

2006 No. 379

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Persons from Abroad) (Amendment No. 2)
Regulations (Northern Ireland) 2006**

Made - - - - *15th September 2006*

Coming into operation - *9th October 2006*

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), 133(2) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Article 6(5) and (12) of, and paragraph 11 of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(b), and now vested in it(c), and sections 1(5)(a) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002(d).

Regulation 3 is made with the consent of the Department of Finance and Personnel(e).

The Social Security Advisory Committee has agreed that proposals in respect of regulation 3 should not be referred to it(f).

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Persons from Abroad) (Amendment No. 2) Regulations (Northern Ireland) 2006 and shall come into operation on 9th October 2006.

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

Amendment of the Income Support (General) Regulations

2. In regulation 21AA(4) of the Income Support (General) Regulations (Northern Ireland) 1987(h) (special cases: supplemental—persons from abroad), for sub-paragraph (h) substitute—

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- (a) 1992 c. 7; section 133(2)(d) was substituted by paragraph 18(3) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705) (N.I. 15)) and 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)
- (c) See Article 8(b) of S.R. 1999 No. 481
- (d) 2002 c. 14 (N.I.)
- (e) 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
- (f) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
- (g) 1954 c. 33 (N.I.)
- (h) 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. 320

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(a);
(hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Housing Benefit (General) Regulations

3. In regulation 7A(5ZB) of the Housing Benefit (General) Regulations (Northern Ireland) 1987(b) (persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;
(hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the Jobseeker’s Allowance Regulations

4. In regulation 85A(4) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(c) (special cases: supplemental—persons from abroad), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;
(hh) a person who has humanitarian protection granted under those rules;”.

Amendment of the State Pension Credit Regulations

5. In regulation 2(4) of the State Pension Credit Regulations (Northern Ireland) 2003(d) (persons not in Northern Ireland), for sub-paragraph (h) substitute—

- “(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;
(hh) a person who has humanitarian protection granted under those rules;”.

Sealed with the Official Seal of the Department for Social Development on 15th September 2006



John O’Neill

A senior officer of the Department for Social Development

The Department of Finance and Personnel consents to regulation 3.

Sealed with the Official Seal of the Department of Finance and Personnel on 15th September 2006



M McIvor

A senior officer of the Department of Finance and Personnel

(a) 1971 c. 77
(b) S.R. 1987 No. 461; regulation 7A was inserted by regulation 2(1) of S.R. 1994 No. 80; paragraph (5ZB) was substituted by regulation 3(2)(c) of S.R. 2006 No. 178 and amended by regulation 3 of S.R. 2006 No. 320
(c) 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. 320
(d) 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. 320

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations (Northern Ireland) 1987, the Housing Benefit (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996 and the State Pension Credit Regulations (Northern Ireland) 2003.

Those 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 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. However, certain categories of persons are exempt from this habitual residence test.

These Regulations amend an existing category which exempts those with exceptional leave to enter the United Kingdom granted by an immigration officer, or to remain in the United Kingdom granted by the Secretary of State. The amended exemption defines exceptional leave by reference to it being leave to enter or remain granted outside of the rules made under section 3(2) of the Immigration Act 1971 ("the Immigration Rules"). It no longer refers to the person who grants the leave.

These Regulations also insert a new category of persons who are exempt from the habitual residence test, namely those who have humanitarian protection granted under the Immigration Rules. Prior to 9th October 2006, humanitarian protection was a type of exceptional leave to enter or remain granted outside the Immigration Rules. A person granted humanitarian protection was exempt from the habitual residence test because of the exceptional leave exemption previously mentioned. From 9th October 2006, the Immigration Rules are amended so that humanitarian protection is granted under those rules. Those amendments are made in consequence of Council Directive 2004/83/EC (OJ L 304, 30.9.04, p.12).

In so far as these Regulations are required, for the purposes of regulation 3, 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.