

2000 No. 71

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000

Made9th March 2000

Coming into operation3rd April 2000

The Department for Social Development, in exercise of the powers conferred by sections 64(1), 68(4), 70(4), 71(6), 122(1)(a) and (d), 131(1), 132(3), 133(2)(i) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), section 5(1)(a) and (b) and 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992(b), Articles 14(1) and (2) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(c) and sections 115(3), (4) and (8) and 123(5) and (6) of the Immigration and Asylum Act 1999(d), and now vested in it(e), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(f) in so far as regulations 2(1), (4)(a) and (6), 6 and 11(1), (2)(b), (4) to (7), (9) and (10) are concerned, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, the Immigration and Asylum Act 1999 and which is made before the end of the period of six months beginning with the coming into force of that Act(g), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 and shall come into operation on 3rd April 2000.

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

(3) In these Regulations—

“the Act” means the Immigration and Asylum Act 1999;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

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- (a) 1992 c. 7; section 68(4) was amended by regulation 2(2) of S.R. 1994 No. 370 and section 171(2) was substituted by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I.1999/671)
- (b) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
- (c) S.I.1995/2705 (N.I. 15)
- (d) 1999 c. 33
- (e) See Article 8(b) of S.R. 1999 No. 481
- (f) See Article 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I.1993/1579 (N.I. 8)) consent function transferred from the Department of the Environment for Northern Ireland to the Department of Finance and Personnel; see Article 6(b) of, and Part II of Schedule 4 to, S.R. 1999 No. 481
- (g) See section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
- (h) 1954 c. 33 (N.I.)

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(a);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(b);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c);

“the Persons from Abroad Regulations” means the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996(d);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(e);

►¹“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007; ◀

►²“personal independence payment” means personal independence payment under Part 5 of the Welfare Reform (Northern Ireland) Order 2015; ◀

►³“universal credit” means universal credit under Part 2 of the Welfare Reform (Northern Ireland) Order 2015. ◀

Persons not excluded from specified benefits under section 115 of the Act

2.—(1) For the purposes of entitlement to income-based jobseeker’s allowance, income support, a social fund payment ►⁴, health in pregnancy grant ◀ or ►⁵ ◀ ►⁶ income-related employment and support allowance, ◀ ►⁷ ►⁸ ◀ as the case may be, a person falling within a category or description of persons specified in Part I of the Schedule is a person to whom section 115 of the Act does not apply.

►⁹(1A) For the purposes of entitlement to ►¹⁰ housing benefit under the Contributions and Benefits Act, state pension credit under the State Pension Credit Act (Northern Ireland) 2002 or ◀ universal credit, ►¹¹ as the case may be ◀ a person falling within a category or description of persons specified in ►¹² paragraphs 2 and 3 ◀ of Part I of the Schedule is a person to whom section 115 of the Act does not apply. ◀

(2) For the purposes of entitlement to attendance allowance, severe disablement allowance, ►¹³ carer’s allowance ◀, disability living allowance, a social fund payment or child benefit under the Contributions and Benefits Act, ►¹⁴ or personal independence payment ◀ as the case may be, a person falling within a category or description of persons specified in Part II of the Schedule is a person to whom section 115 of the Act does not apply.

(3) For the purposes of entitlement to child benefit, attendance allowance or disability living allowance under the Contributions and Benefits Act, ►¹⁵ or personal independence payment ◀ as the case may be, a person in respect of whom there is an order made under section 155 of the Social Security Administration (Northern Ireland) Act 1992 giving effect to a reciprocal agreement in respect of one of those benefits, as the case may be, is a person to whom section 115 of the Act does not apply.

►¹⁶ ►¹⁷(3A) For the purposes of entitlement to child benefit under the Contributions and Benefits Act, a person—

(a) who is lawfully working in Northern Ireland; and

(b) who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an agreement under Article 217 of the Treaty on the Functioning of the

(a) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, S.R. 1993 No. 373, S.R. 1994 No. 266 and S.R. 1996 No. 449

(b) S.R. 1987 No. 461; relevant amending regulations are S.R. 1993 No. 145, S.R. 1994 No. 266, S.R. 1996 Nos. 11, 405 and 448 and S.R. 1998 No. 81

(c) S.R. 1987 No. 465; relevant amending regulations are S.R. 1996 No. 449

(d) S.R. 1996 No. 11; relevant amending rules are S.R. 1999 No. 371(C. 28)

(e) S.R. 1996 No. 198; relevant amending regulations are S.R. 1996 Nos. 356 and 358 and S.R. 1999 No. 428

European Union which makes provision for receipt of family allowances for members of their family who are legally resident in the United Kingdom,

is a person to whom section 115 of the Act does not apply. ◀ ◀

(4) For the purposes of entitlement to—

- (a) income support, a social fund payment or housing benefit under the Contributions and Benefits Act, ▶¹⁸income-related employment and support allowance, ◀ as the case may be, a person who is entitled to or is receiving benefit by virtue of regulation 11(1) or (2) of the Persons from Abroad Regulations is a person to whom section 115 of the Act does not apply;
- (b) attendance allowance, disability living allowance, ▶¹⁹carer's allowance ◀, severe disablement allowance, a social fund payment or child benefit under the Contributions and Benefits Act, as the case may be, a person who is entitled to or is receiving benefit by virtue of regulation 11(8) is a person to whom section 115 of the Act does not apply;
- ▶²⁰(c) state pension credit under the State Pension Credit Act (Northern Ireland) 2002, a person to whom sub-paragraph (a) would have applied but for the fact that they have attained the qualifying age for the purposes of state pension credit, is a person to whom section 115 of the Act does not apply. ◀
- ▶²¹(5) For the purposes of entitlement to ▶²²universal credit, ◀ income support, ▶²³an income-based jobseeker's allowance under the Jobseekers (Northern Ireland) Order 1995 ◀, an ▶²⁴income-related ◀ employment and support allowance or a social fund payment under the Contributions and Benefits Act, as the case may be, a person who is an asylum seeker within the meaning of paragraph (5) of regulation 11 who has not ceased to be an asylum seeker by virtue of paragraph (6) of that regulation is a person to whom section 115 of the Act does not apply. ◀

(6) For the purposes of entitlement to housing benefit or a social fund payment under the Contributions and Benefits Act, as the case may be, a person to whom regulation 11(4) applies, is a person to whom section 115 of the Act does not apply.

▶²⁵(7) For the purposes of entitlement to state pension credit under the State Pension Credit Act (Northern Ireland) 2002, a person to whom paragraph (5) would have applied but for the fact that they have attained the qualifying age for the purposes of state pension credit, is a person to whom section 115 of the Act does not apply.

▶²⁶ ◀ ◀

[Regulation 3 amends regulation 9 of SR 1976 No.99]

[Regulation 4 amends regulation 3 of SR 1984 No.317]

[Regulation 5 amends regulations 2, 4ZA, 21, 21A, 40, 70 and 71 of, and Schedules 1B, 7 and 9 to, SR 1987 No.459]

[Regulation 6 amends regulations 2, 7A and 33 of, and Schedules 1A and 4 to, SR 1987 No.461]

[Regulation 7 amends regulation 6 of SR 1987 No.465]

[Regulation 8 amends regulation 2 of SR 1992 No.20]

[Regulation 9 amends regulation 2 of SR 1992 No.32]

[Regulation 10 amends regulations 1, 85, 103, 147 and 148 of, and Schedule 4 to, SR 1996 No.198]

Transitional arrangements and savings

11.—(1) Paragraph (2) shall apply where, in relation to a claim for income support, a social fund payment or housing benefit, as the case may be, a person has submitted a claim for asylum on or before 2nd April 2000 and is notified that he has been recorded by the Secretary of State as 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).

(2) Where this paragraph applies—

- (a) regulation 21A of the Income Support Regulations (treatment of refugees) shall continue to have effect as if regulation 5(5) of these Regulations had not been made;
- (b) paragraphs 1 and 2 of Schedule A1 to the Housing Benefit Regulations (treatment of claims for housing benefit by refugees) shall continue to have effect as if regulation 6(5) of these Regulations had not been made; and
- (c) regulation 6(4D) of the Claims and Payments Regulations shall continue to have effect as if regulation 7 of these Regulations had not been made.

►²⁷◄

(4) For the purposes of regulation 7A of the Housing Benefit Regulations, a person who is an asylum seeker within the meaning of paragraph (5) who has not ceased to be an asylum seeker by virtue of paragraph (6), is not a person from abroad within the meaning of paragraph (1) of that regulation.

(5) An asylum seeker within the meaning of this paragraph is a person who—

- (a) submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum on or before 2nd April 2000 to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made before that date; or
- (b) on or before 2nd April 2000 becomes, while present in Northern Ireland, an asylum seeker when—
 - (i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change of circumstances that he would not normally order the return of a person to that country;
 - (ii) he submits, within a period of three months from the date on which that declaration was made, a claim for asylum to the Secretary of State under the Convention, and
 - (iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made; and
- (c) in the case of a claim for income-based jobseeker's allowance, holds a work permit or has written authorisation from the Secretary of State permitting him to work in the United Kingdom.

(6) A person ceases to be an asylum seeker for the purposes of this paragraph when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.

(7) In paragraph (5) “the Common Travel Area” means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively and “the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.

(8) Where, before the coming into operation of these Regulations, a person has claimed benefit to which he is entitled or is receiving benefit by virtue of regulation 11(3) of the Persons from Abroad Regulations or regulation 16B(g) of the Child Benefit (General) Regulations (Northern Ireland) 1979(c), as the case may be, those provisions shall continue to have effect, for the purposes of entitlement to attendance allowance, disability living allowance, ►²⁸carer's allowance◄, severe disablement allowance or child benefit, as the case may be, until such time as—

- (a) his claim for asylum (if any) is recorded by the Secretary of State as having been decided or abandoned; or

(a) Cmnd. 9171

(b) Cmnd. 3906

(c) S.R. 1979 No. 5; regulation 16B was inserted by S.R. 1996 No. 422 and amended by S.R. 1998 No. 81 and paragraph (g) was added by regulation 2(b) of S.R. 1996 No. 469 and amended by Article 7(4) of S.R. 1999 No. 310 (C. 23)

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- (b) his entitlement to that benefit is revised or superseded under Article 10 or 11 of the Social Security (Northern Ireland) Order 1998(a), if earlier, as if regulations 3, 4, 8, 9 and 12(2) or (3) of these Regulations, as the case may be, had not been made.

(9) In regulation 11(1) of the Persons from Abroad Regulations after “shall have effect” there shall be inserted “(both as regards him and as regards persons who are members of his family at the coming into operation of these Regulations)”.

(10) Notwithstanding the amendments in regulations 5 and 6 of these Regulations, regulation 11(1) and (2) of the Persons from Abroad Regulations shall continue to have effect as they had effect before those amendments came into operation.

[Regulation 12 revokes regulation 11(3) of SR 1996 No.11 and regulation 16B of 1979 No.5]

Sealed with the Official Seal of the Department for Social Development on 9th March 2000.

(L.S.)

John O'Neill

Senior Officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to regulations 2(1), (4)(a) and (6), 6 and 11(1), (2)(b), (4) to (7), (9) and (10) of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 9th March 2000.

(L.S.)

J.G. Sullivan

Senior Officer of the Department of Finance and Personnel

SCHEDULE

Regulation 2

PERSONS NOT EXCLUDED FROM CERTAIN BENEFITS UNDER SECTION 115 OF THE
IMMIGRATION AND ASYLUM ACT 1999

PART I

Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to ►²⁹universal credit, ◀ income-based jobseeker's allowance, income support, ►³⁰income-related employment and support allowance ◀ a social fund payment or housing benefit

►³¹◀

2. A person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation and who has not been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later and the person or persons who gave the undertaking to provide for his maintenance and accommodation has, or as the case may be, have died.

3. A person who—

- (a) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation; and
- (b) has been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later.

(a) S.I. 1998/1506 (N.I. 10); paragraph (4) of Article 11 was repealed by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999

4. A person who is a national of a state which has ratified the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953^(a)) or a state which has ratified the Council of Europe Social Charter (signed in Turin on 18th October 1961^(b)) and who is lawfully present in the United Kingdom.

PART II

Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to attendance allowance, severe disablement allowance, ►³²carer's allowance◄, disability living allowance, ►³³personal independence payment,◄ a social fund payment ►³⁴, health in pregnancy grant◄ or child benefit

1. A member of a family of a national of a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993^(c) ►³⁵as modified or supplemented from time to time◄.

►³⁶2. A person who is lawfully working in Northern Ireland and is a national of a State with which—

►³⁷◄

(b) the United Kingdom has concluded an agreement which replaces in whole or in part ►³⁸an agreement under Article 217 of the Treaty on the Functioning of the European Union◄ which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.◄

For child benefit purposes only ►³⁹sub-paragraph (a) has been omitted and sub-paragraph (b) is substituted with the following -◄

(b) the United Kingdom has concluded an agreement which replaces in whole or in part ►⁴⁰an agreement under Article 217 of the Treaty on the Functioning of the European Union◄ which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.

3. A person who is a member of a family of, and living with, a person specified in paragraph 2.

4. A person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation.

(a) Cmnd. 9512

(b) Cmnd. 2643

(c) OJ No. L1, 3.1.1994, p. 3

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984, the Income Support (General) Regulations (Northern Ireland) 1987, the Housing Benefit (General) Regulations (Northern Ireland) 1987, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 and the Jobseeker's Allowance Regulations (Northern Ireland) 1996.

Regulation 1 makes provision relating to citation, commencement and interpretation.

Regulation 2 and the Schedule make provision for certain people not to be excluded from entitlement to benefits under section 115 of the Immigration and Asylum Act 1999 who would otherwise be excluded under that section.

Regulations 3 to 10 make consequential amendments to the Regulations referred to above.

Regulation 11 makes provision for transitional arrangements and savings.

Regulation 12 makes provision for revocations.

These Regulations are made by virtue of, or consequential upon, provisions in the Immigration and Asylum Act 1999 (c.33) which includes provision for new arrangements for the support of asylum seekers. The Regulations are made before the end of the period of six months beginning with the coming into force of the relevant provisions of that Act and are, accordingly exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c.8), from reference to the Social Security Advisory Committee.

References

1. Added by reg. 23(2) of SR 2008 No. 286 as from 27.10.08
2. Added by reg. Reg 22(2) of S.R. 2016 No.228 as from 20.06.16
3. Added by reg. Reg 29(2) of S.R. 2016 No.236 as from 27.09.17
4. Inserted by reg. 9(2) of SI 2008/3108 as from 1.1.09
5. Omitted by reg. 2(2)(a) or S.R. 2022 No. 202 as from 15.09.22
6. Inserted by reg. 23(3)(a) of SR 2008 No. 286 as from 27.10.08
7. Omitted by reg. 2(2)(b) or S.R. 2022 No. 202 as from 15.09.22
8. Inserted by reg. 6(a) of SR 2003 No. 421 as from 6.10.03
9. Inserted by reg. 29(3)(a) of SR 2016 No. 236 as from 27.9.18
10. Inserted by reg. 2(3)(a) of S.R. 2022 No. 202 as from 15.09.22
11. Inserted by reg. 2(3)(b) of S.R. 2022 No. 202 as from 15.09.22
12. Substituted by reg. 2(2) of S.R. 2021 No. 281 as from 28.10.21
13. Substituted by para. 1 of the Sch. to SR 2002 No. 323 as from 1.4.03
14. Inserted by reg 22(3)(a) of S.R. 2016 No. 228 as from 20.06.16
15. Inserted by reg 22(3)(b) of S.R. 2016 No. 228 as from 20.06.16
16. Inserted by reg. 3(2) of SI 2020/1505 as from 01.01.21
17. Substituted by reg. 3(2) of SI 2021/495 as from 13.05.21
18. Inserted by reg. 23(3)(b) of SR 2008 No. 286 as from 27.10.08
19. Substituted by para. 1 of the Sch. to SR 2002 No. 323 as from 1.4.03
20. Inserted by reg. 6(b) of SR 2003 No. 421 as from 6.10.03
21. Substituted by reg. 3(5)(a) of SR 2010 No. 6 so far as relating to a particular beneficiary from the first day of the first benefit week to commence for that beneficiary on or after 25.1.10
22. Inserted by reg. 29(3)(b)(i) of SR 2016 No. 236 as from 27.09.17
23. Substituted by reg. 29(3)(b)(ii) of SR 2016 No. 236 as from 27.09.17
24. Inserted by reg. 29(3)(b)(iii) of SR 2016 No. 236 as from 27.09.17
25. Added by reg. 6(c) of SR 2003 No. 421 as from 6.10.03
26. Omitted by reg. 7(2) of SR 2013 No. 246 as from 29.10.13
27. Omitted by reg. 2(1)(c) of SR 2010 No. 6 so far as relating to a particular beneficiary from the first day of the first benefit week to commence for that beneficiary on or after 25.1.10 subject to paras. (2) to (4) *ibid*
28. Substituted by para. 1 of the Sch. to SR 2002 No. 323 as from 1.4.03
29. Inserted by reg. 29(4) of SR 2016 No. 236 as from 27.9.17
30. Inserted by reg. 23(5) of SR 2008 No. 286 as from 27.10.08
31. Omitted by reg. 7(3) of SR 2013 No. 246 as from 29.10.13
32. Substituted by para. 1 of the Sch. to SR 2002 No. 323 as from 1.4.03
33. Inserted by reg 22(4) of S.R. 2016 No.228 as from 20.06.16
34. Inserted by reg. 9(3) of SI 2008/3108 as from 1.1.09
35. Added by reg. 8 of SR 2013 No. 167 as from 1.7.13
36. Substituted by reg. 2 of SR 2019 No. 213 as from 01.01.21 and by reg. 3(2) of SI 2019/1431 in so far as it relates to child benefit as from 01.01.21
37. Omitted by reg. 2(3)(a) of S.R. 2021 No. 281 as from 28.10.21
38. Substituted by reg. 2(3)(b) of S.R. 2021 No. 281 as from 28.10.21
39. Omitted by reg. 3(3)(a) of SI 2020/1505 in so far as it relates to child benefit as from 01.01.21
40. Substituted by reg. 3(3)(b) of SI 2020/1505 in so far as it relates to child benefit as from 01.01.21