EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (HABITUAL RESIDENCE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2014

S.R. 2014 No. 133

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 the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Jobseekers (Northern Ireland) Order 1995, the Immigration and Asylum Act 1999, the State Pension Credit Act (Northern Ireland) 2002 and the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

2.1 This Statutory Rule makes changes to a number of income-related benefit regulations to provide clarity and consistency in the way an EEA national's right of residence is determined for benefit purposes. The Income-related Benefit Regulations that are amended by this Rule are:

- 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.

2.2 The above listed income-related benefit regulations contain a general rule that claimants must have a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area) and must be habitually resident to qualify for income-related benefits. This is known as the Habitual Residence Test. These regulations ensure that the income-related benefit regulations now refer to the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) rather than Directive 2004/38/EC when defining legal right of residence in the UK.

3. Background

3.1 Under the income-related benefit regulations a claimant who is not habitually resident in the Common Travel Area is defined as a "person from abroad" and such a person is not able to receive income-related benefits. In order to be treated as habitually resident a claimant needs to have a legal right to reside in the place where he or she is habitually resident.

3.2 Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State ("the Directive") sets out the qualifying rights to reside of EEA nationals. The Home Office have transposed the Directive into UK law through the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) ("the Immigration EEA Regulations").

3.3 To ensure consistency between the income-related benefit regulations and the Immigration (EEA) Regulations, the income-related benefit regulations are being amended to refer to the Immigration (EEA) Regulations rather than the Directive to identify those EEA nationals who are treated as habitually resident.

3.4 The effect of these amendments will also minimise the need to make repeated changes to the income-related benefit regulations whenever changes are made to the Immigration (EEA) Regulations. For example, the Home Office have recently made amendments to Regulation 6 of the Immigration (EEA) Regulations by way of the Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 (S.I. 2013/3032) in order to restrict the extent to which a person who is involuntarily unemployed may retain the status of "worker" and also the length of time that a person can be a jobseeker.

4. Consultation

4.1 A formal consultation has not been carried out by the Department on these Regulations. Consultation was not considered necessary for these changes as they make minor and technical amendments which are designed to provide consistency with provisions in existing legislation.

4.2 The Social Security Advisory Committee were consulted and were in agreement that they did not require the proposals for these Regulations to be formally referred.

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 these legislative proposals and has concluded that the proposals 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 they do not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 There are no significant costs to the Department to implement these proposals.

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 the Rule—

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

(b) is not incompatible with Community law,

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

(d) does 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 main corresponding Great Britain Regulations are the Social Security (Habitual Residence) (Amendment) Regulations 2014 (S.I. 2014/902).

10.2 Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.