STATUTORY INSTRUMENTS

2019 No. 872

EXITING THE EUROPEAN UNION

SOCIAL SECURITY

The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019

Made - - - -	*10.35 a.m. on 16th April 2019*
Laid before Parliament	*2.45 p.m. on 16th April 2019*
Coming into force - -	*7th May 2019*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a) and (d), 137(1) and (2)(a) and (i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**), sections 35(1) and 36(2) and (4) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers Act 1995(**b**), sections 1(5)(a) and 17(1) of the State Pension Credit Act 2002(**c**), sections 24(1) and 25(2), (3) and (5) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act 2007(**d**) and sections 4(5)(a) and 42(1), (2) and (3) of the Welfare Reform Act 2012(**e**).

The Secretary of State has not referred proposals in respect of these Regulations to the Social Security Advisory Committee, as it appears to her that by reason of the urgency of the matter it is inexpedient to do so(**f**).

In relation to regulations 5 and 6, the Secretary of State has not undertaken consultation with organisations appearing to her to be representative of the authorities concerned, as it appears to her that by reason of the urgency of the matter it is inexpedient to do so(**g**).

(**a**) 1992 c. 4; section 137 is cited because of the meaning given to the word "prescribed" in subsection (1). Section 175(1), (3) and (4) is applied to provisions of the State Pension Credit Act 2002 (c. 16) by section 19(1) of that Act. There are amendments to section 137 and section 175(1) but none is relevant.

(**b**) 1995 c. 18; section 35(1) is cited because of the meaning given to the words "applicable amount", "prescribed" and "regulations". Section 35(1) was amended by paragraph 62 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 c. 2. Paragraph 11 of Schedule 1 was amended by part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).

(**c**) 2002 c. 16; section 17(1) is cited because of the meaning given to the words "prescribed" and "regulations". There are amendments to section 17(1) but none is relevant.

(**d**) 2007 c. 5; section 24(1) is cited because of the meaning given to the words "prescribed" and "regulations". There are amendments to section 24(1) but none is relevant.

(**e**) 2012 c. 5.

(**f**) See section 173(1)(a) of the Social Security Administration Act 1992 (c. 5). The amendments to section 173 are not relevant to these Regulations.

(**g**) See section 176(2)(a) of the Social Security Administration Act 1992 (c. 5). The amendments to section 176 are not relevant to these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 and come into force on 7th May 2019.

Income Support (General) Regulations 1987

2.—(1) The Income Support (General) Regulations 1987(**a**) are amended as follows.

(2) In regulation 21AA (special cases: supplemental – persons from abroad)(**b**)—

(a) at the end of paragraph (2) add "or (3A)";

(b) in paragraph (3)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016"(**c**);

(c) for paragraph (3)(bb) substitute—

"(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;"(**d**);

(d) after paragraph (3) insert—

"(3A) A right to reside falls within this paragraph if it exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971(**e**) by virtue of—

(a) Appendix EU to the immigration rules(**f**) made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (4)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

Jobseeker's Allowance Regulations 1996

3.—(1) The Jobseeker's Allowance Regulations 1996(**g**) are amended as follows.

(2) In regulation 85A (special cases: supplemental – persons from abroad)(**h**)—

(a) at the end of paragraph (2)(b) add "or (3A)";

(b) in paragraph (3)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016";

(c) for paragraph (3)(aa) substitute—

"(aa) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;";

(d) after paragraph (3) insert—

(**a**) S.I. 1987/1967.

(**b**) Regulation 21AA was added by S.I. 2006/1026. Relevant amending instruments are S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.

(**c**) S.I. 2016/1052.

(**d**) The definition of "primary carer" in regulation 16 was amended by S.I. 2018/801. There are other amendments but none is relevant.

(**e**) 1971 c. 77.

(**f**) The immigration rules were laid before Parliament on 23rd May 1994 (HC 395). Appendix EU was laid before Parliament on 20th July 2018 as part of a command paper that amended the immigration rules entitled "Statement of Changes in Immigration Rules" (Cm 9675). Appendix EU was amended in respect of the Zambrano right to reside by a further command paper entitled "Statement of Changes in Immigration Rules" laid before Parliament on 7th March 2019 (HC 1919).

(**g**) S.I. 1996/207.

(**h**) Regulation 85A was inserted by S.I. 2006/1026. Relevant amending instruments are S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.

"(3A) A right to reside falls within this paragraph if it exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (4)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

State Pension Credit Regulations 2002

4.—(1) The State Pension Credit Regulations 2002(**a**) are amended as follows.

(2) In regulation 2 (persons not in Great Britain)(**b**)—

(a) at the end of paragraph (2) add "or (3A)";

(b) in paragraph (3)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016";

(c) for paragraph (3)(bb) substitute—

"(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;";

(d) after paragraph (3) insert—

"(3A) A right to reside falls within this paragraph if it exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (4)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

Housing Benefit Regulations 2006

5.—(1) The Housing Benefit Regulations 2006(**c**) are amended as follows.

(2) In regulation 10 (persons from abroad)(**d**)—

(a) at the end of paragraph (3) add "or (3AA)";

(b) in paragraph (3A)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016";

(c) for paragraph (3A)(bb) substitute—

"(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;";

(d) after paragraph (3A) insert—

(**a**) S.I. 2002/1792.

(**b**) Regulation 2 was substituted by S.I. 2006/1026. Relevant amending instruments are S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.

(**c**) S.I. 2006/213.

(**d**) Regulation 10 was amended by S.I. 2006/1026, S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.

"(3AA) A right to reside falls within this paragraph if it exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (3B)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

6.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**a**) are amended as follows.

(2) In regulation 10 (persons from abroad)(**b**)—

(a) at the end of paragraph (3) add "or (4ZA)";

(b) in paragraph (4)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016";

(c) for paragraph (4)(bb) substitute—

"(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the person satisfies the criteria in paragraph (5) of that regulation;";

(d) after paragraph (4) insert—

"(4ZA) A right to reside falls within this paragraph if it exists by virtue of a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (4A)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

Employment and Support Allowance Regulations 2008

7.—(1) The Employment and Support Allowance Regulations 2008(**c**) are amended as follows.

(2) In regulation 70 (special cases: supplemental – persons from abroad)(**d**)—

(a) at the end of paragraph (2) add "or (3A)";

(b) in paragraph (3)(a) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016";

(c) for paragraph (3)(bb) substitute—

"(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;";

(d) after paragraph (3) insert—

(**a**) S.I. 2006/214.
(**b**) Regulation 10 was amended by S.I. 2006/1026, S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.
(**c**) S.I. 2008/794.
(**d**) Regulation 70 was amended by S.I. 2012/2587 and S.I. 2014/902. There are other amending instruments but none is relevant.

"(3A) A right to reside falls within this paragraph if it exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(a) Appendix EU to the immigration rules made under section 3(2) of that Act; or

(b) 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.";

(e) in paragraph (4)(za) for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

Universal Credit Regulations 2013

8.—(1) The Universal Credit Regulations 2013(**a**) are amended as follows.

(2) In regulation 2 (interpretation)(**b**) in the definition of "EEA Regulations" for "Immigration (European Economic Area) Regulations 2006" substitute "Immigration (European Economic Area) Regulations 2016".

(3) In regulation 9 (persons treated as not being in Great Britain)(**c**)—

(a) at the end of paragraph (3)(aa)(ii) omit "or";

(b) in paragraph (3)(b)—

(i) for "regulation 15A(1)" substitute "regulation 16";

(ii) for "the claimant" substitute "the person";

(iii) for "regulation 15A(4A)" substitute "regulation 16(5)";

(c) at the end of paragraph (3)(b) add "; or";

(d) after paragraph (3)(b) insert—

"(c) 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; or

(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.".

Signed by authority of the Secretary of State for Work and Pensions

Alok Sharma
Minister for Employment
Department for Work and Pensions

16th April 2019 at 10.35 a.m.

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 he or she is 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

(**a**) S.I. 2013/376.
(**b**) There are amendments to regulation 2 but none is relevant.
(**c**) Regulation 9 was amended by S.I. 2015/546. There are other amending instruments but none is relevant.

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 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 (c. 77), 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 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 (S.I. 2006/1003) so that instead they refer to the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052), as the latter revoked the former.

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

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