EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (AMENDMENT) (EU EXIT) REGULATIONS (NORTHERN IRELAND) 2019

S.R. 2019 No. 213

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 section 115(3) and (4) of the Immigration and Asylum Act 1999, and is subject to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule makes amendments to the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71). These changes to domestic legislation will ensure that, after the United Kingdom (UK) exits the European Union (EU), the rights of certain third country nationals lawfully living and working in Northern Ireland are protected for the purposes of determining entitlement to certain benefits.

3. Background

3.1. Under existing legislation, persons who are subject to immigration control are generally not entitled to benefits. This policy is reflected in legislation in the Immigration and Asylum Act 1999. However, there are some exceptions to this general approach. Currently a person who is:

- lawfully working in Northern Ireland;
- subject to immigration control as set out in section 115(9) of the Immigration and Asylum Act; and
- a national of a State which has concluded an Association Agreement (AA) with the EU providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families

is treated as <u>not</u> being subject to immigration control for the purposes of accessing certain benefits. This means that they can access certain disability and carer's benefits and social fund payments, where all eligibility criteria are met.

3.2. Part II of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 sets out the persons not excluded from accessing certain benefits under section 115

of the Immigration and Asylum Act. Paragraph 2 of Part II of the Schedule provides that a person who is lawfully working in Northern Ireland and is a national of a State with which the EU has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (TFEU) which provides for equal treatment in the field of social security is not excluded from accessing certain disability and carer's benefits and social fund payments. Regulation 2 of this Statutory Rule extends paragraph 2 of Part II of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 to also cover agreements the UK has concluded which replace, in whole or in part, an EU Agreement[1] which has ceased to apply. This would cover the Trade and Partnership Agreements (TPAs) the UK has agreed with some third countries where relevant.

3.3. The EU currently has a number of AAs with third countries, some of which include social security provisions for workers which provide for equal treatment. When the UK leaves the EU, the provisions in the AAs will be transitioned into TPAs between the UK and those third countries. To give effect to the TPA social security provisions where relevant, these Regulations make simple technical changes to include references to TPAs in existing Northern Ireland social security legislation. This will maintain continuity of access to certain disability and carer's benefits and social fund payments, for those in the scope of these TPAs, including Zambrano Carers (non-EEA nationals who are primary carers of a British citizen and derive their right to reside in the UK through the person they care for).

3.4. The relevant benefits and payments are Attendance Allowance, Personal Independence Payment, Disability Living Allowance, Severe Disablement Allowance, Carer's Allowance and Social Fund payments. The only Social Fund payment to which the provisions apply is Winter Fuel Payment.

3.5. Attendance Allowance is a tax-free, non-means-tested benefit which provides help with extra costs to someone over state pension age who has a disability severe enough that they need someone to help look after them.

3.6. Personal Independence Payment is a tax-free, non-means-tested benefit which provides help with extra costs to someone who has a long term health condition or disability.

3.7. Disability Living Allowance is a tax-free, non-means-tested benefit which helps with extra costs to someone who first claimed under state pension age who has a long term health condition or disability. This benefit is being replaced by Personal Independence Payment for disabled adults.

3.8. Severe Disablement Allowance is a tax-free, non-means-tested benefit for those who cannot work because of illness or disability. It has not been possible to claim Severe Disablement Allowance since 2001, and it is being replaced by Employment and Support Allowance.

3.9. Carer's Allowance is a benefit for people who are giving regular and substantial care to disabled people in their own homes. They must spend at

[1] This is defined as an agreement concluded by the European Union under Article 217 of the Treaty on the Functioning of the European Union.

least 35 hours a week caring for a disabled person who is receiving certain disability benefits.

3.10. Winter Fuel Payment is a payment made to households with someone over state pension age to help pay their heating bills.

4. Consultation

4.1. There is no requirement to consult on the proposals in 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 proposals for these Regulations and concluded that they do not have significant implication for equality of opportunity or good relations. The proposed Regulations make only technical changes which will maintain the status quo by ensuring the current rules on access to certain benefits will continue to apply to certain third country nationals lawfully living and working in Northern Ireland. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

7.1. The Regulations impose no new costs; they maintain the status quo by ensuring the current rules on access to certain benefits will continue to apply to certain third country nationals lawfully living and working in Northern Ireland.

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) are not incompatible with Community law,

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

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

9. EU Implications

9.1. Not applicable. The Regulations maintain the status quo by ensuring the current rules on access to certain benefits will continue to apply to certain third country nationals lawfully living and working in Northern Ireland.

10. Parity or Replicatory Measure

10.1. These Regulations are equivalent, in part, to the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1431), and are due to come into force on exit day.

11. Additional Information

11.1. The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019 also maintain continuity of access to Child Benefit and Child Tax Credit. These amendments extend to Northern Ireland.