EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND FUNERAL EXPENSES PAYMENT (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 15

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (the "2018 Act") and is subject to the negative resolution procedure.

2. Purpose

2.1 This Rule addresses deficiencies in retained EU law relating to social fund funeral expenses payments arising from the withdrawal of the United Kingdom from the European Union. The law it addresses has been retained under section 2 of the 2018 Act. It amends the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 506) ("the 2005 Regulations") to include a reference to the United Kingdom alongside the reference to a "member State of the European Union" to reflect the fact that the UK is no longer a member State. This will maintain the status quo for eligible EEA nationals and their family members organising a funeral in the UK.

2.2 The 2005 Regulations form part of Northern Ireland's domestic legislation. Regulation 7(9)(a) and 7(10) form part of EU-derived domestic legislation and allowed for eligible EEA nationals and their family members to be awarded a social fund funeral expenses payment for funerals taking place in "a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland". As the United Kingdom was a Member State of the European Union this included funerals in the United Kingdom.

2.3 Without the amendment, as the United Kingdom is no longer a member of the European Union, eligible EEA nationals and their family members could be awarded a social fund funeral expenses payment for a funeral taking place in countries in the EEA or Switzerland, but not in the United Kingdom.

2.4 It will maintain the status quo for eligible EEA nationals and their family members, who will continue to be able to be awarded a social fund funeral expenses payment for a funeral taking place in the United Kingdom, the EEA or Switzerland.

3. Background

3.1 The 2018 Act contains a power to make secondary legislation to 'fix' legal inoperabilities and other deficiencies that arise on exit in retained EU law. This includes EU-derived domestic legislation.

3.2 This Statutory Rule amends regulation 7(9)(a) of the 2005 Regulations by substituting "Norway or Switzerland" with "Norway, Switzerland or the United Kingdom." The full text of regulation 7(9)(a) currently reads "in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland".

3.3 This amendment will maintain the status quo for persons falling within regulation 7(10) of the 2005 Regulations, so that they can continue to be eligible for a social fund funeral expenses payment if they hold a funeral in the United Kingdom. This amendment is necessary because the United Kingdom is no longer a "member State of the European Union".

3.4 This Rule is needed to maintain the policy position that eligible EEA nationals and their family members should be able to claim a social fund funeral expenses payment for funerals taking place in the United Kingdom as well as in EEA states and Switzerland.

4. Consultation

4.1 There is no requirement to consult on these Regulations.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations and has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 These Regulations do not require a Regulatory Impact Assessment as there is no significant impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations–

(a) are not incompatible with any of the Convention rights,

(b) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(c) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable. This Rule maintains the status quo - eligible EEA nationals and their family members will continue to be able to be awarded a social fund funeral expenses payment for a funeral taking place in the United Kingdom.

10. Parity or Replicatory Measure

10.1 The Great Britain Regulations are the Social Fund Funeral Expenses Payment (Amendment) Regulations 2021 (S.I. 2021/65) which come into force on 15th February 2021.