

## PART 2

### ENTITLEMENT

#### *Minimum age*

#### **Cases where the minimum age is 16**

**8.—**(1) For the basic condition in Article 9(1)(a) of the Order (at least 18 years old) the minimum age is 16 years old where a person—

- (a) has limited capability for work,
- (b) is awaiting an assessment under Part 5 to determine whether the person has limited capability for work and has a statement given<sup>1</sup> in accordance with the Medical Evidence Regulations which provides that the person is not fit for work,
- (c) has regular and substantial caring responsibilities for a severely disabled person,
- (d) is responsible for a child,
- (e) is a member of a couple the other member of which is responsible for a child or a qualifying young person (but only where the other member meets the basic conditions in Article 9 of the Order),
- (f) is pregnant, and it is 11 weeks or less before her expected week of confinement, or was pregnant and it is 15 weeks or less since the date of her confinement, or
- (g) is without parental support (see paragraph (3)).

(2) Paragraphs (1)(c), (f) and (g) do not include any person who is a care leaver.

(3) For the purposes of paragraph (1)(g) a young person is without parental support where that person is not being looked after by an authority and—

- (a) has no parent,
- (b) cannot live with their parents because—
  - (i) the person is estranged from them, or
  - (ii) there is a serious risk to the person's physical or mental health, or that the person would suffer significant harm if the person lived with them, or
- (c) is living away from their parents, and neither parent is able to support the person financially because that parent—
  - (i) has a physical or mental impairment,
  - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
  - (iii) is prohibited from entering or re-entering Northern Ireland.

(4) In this regulation—

“parent” includes any person acting in the place of a parent;

“care leaver” means an eligible child for the purposes of Article 34A of the Children (Northern Ireland) Order 1995<sup>(a)</sup> or a relevant child for the purposes of Article 34B of that Order;

“confinement” means—

- (a) labour resulting in the birth of a living child, or
- (b) labour after 24 weeks of pregnancy resulting in the birth of a child whether alive or dead,

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<sup>(a)</sup> Articles 34A and 34B were inserted by sections 1 and 2 of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11 (N.I.)).

and where a woman's labour begun on one day results in the birth of a child on another day she is to be taken to be confined on the date of the birth.

*In Northern Ireland*

**Persons treated as not being in Northern Ireland**

9.—(1) For the purposes of determining whether a person meets the basic condition to be in Northern Ireland, except where a person falls within paragraph (4), a person is to be treated as not being in Northern Ireland if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(3) For the purposes of paragraph (2), a right to reside does not include a right which exists by virtue of, or in accordance with—

- (a) regulation 13 of the EEA Regulations<sup>2</sup>◀,
- (b) regulation 14 of the EEA Regulations<sup>(a)</sup>, but only in cases where the right exists under that regulation because the person is—
  - (i) a qualified person for the purposes of regulation 6(1) of those Regulations as a jobseeker, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker, <sup>3</sup>◀
- (c) <sup>4</sup>regulation 16◀ of the EEA Regulations, but only in cases where the right exists under that regulation because <sup>5</sup>the person◀ satisfies the criteria in <sup>6</sup>regulation 16(5)◀ of those Regulations<sup>7</sup>◀ <sup>8</sup>, or◀
- (d) <sup>9</sup>a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of —
  - (i) Appendix EU to the immigration rules made under section 3(2) of that Act, <sup>10</sup>◀
  - (ii) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act,◀<sup>11</sup> or
  - (iii) having arrived in the United Kingdom with an entry clearance that was granted under Appendix EU (Family Permit) to the immigration rules made under Section 3(2) of that Act.◀
- <sup>12</sup>(3A) Paragraph 3(d)(i) does not apply to a person who—
  - (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
  - (b) would have a right to reside under the EEA Regulations if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3)(a) or (c).◀

(4) A person falls within this paragraph if the person is—

- <sup>13</sup>(za) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971, where such leave is granted by virtue of—
  - (i) the Afghan Relocations and Assistance Policy, or

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(a) Regulation 14 was amended by Schedule 1 of S.I. 2012/1547 and S.I. 2013/3032.

- (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
- (zb) a person in Northern Ireland not coming within sub-paragraph (za) or ►<sup>14</sup>(e)◄ who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021,◄
- <sup>15</sup>(zc) a person in Northern Ireland who was residing in Ukraine immediately before 1st January 2022, left Ukraine in connection with the Russian invasion which took place on 24th February 2022 and—
  - (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971, ►<sup>16</sup>◄
  - (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act ►<sup>17</sup>or;◄
  - <sup>18</sup> (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,◄
- <sup>19</sup>(zd) a person who was residing in Sudan before 15th April 2023, left Sudan in connection with the violence which rapidly escalated on 15th April in Khartoum and across Sudan and—
  - (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
  - (ii) has a right of abode in the United Kingdom within the meaning given in Section 2 of that Act, or
  - (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,◄
- (a) a qualified person for the purposes of regulation 6 of the EEA Regulations as a worker or a self-employed person,
- (b) a family member of a person referred to in sub-paragraph (a)►<sup>20</sup>◄,
- (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations,
- <sup>21</sup>(ca) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3)(d)(i), provided that the relevant person of Northern Ireland falls within paragraph (4)(a), or would do so but for the fact that they are not an EEA national,◄
- <sup>22</sup>(cb) a frontier worker within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020,
- (cc) a family member, of a person referred to in sub-paragraph (cb), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971,◄
- (d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(a), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(b),
- (e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(c)►<sup>23</sup>◄
- (f) a person who has humanitarian protection granted under those rules, or
- (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(d) and who is in the United Kingdom as a result of their deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.
- <sup>24</sup>(5) In this regulation—
 

“EEA national” has the same meaning given in regulation 2(1) of the EEA Regulations,

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(a) Cmnd. 9171.

(b) Cmnd. 3906.

(c) 1971 c. 77.

(d) 1999 c. 33.

“family member” has the same meaning given in regulation 7(1)(a), (b) or (c) of the EEA Regulations, except that regulation 7(4) does not apply for the purposes of paragraphs (3A) and 4(ca),

“relevant person of Northern Ireland” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971. ◀

### **Crown servants and members of Her Majesty’s forces posted overseas**

**10.**—(1) The following persons do not have to meet the basic condition to be in Northern Ireland—

- (a) a Crown servant or member of Her Majesty’s forces posted overseas;
- (b) in the case of joint claimants, the partner of a person mentioned in sub-paragraph (a) while they are accompanying the person on that posting.

(2) A person mentioned in paragraph (1)(a) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty’s forces and was, immediately before their posting or the first of consecutive postings, habitually resident in the United Kingdom.

(3) In this regulation—

“Crown servant” means a person holding an office or employment under the Crown, and

“Her Majesty’s forces” has the meaning in the Armed Forces Act 2006(a).

### **Temporary absence from Northern Ireland**

**11.**—(1) A person’s temporary absence from Northern Ireland is disregarded in determining whether they meet the basic condition to be in Northern Ireland if—

- (a) the person is entitled to universal credit immediately before the beginning of the period of temporary absence, and
- (b) either—
  - (i) the absence is not expected to exceed, and does not exceed, one month, or
  - (ii) paragraph (3) or (4) applies.

(2) The period of one month in paragraph (1)(b) may be extended by up to a further month if the temporary absence is in connection with the death of —

- (a) the person’s partner or a child or qualifying young person for whom the person was responsible, or
- (b) a close relative of the person, or of their partner or of a child or qualifying young person for whom the person or their partner was responsible,

and the Department considers that it would be unreasonable to expect the person to return to Northern Ireland within the first month.

(3) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with—

- (a) the person undergoing—
  - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner, or
  - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Northern Ireland, or
- (b) the person accompanying their partner or a child or qualifying young person for whom they are responsible for treatment or convalescence or care as mentioned in sub-paragraph (a).

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(a) 2006 c. 52.

(4) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and the person is—

- (a) a mariner, or
- (b) continental shelf worker who is in a designated area or a prescribed area.

(5) In this regulation—

“continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998<sup>(a)</sup>;

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964<sup>(b)</sup> as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“mariner” means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel, and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;

“medically approved” means certified by a registered medical practitioner;

“prescribed area” means any area over which Norway or any member State<sup>25</sup> exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

### *Receiving education*

#### **Meaning of “receiving education”**

**12.—**(1) For the basic condition in Article 9(1)(d) of the Order (not receiving education) a qualifying young person is to be treated as receiving education.

(2) In any other case “receiving education” means—

- (a) undertaking a full-time course of advanced education, or
- (b) undertaking any other full-time course of study or training at an educational establishment for which a student loan or grant is provided for the person’s maintenance.

(3) “course of advanced education” means—

- (a) a course of study leading to—
  - (i) a postgraduate degree or comparable qualification,
  - (ii) a first degree or comparable qualification,
  - (iii) a diploma of higher education,
  - (iv) a higher national diploma, or
- (b) any other course of study which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher).

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<sup>(a)</sup> 1998 c. 17.

<sup>(b)</sup> 1964 c. 29.

(4) A claimant who is not a qualifying young person and is not undertaking a course described in <sup>26</sup>paragraph (2) is nevertheless to be treated as receiving education if the claimant is undertaking a course of study or training that is not compatible with any work-related requirement imposed on the claimant by the Department.

### Meaning of “undertaking a course”

**13.**—(1) For the purposes of these Regulations a person is to be regarded as undertaking a course of education, study or training—

- (a) throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it, or
- (b) where a person is undertaking a part of a modular course, for the period beginning on the day on which that part of the course starts and ending —
  - (i) on the last day, on which the person is registered as undertaking that part, or
  - (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

(2) The period referred to in paragraph (1)(b) includes—

- (a) where a person has failed examinations or has failed to complete successfully a module relating to a period when the person was undertaking a part of the course, any period in respect of which the person undertakes the course for the purpose of retaking those examinations or completing that module, and
- (b) any period of vacation within the period specified in paragraph (1)(b) or immediately following that period except where the person has registered to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

(3) In this regulation “modular course” means a course which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

(4) A person is not to be regarded as undertaking a course for any part of the period mentioned in paragraph (1) during which the following conditions are met—

- (a) the person has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person,
- (b) the person has recovered from that illness or ceased caring for that person within the past year, but not yet resumed the course, and
- (c) the person is not eligible for a grant or student loan.

### Exceptions to the requirement not to be receiving education

**14.**<sup>27</sup>—(1) A person does not have to meet the basic condition in Article 9(1)(d) of the Order (not receiving education) if —

- (a) the person —
  - (i) is undertaking, a full-time course of study or training which is not a course of advanced education,
  - (ii) is under the age of 21, or is 21 and reached that age whilst undertaking the course, and
  - (iii) is without parental support (as defined in regulation 8(3)),
- (b) <sup>28</sup>the person is entitled to attendance allowance, disability living allowance, child disability payment<sup>29</sup>, adult disability payment or personal independence payment and, on a date before the date on which the person starts receiving education—

- (i) it has been determined that the person has limited capability for work or limited capability for work and work-related activity on the basis of an assessment under Part 5 or under Part 4 or 5 of the ESA Regulations; or
- (ii) the person is treated as having limited capability for work under Schedule 8 or limited capability for work and work-related activity under Schedule 9;◀
- (c) the person is responsible for a child or a qualifying young person,
- (d) the person is a single person and a foster parent with whom a child is placed,
- (e) the person is a member of a couple, both of whom are receiving education, and the other member is—
  - (i) responsible for a child or qualifying young person, or
  - (ii) a foster parent with whom a child is placed, or
- (f) the person—
  - (i) has reached the qualifying age for state pension credit, and
  - (ii) is a member of a couple the other member of which has not reached that age.

▶<sup>30</sup>◀

### *Accepting a claimant commitment*

#### **Claimant commitment – date and method of acceptance**

**15.**—(1) For the basic condition in Article 9(1)(e) of the Order, a person who has accepted a claimant commitment within such period after making a claim as the Department specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

(2) In a case where an award may be made without a claim, a person who accepts a claimant commitment within such period as the Department specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first assessment period in relation to the award in accordance with regulation 22(3) or (4) (assessment periods).

(3) The Department may extend the period within which a person is required to accept a claimant commitment or an updated claimant commitment where the person requests that it review—

- (a) any action proposed as a work search requirement or a work availability requirement, or
- (b) whether any limitation should apply to those requirements,

and it considers that the request is reasonable.

(4) A person must accept a claimant commitment by one of the following methods, as specified by the Department—

- (a) electronically,
- (b) by telephone, or
- (c) in writing.

#### **Claimant commitment – exceptions**

**16.**<sup>31</sup>—(1)◀A person does not have to meet the basic condition to have accepted a claimant commitment if the Department considers that—

- (a) the person cannot accept a claimant commitment because they lack the capacity to do so, or
- (b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

- <sup>32</sup>(2) A person does not have to meet the basic condition to have accepted a claimant commitment if the person is terminally ill.◀

### *Financial conditions*

#### **Minimum amount**

**17.** For the purposes of Article 10(1)(b) and (2)(b) of the Order (financial conditions: amount payable not less than any prescribed minimum) the minimum is one penny.

#### **Capital limit**

**18.—**(1) For the purposes of Article 10(1)(a) and (2)(a) of the Order (financial conditions: capital limit)—

- (a) the prescribed amount for a single claimant is £16,000, and
- (b) the prescribed amount for joint claimants is £16,000.

(2) In a case where the person is a member of a couple, but makes a claim as a single person, the claimant's capital is to be treated as including the capital of the other member of the couple.

### *Restrictions on entitlement*

#### **Restrictions on entitlement – prisoners etc.**

**19.—**(1) Entitlement to universal credit does not arise where a person is—

- (a) a member of a religious order who is fully maintained by their order,
- (b) a prisoner, or
- (c) serving a sentence of imprisonment detained in hospital.

(2) Paragraph (1)(b) does not apply during the first 6 months when the claimant is a prisoner where—

- (a) the person was entitled to universal credit as a single person immediately before becoming a prisoner, and the calculation of their award included an amount for the housing costs element, and
- (b) the person has not been sentenced to a term in custody that is expected to extend beyond that 6 months.

(3) In the case of a prisoner to whom paragraph (2) applies, an award of universal credit is not to include any element other than the housing costs element.

(4) In paragraph (1)(c) a person serving a sentence of imprisonment detained in hospital is a person who is—

- (a) being detained—
  - (i) under Article 53 of the Mental Health (Northern Ireland) Order 1986(a), and
  - (ii) before the day which the Secretary of State certifies to be that person's release date within the meaning of Article 56(3) of that Order (in any case where there is such a release date).

►<sup>33</sup>◀

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(a) S.I. 1986/595 (N.I. 4); Article 53(5)(a) was amended by paragraph 27 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) and paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26 (N.I.)) and Article 56(3) was amended by paragraph 5(2) to Schedule 5 to the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)).



## REFERENCES

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1. Omitted by reg. 4(3)(a) of S.R. 2022 No. 182 as from 1st July 2022
  2. Omitted by reg. 77(3)(a)(i) of S.I. 2020/1309 as from 31st December 2020
  3. Omitted by reg. 2(3)(a) of S.R. 2019 No. 89 as from 7th May 2019
  4. Substituted by reg. 2(3)(b)(i) of S.R. 2019 No. 89 as from 7th May 2019
  5. Substituted by reg. 2(3)(b)(ii) of S.R. 2019 No. 89 as from 7th May 2019
  6. Substituted by reg. 2(3)(b)(iii) of S.R. 2019 No. 89 as from 7th May 2019
  7. Omitted by reg. 77(3)(a)(ii) of S.I. 2020/1309 as from 31st December 2020
  8. Added by reg. 2(3)(c) of S.R. 2019 No. 89 as from 7th May 2019
  9. Added by reg. 2(3)(d) of S.R. 2019 No. 89 as from 7th May 2019
  10. Omitted by reg. 27(2)(a) of S.I. 2020/1372 as from 31st December 2020
  11. Inserted by reg. 27(2)(b) of S.I. 2020/1372 as from 31st December 2020
  12. Inserted by reg. 2(2)(a) of S.R. 2020 No. 130 as from 24th August 2020
  13. Inserted by reg. 3(2) of S.R. 2021 No. 269 as from 25th September 2021
  14. Substituted by reg. 3(2) of S.R. 2022 No. 149 as from 24th March 2022
  15. Inserted by reg. 3(3) of S.R. 2022 No. 149 as from 24th March 2022
  16. Omitted by reg. 2(2)(g) of S.R. 2022 No. 230 as from 18th October 2022
  17. Inserted by reg. 2(2)(g) of S.R. 2022 No. 230 as from 18th October 2022
  18. Inserted by reg. 2(2)(g) of S.R. 2022 No. 230 as from 18th October 2022
  19. Inserted by reg. 3 of S.R. 2023 No. 80 as from 18th May 2023
  20. Omitted by reg. 2(2)(b) of S.R. 2020 No. 130 as from 24th August 2020
  21. Inserted by reg. 2(2)(c) of S.R. 2020 No. 130 as from 24th August 2020
  22. Inserted by reg. 77(3)(b) of S.I. 2020/1309 as from 31st December 2020
  23. Omitted by reg. 3(4) of S.R. 2022 No. 149 as from 24th March 2022
  24. Inserted by reg. 2(2)(d) of S.R. 2020 No. 130 as from 24th August 2020
  25. Omitted by reg. 10 of S.I. 2019/129 as from 1st January 2021
  26. Substituted by reg. 9(2) of S.R. 2017 No. 116 immediately after the coming into operation of S.R. 2016 No. 216
  27. Inserted by reg. 2(1)(a) of S.R. 2020 No. 166 as from 05.08.2020
  28. Substituted by reg. 2(a) of S.R. 2021 No. 303 as from 15.12.2021
  29. Inserted by Art. 28(3) of S.I. 2022/177 as from 21st March 2022
  30. Omitted by reg. 2(b) of S.R. 2021 No. 303 as from 15.12.2021
  31. Inserted by reg. 2(a) of S.R. 2022 No. 14 as from 15.02.2022
  32. Inserted by reg. 2(b) of S.R. 2022 No. 14 as from 15.02.2022
  33. Omitted by reg. 6(3) of S.R. 2018 No. 92 as from 8.5.18