
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 (together the "income-related benefit regulations").

The income-related benefit regulations provide that a claimant is ineligible for benefits 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 (as the case may be) 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 people are exempt from this habitual residence test.

These Regulations amend the income-related benefit regulations to reflect that a new right to reside has been created for nationals of European Economic Area states ("EEA nationals") in Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971, in the form of limited leave to enter, or remain in, the United Kingdom. The effect of these Regulations is that this new right to reside is not a relevant right to reside for the purposes of establishing habitual residence.

These Regulations also reflect the change to the immigration rules that enables a non-EEA national carer of a British Citizen in the situation described in regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 (a "Zambrano carer") to be granted limited leave to enter, or remain in, the United Kingdom under Appendix EU. This continues to be a right to reside that is not relevant for the purposes of establishing habitual residence.

These Regulations also update provisions in the income-related benefit regulations that refer to the Immigration (European Economic Area) Regulations 2006 so that instead they refer to the Immigration (European Economic Area) Regulations 2016, as the latter revoked the former.

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 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.