
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 Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and the Universal Credit Regulations 2013 (S.I. 2013/376) (together the “income-related benefit regulations”).

The income-related benefit regulations provide that a claimant is ineligible for benefits where they are a “person from abroad”, in the case of state pension credit, a “person not in Great Britain”, or in the case of universal credit, a “person to be treated as not being in Great Britain”. A person is a person from abroad, a person not in Great Britain or a person to be treated as not being in Great Britain (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 family members of relevant persons of Northern Ireland can now apply for leave to enter, or remain in, the United Kingdom under Appendix EU to the immigration Rules made under section 3(2) of the Immigration Act 1971 (c.77) (“EUSS leave”).

The amendments create an exception that where a family member of a relevant person of Northern Ireland has been granted limited EUSS leave, that leave is relevant for the purposes of establishing habitual residence. This is subject to the proviso that if the relevant person of Northern Ireland were an EEA national, the family member would have a right to reside not otherwise excluded by the income related benefits regulations.

The amendments provide that subject to certain conditions, a family member of a relevant person of Northern Ireland who has been granted limited EUSS leave will not be considered as being a person from abroad, a person not in Great Britain or a person to be treated as not being in Great Britain (as the case may be), thereby adding them to the list of persons exempt from the habitual residence test. The relevant conditions are that, at the point the family member makes a claim, the relevant person of Northern Ireland would be considered a qualified person under the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (the “EEA Regulations”), either as a worker or a self-employed person. Alternatively, where the family member would have a right to reside under the EEA regulations because of their relationship with a person of Northern Ireland, they will have access to income related benefits as long as that right to reside is not excluded by the relevant regulations. The relevant person of Northern Ireland is treated as if they are an EEA national and would therefore satisfy these conditions whether or not they are an EEA national (as defined in the EEA Regulations).

The amendments add relevant definitions to the income related benefit regulations. They define “*EEA national*” and “*family member*” by reference to the EEA Regulations. They define a “*relevant person of Northern Ireland*” by reference to Appendix EU to the immigration rules.

An impact assessment has not been produced for this instrument as it has no impact on businesses or civil society organisations.