EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (HABITUAL RESIDENCE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2012

S.R. 2012 No. 380

1. Introduction

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

1.2. The Statutory Rule is made under powers conferred by sections 122(1)(a) and (d), 131(1) and (2), 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Articles 6(5) and (12) and 36(2) of the Jobseekers (Northern Ireland) Order 1995, and now vested in it, sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002 and sections 4(3) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Social Security (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2012 amend a range of income-related benefits regulations as an indirect consequence of the judgment of the Court of Justice of the European Union in Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi.

2.2. The regulations amend the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003, the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 and the Employment and Support Allowance Regulations (Northern Ireland) 2008.

2.3. Regulation 1 provides for the citation and commencement.

2.4. Regulations 2 to 7 amend the regulations listed above to add the right to reside in the UK arising from the Zambrano judgment to those specifically excluded for the purposes of establishing entitlement to income-related benefits.

3. Background

3.1. In the Zambrano case, the Court of Justice of the European Union held that Article 20 of the Treaty on the Functioning of the European Union precludes a Member State from refusing a third country national rights to reside and work where such decisions would cause their children, who are citizens of the EU, to leave the Union thereby denying them rights conferred on citizens of the Union.

3.2. In compliance with the judgment, the Home Office amended the Immigration (European Economic Area) Regulations 2006 to provide a right of residence in the UK for the primary carer of a British citizen where a refusal would mean that the British citizen would be unable to reside in the UK or another EEA State.

3.3. Under existing legislation, most non-EEA nationals who have a right to reside and work in the UK do not have access to income-related benefits as their immigration status specifies that they have no recourse to public funds. The amendments to the Immigration (European Economic Area) Regulations 2006 have the unintended consequence of providing access to income-related benefits because a right to reside in the Common Travel Area is one of the conditions of entitlement.

3.4. The Social Security (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2012 maintain the existing policy position.

4. Consultation

4.1. Under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, the Social Security Advisory Committee were consulted in respect of regulations 5 and 6 of the Regulations. Following agreement from the Committee, the Regulations have not been formally referred by virtue of section 150(1)(b) of that Act. Otherwise the Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and acccordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

5. Equality Impact

5.1. A screening exercise has been carried out for the purposes of section 75 of the Northern Ireland Act 1998. A full Equality Impact Assessment is not required as the regulations maintain the existing policy position. They do not represent a new or revised policy or introduce new impacts.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not required as the regulations do not impose a cost on business, charities, social enterprises or voluntary bodies.

7. Financial Implications

7.1. None.

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 the proposed Rule is not incompatible with any of the Convention rights, is not incompatible with Community Law, does not discriminate against a person or class of person on the ground of religious belief or political opinion and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The proposed regulations are required as an indirect consequence of the judgment of the Court of Justice of the European Union in Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi.

10. Parity or Replicatory Measure

10.1. The proposed Rule is a parity measure and introduces measures corresponding to the Social Security (Habitual Residence) (Amendment) Regulations 2012 in accordance with section 87 of the Northern Ireland Act 1998.

11. Additional Information

11.1. Not applicable.