

2022 No. 230

SOCIAL SECURITY

**The Social Security (Habitual Residence and Past Presence)
(Amendment No. 2) Regulations (Northern Ireland) 2022**

Made - - - - - *27th September 2022*

Coming into operation - - - - - *18th October 2022*

The Department for Communities(a) 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(b), Article 36(2)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(c), and now vested in it(d), sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(e), section 25(2)(a) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(f) and Articles 9(5)(a), 48(1) and (2)(a), 82(3), 97(1) and 99(1)(a) of the Welfare Reform (Northern Ireland) Order 2015(g).

Regulation 2 is made with the consent of the Department of Finance(h), in so far as it relates to the provisions referred to in paragraph (2)(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 No. 2) Regulations (Northern Ireland) 2022 and shall come into operation on 18th October 2022.

Amendment of income-related benefit legislation

2.—(1) In the provisions specified in paragraph (2)—

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

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(b) 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)
(c) 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)
(d) See Article 8(b) of S.R. 1999 No. 481
(e) 2002 c. 14 (N.I.)
(f) 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))
(g) S.I. 2015/2006 (N.I. 1)
(h) 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.))

- (c) after head (ii) add—
- “(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA(a) of that Act;”.
- (2) The provisions referred to in paragraph (1) are—
- (a) regulation 21AA(4)(zcc) of the Income Support (General) Regulations (Northern Ireland) 1987(b) (special cases: supplemental—persons from abroad);
 - (b) regulation 85A(4)(zcc) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(c) (special cases: supplemental—persons from abroad);
 - (c) regulation 2(4)(zcc) of the State Pension Credit Regulations (Northern Ireland) 2003(d) (persons not in Northern Ireland);
 - (d) regulation 10(5)(zcc) of the Housing Benefit Regulations (Northern Ireland) 2006(e) (persons from abroad);
 - (e) regulation 10(5)(zcc) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(f) (persons from abroad);
 - (f) regulation 70(4)(zcc) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(g) (special cases: supplemental – persons from abroad);
 - (g) regulation 9(4)(zc) of the Universal Credit Regulations (Northern Ireland) 2016(h) (persons treated as not being in Northern Ireland).

Amendment of disability and carers benefit legislation

- 3.—(1) In the provisions specified in paragraph (2)—
- (a) for “or a right” substitute “, a right”;
 - (b) after “the Immigration Act 1971” insert “or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,”.
- (2) The provisions referred to in paragraph (1) are—
- (a) regulation 9C(1)(f) of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(i) (refugees and certain persons with leave to enter or remain in the United Kingdom(j));
 - (b) regulation 2C(1)(f) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(k) (refugees and certain persons with leave to enter or remain in the United Kingdom);

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- (a) Section 3ZA was inserted into the Immigration Act 1971 (c. 77) by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20)
 - (b) S.R. 1987 No. 459; regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178 and paragraph (4)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (c) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178 and paragraph (4)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (d) S.R. 2003 No. 28; regulation 2 was substituted by regulation 5 of S.R. 2006 No. 178 and paragraph (4)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (e) S.R. 2006 No. 405; paragraph (5)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (f) S.R. 2006 No. 406; paragraph (5)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (g) S.R. 2008 No. 280; paragraph (4)(zcc) was inserted by regulation 2(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (h) S.R. 2016 No. 216; paragraph (4)(zc) was inserted by regulation 3(3) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (i) S.R. 1976 No. 99; regulation 9C was inserted by regulation 2(3) of S.R. 2017 No. 218 and paragraph (1)(f) was added by regulation 4(2)(b) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
 - (j) The heading to the provisions referred to in paragraph (2)(a) to (d) was substituted by regulation 4(2) of S.R. 2021 No. 269
 - (k) S.R. 1992 No. 20; regulation 2C was inserted by regulation 7(3) of S.R. 2017 No. 218 and paragraph (1)(f) was added by regulation 4(2)(b) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269

- (c) regulation 2C(1)(f) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992^(a) (refugees and certain persons with leave to enter or remain in the United Kingdom);
- (d) regulation 23A(1)(f) of the Personal Independence Payment Regulations (Northern Ireland) 2016^(b) (refugees and certain persons with leave to enter or remain in the United Kingdom).

Sealed with the Official Seal of the Department for Communities on 27th September 2022

(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 (2)(d) and (e) of that regulation

Sealed with the Official Seal of the Department of Finance on 27th September 2022

(L.S.)

Patrick Neeson
A senior officer of the Department of Finance

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022 No. 149) (“the principal Regulations”) enable certain persons to access both income-related benefits and disability and carers benefits upon arrival in Northern Ireland from Ukraine provided they meet the other relevant entitlement conditions.

These Regulations make further amendments so that persons who do not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of the Immigration Act 1971 (c. 77) but who would not fall within the categories already listed in the principal Regulations, notably Irish citizens, may access income-related benefits (regulation 2) and disability and carers benefits (regulation 3) upon arrival in Northern Ireland from Ukraine.

Regulation 1 provides for citation and commencement.

Regulation 2 amends 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, the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Universal Credit Regulations (Northern Ireland) 2016 – the income-related benefit regulations.

Regulation 3 amends the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 and

(a) S.R. 1992 No. 32; regulation 2C was inserted by regulation 8(3) of S.R. 2017 No. 218 and paragraph (1)(f) was added by regulation 4(2)(b) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269
(b) S.R. 2016 No. 217; regulation 23A was inserted by regulation 15 of S.R. 2017 No. 218 and paragraph (1)(f) was added by regulation 5(2)(b) of S.R. 2022 No. 149; relevant amending Regulations are S.R. 2021 No. 269

the Personal Independence Payment Regulations (Northern Ireland) 2016 – the disability and carers benefit regulations.

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.

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