EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME-RELATED BENEFITS) (PERSONS OF NORTHERN IRELAND – FAMILY MEMBERS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

2020 No. 149

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 sections 122(1)(a) and (d), 133(2)(a) and (i) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Article 36(2) of, and paragraph 11(2) of Schedule 1 to, 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 section 25(2) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007*,* and is subject to the negative resolution procedure.

2. Purpose

2.1 This instrument makes amendments to the income-related benefits legislation for family members of people of Northern Ireland[1] granted limited leave to remain under Appendix EU to the Immigration Rules. The amendments will enable them to access income-related benefits on broadly the same terms as family members of citizens of the Republic of Ireland.

3. Background

3.1 The Minister for Communities, in exercise of the powers conferred by sections 122(1)(a) and (d), 133(2)(a) and (i) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Article 36(2) of, and paragraph 11(2) of Schedule 1 to, 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 section 25(2) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007, makes these Regulations.

[1] A relevant person of Northern Ireland – "a person who: (a) is: (i) a British citizen; or (ii) an Irish citizen; or (iii) a British citizen and an Irish citizen; and (b) was born in Northern Ireland and, at the time of the person's birth, at least one of their parents was: (i) a British citizen; or (ii) an Irish citizen; or (iii) a British citizen and an Irish citizen; or (iv) otherwise entitled to reside in Northern Ireland without any restriction on their period of residence". As defined in Appendix EU to the Immigration Rules made under section 3(2) of the Immigration Act 1971.

4. Consultation

4.1 Given the urgency of these Regulations, no consultation has been done.

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. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1 The legislation applies to activities which are undertaken by small businesses and owing to the urgent nature of the requirement for this legislation it is not appropriate to carry out a Regulatory Impact Assessment.

7. Section 24 of the Northern Ireland Act 1998

7.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that 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 grounds of religious belief or political opinion; and

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

8. E U Implications

8.1 Not applicable.

9. Parity or Replicatory Measure

9.1 These Regulations are equivalent to the Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 (SI 2020/683) which were made in Great Britain on 2nd July 2020 and came into force on 24th August 2020.

10. Legislative Context

Current income-related benefits regulations

10.1 Under existing legislation, individuals who wish to claim income-related benefits must be both habitually resident in the Common Travel Area (CTA) and have a legal right to reside that gives them access to benefits and services. A legal right to reside for non-UK nationals who do not have EEA legal rights takes the form of an immigration status which gives the individual recourse to public funds, such as indefinite leave to remain.

European Economic Area (EEA) nationals can bypass this requirement if they are exercising a qualifying EU treaty right that is recognised in Article 7 of Directive 2004/38/EC[2] on free movement between EEA countries. This directive is implemented in domestic legislation through the Immigration (European Economic Area) Regulations 2016[3]. Family members, including non-EEA nationals, can derive a right to reside from an EEA national which allows them to access income-related benefits under this legislation where the EEA national is exercising a qualifying EU treaty right.

10.2 People of Northern Ireland can access income-related benefits by virtue of being British citizens, Irish citizens or both with rights under CTA arrangements. Their family members, however, cannot access income-related benefits unless they are granted a qualifying immigration status by the Home Office. This instrument changes the income-related benefit regulations in line with the Home Office's amendments to Appendix EU to the Immigration Rules laid on 14 May 2020[4], in which 'a relevant person of Northern Ireland' will be included in the definition of 'EEA citizen' from 24 August 2020. This instrument allows those granted limited leave to remain (LLR) under the EU Settlement Scheme (EUSS) as a family member of a relevant person of Northern Ireland to access these benefits on broadly the same terms as a family member of a citizen of the Republic of Ireland.

10.3 Family members of citizens of the Republic of Ireland granted LLR under the EU Settlement Scheme can access income-related benefits if the Irish citizen is exercising a qualifying EU treaty right, meaning that they are a worker, self-employed person, self-sufficient person or student, or that they have acquired a right of permanent residence[5] or if they are a family member who has retained a right of residence[6]. This instrument will make amendments so that a family member of a person of Northern Ireland in a comparable situation can also access income-related benefits.

Amendments to the income-related benefits regulations

10.4 Regulation 21AA of the Income Support (General) Regulations (Northern Ireland) 1987 currently provides that an individual who does not have a right to reside, or who has a right to reside only by virtue of their initial three months' right to reside, their right to reside as a jobseeker, or their right to reside as a Zambrano carer, is not treated as being within the UK, the Channel Islands, the Isle of Man and the Republic of Ireland for the purposes of claiming Income Support. Regulation 2 of this instrument amends regulation 21AA of the Income Support (General) Regulations (Northern Ireland) 1987 to create an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so they can access Income Support on broadly the same terms as family members of Irish citizens.

10.5 Regulation 85A of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 makes similar provision for the purposes of claiming Jobseeker's Allowance, except that a person with a right to reside only as a jobseeker is not among those rights to reside listed as insufficient to satisfy the habitual residence test. Regulation 3 of this

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0038&from=EN
[3] https://www.legislation.gov.uk/uksi/2016/1052/contents
[4] https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-cp-232-14-may-2020
[5] This is generally after five years' continuous lawful residence in one or a combination of the previously mentioned categories, but there are circumstances in which it can be acquired earlier.
[6] https://www.legislation.gov.uk/uksi/1987/1967/contents

instrument amends regulation 85A of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 to create an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so they can access Jobseeker's Allowance on broadly the same terms as family members of Irish citizens

10.6 Regulation 2 of the State Pension Credit Regulations (Northern Ireland) 2003 makes similar provision for the purposes of claiming State Pension Credit. Regulation 4 of this instrument amends regulation 2 of the State Pension Credit Regulations (Northern Ireland) 2003 to an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so they can access State Pension Credit on broadly the same terms as family members of Irish citizens.

10.7 Regulation 10 of the Housing Benefit Regulations (Northern Ireland) 2006 makes similar provision for the purposes of claiming Housing Benefit. Regulation 5 of this instrument amends regulation 10 of the Housing Benefit Regulations (Northern Ireland) 2006 to create an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so they can access Housing Benefit on broadly the same terms as family members of Irish citizens.

10.8 Regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 makes similar provision for the purposes of claiming Housing Benefit. Regulation 6 of this instrument amends regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 to create an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so those who have attained the qualifying age for state pension credit can access Housing Benefit on broadly the same terms as family members of Irish citizens.

10.9 Regulation 70 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 makes similar provision for the purposes of claiming Employment and Support Allowance. Regulation 7 of this instrument amends regulation 70 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 to create an exception for family members of persons of Northern Ireland granted limited leave to enter or remain under Appendix EU to the Immigration Rules so they can access Employment and Support Allowance on broadly the same terms as family members of Irish citizens.

Impact of Amendments

10.10 This instrument amends the aforementioned regulations so that someone who is granted limited leave to enter or remain under the EU Settlement Scheme (EUSS) as the family member of a person of Northern Ireland would have access to income related benefits if their person of Northern Ireland was in a comparable position to an EEA national exercising a qualifying EU treaty right in the UK.

10.11 These amendments also clarify that a person of Northern Ireland should be treated as a European Economic Area national for these purposes. This is consistent with the

definitions provided in Annex 1 of Appendix EU to the Immigration Rules made under section 3(2) of the Immigration Act 1971[7]

11. Policy background

11.1 The Government made a series of commitments in the 'New Decade, New Approach' (9 January 2020)[8] for supporting power-sharing in Northern Ireland and upholding the Belfast (Good Friday) Agreement 1998. One of these commitments was to ensure that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status on broadly the same terms as the family members of citizens of the Republic of Ireland in the UK.

11.2 The Home Office is amending the Immigration Rules on 24 August 2020 to implement this commitment. This will allow the family members of people of Northern Ireland to apply to the EUSS. The EUSS will give these family members broadly the same ability to live and work in the UK as the family members of Irish citizens, including their access to benefits and services. Those granted indefinite leave to remain under the EUSS will be given the same access to benefits as UK nationals.

11.3 This instrument ensures that those granted limited leave to remain under the EUSS as the family member of a person of Northern Ireland will have the same access to income-related benefits as the family members of Irish citizens granted limited leave to remain on that basis

12. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

12.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

13. Monitoring & review

13.1 There are no plans to monitor or review this instrument as it clarifies that the current habitual residence rules on access to benefits will continue to apply to those holding limited leave to enter or remain or enter under the EU Settlement Scheme.

13.2 The regulation does not include a statutory review clause

14. Contact

14.1 Anne McCleary at the Department for Communities. Telephone: 02890 839332 or email: anne.mccleary@communities-ni.gov.uk can be contacted with any queries regarding the Statutory Rule.

[7] https://www.legislation.gov.uk/ukpga/1971/77/section/3

[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf