EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2022

S.R. 2022 No. 202

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 These Regulations amend the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71) ("the 2000 Regulations") to remove, for the purposes of accessing housing benefit and state pension credit, the exception from being a person subject to immigration control for nationals of the 27 countries which have ratified either the European Convention on Social and Medical Assistance (ECSMA) or the Council of Europe Social Charter, signed in Turin on 18th October 1961 (1961 ESC). This will mean that nationals from these countries will be treated in the same way as those arriving from the rest of the world and will only be able to access these benefits after five years of lawful residence in the UK.

3. Background

3.1 Section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") excludes persons subject to immigration control ("PSICs") from access to specified income-related benefits. A PSIC, as defined in section 115(9) of the 1999 Act, includes an individual who does not have leave to enter or remain in the UK or does have leave to enter or remain but has a No Recourse to Public Funds condition attached to their leave. European Economic Area (EEA) citizens are no longer automatically exempt from being a PSIC under section 115(9) of the 1999 Act and have equivalent status to non-EEA nationals entering the UK, unless for example they are covered by the Withdrawal Agreement and/or have leave under the European Union Settlement Scheme.

3.2 However, the 2000 Regulations provide a number of exemptions to section 115 of the 1999 Act for the purpose of access to specified benefits. Regulation 2 of, and paragraph 4 of Part I of the Schedule to, the 2000 Regulations specify that a person who is a national of a country that has ratified ECSMA or the 1961 ESC, and who is "lawfully present" in the UK, is not excluded under section 115 from certain income-related benefits, including housing benefit and state pension credit. This

means that currently nationals from countries that have ratified ECSMA or the 1961 ESC may be eligible to access housing benefit and state pension credit, notwithstanding their PSIC status, if they are lawfully present in the UK and meet the eligibility requirements of the relevant benefits legislation.

3.3 The 2000 Regulations are therefore being amended to ensure that nationals of countries that have ratified ECSMA or the 1961 ESC who are PSIC, who make a claim for housing benefit and state pension credit on or after the date on which these Regulations come into operation, will be placed on equal footing with other third country nationals claiming these benefits. This will not impact on those benefits which are already in payment and will only take effect for new claims to housing benefit and state pension credit from 15 September 2022 onwards.

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.

10. Parity or Replicatory Measure

10.1 The Great Britain Regulations are the Social Security and Council Tax Reduction Schemes (Amendment) Regulations 2022 (S.I. 2022/449) which come into force on 3 May 2022.