Benefit Regulations 2006**

7.—(1) Regulation 7 of the Council Tax Benefit Regulations 2006<sup>(13)</sup> (persons from abroad) is amended as follows.

(2) After paragraph (4)(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;”.

(3) At the end of paragraph (4)(c), omit “or”.

(4) At the end of paragraph (4)(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).”.

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<sup>(11)</sup> S.I. 2006/213; regulation 10 was amended by S.I. 2006/1026; there are other amending instruments but none is relevant.

<sup>(12)</sup> S.I. 2006/214; regulation 10 was amended by S.I. 2006/1026; there are other amending instruments but none is relevant.

<sup>(13)</sup> S.I. 2006/215; regulation 7 was amended by S.I. 2006/1026; there are other amending instruments but none is relevant.

### **Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

**8.**—(1) Regulation 7 of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(14)</sup> (persons from abroad) is amended as follows.

(2) After paragraph (4)(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;”.

(3) At the end of paragraph (4)(c), omit “or”.

(4) At the end of paragraph (4)(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 2008**

**9.**—(1) Regulation 70 of the Employment and Support Allowance Regulations 2008<sup>(15)</sup> (special cases: supplemental – persons from abroad) is amended as follows.

(2) After paragraph (3)(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;”.

(3) At the end of paragraph (3)(c), omit “or”.

(4) At the end of paragraph (3)(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).”.

Signed by authority of the Secretary of State for Work and Pensions.

11th October 2012

*Mark Hoban*  
Minister of State,  
Department for Work and Pensions

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<sup>(14)</sup> S.I. 2006/216; regulation 7 was amended by S.I. 2006/1026; there are other amending instruments but none is relevant.

<sup>(15)</sup> S.I. 2008/794; to which there are amendments not relevant to these Regulations.

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## EXPLANATORY NOTE

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

These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Council Tax Benefit Regulations 2006 (S.I. 2006/215), the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) ("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, in the case of state pension credit, a "person not in Great Britain". A person is a person from abroad or a person not in Great Britain 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 insert a right of residence into the lists of rights specified, namely the right 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 (S.I. 2006/1003) where the claimant satisfies the criteria in regulation 15A(4A) of those Regulations.

A full impact assessment has not been produced in relation to these Regulations as no impact on the private or voluntary sectors is foreseen.