EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME-RELATED BENEFITS) (UPDATING AND AMENDMENT NO. 2) (EU EXIT) REGULATIONS (NORTHERN IRELAND) 2019

S.R. 2019 No. 90

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, sections 1(5)(a) and 19(2) 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 Statutory Rule makes amendments to income-related benefits regulations to clarify that the current habitual residence rules on access to benefits for EEA (European Economic Area) nationals, Swiss nationals and Zambrano carers continue to apply whilst they hold limited leave to enter or remain under the EU Settlement Scheme (EUSS). The relevant income-related benefits are Income Support, Jobseeker's Allowance, State Pension Credit, Housing Benefit and Employment and Support Allowance.

2.2. The amendments clarify that the existing rules on access to benefits for EEA and Swiss nationals remain in place for those granted limited leave to enter or remain under the EUSS.

2.3. The amendments also clarify that the existing rules on access to benefits for Zambrano carers remain in place for those granted limited leave to enter or remain under the EUSS.

2.4. The amendments also replace references to the Immigration (European Economic Area) Regulations 2006 with references to the Immigration (European Economic Area) Regulations 2016, which revoked and replaced the 2006 Regulations.

3. Background

3.1. Under existing legislation, individuals who wish to claim income-related benefits must have a right to reside and be habitually resident in the Common Travel Area (CTA).

3.2. For the purposes of accessing income-related benefits, EEA and Swiss nationals and their family members have a right to reside in the CTA if they are exercising EU Treaty rights, such as being in the UK as a worker or self-employed person, or as a family member of a person exercising Treaty rights.

3.3. Zambrano carers are non-United Kingdom and non-EEA citizen primary carers of a British citizen child or adult dependant. Zambrano carers have a right to reside in the UK where the British citizen being cared for is residing in the UK and would be forced to leave if the primary carer were required to leave the UK.

3.4. The EUSS is the means by which EEA and Swiss nationals, resident in the UK before a specified date, are granted a UK immigration status which protects their entitlements and right to remain in the UK. Certain non-EEA and non-Swiss nationals, including Zambrano carers, will also need to apply to the EUSS by the same date in order to confirm their immigration status and rights. Those with fewer than 5 years' continuous residence in the UK will be granted limited leave to enter or remain (also referred to as pre-settled status). Those with 5 or more years' continuous residence will be granted indefinite leave to enter or remain (also referred to as settled status).

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, in effect, maintain the status quo for the purpose of access to income-related benefits for those granted limited leave to enter or remain under the EUSS. 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 regarding access to income-related benefits.

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 clarify that existing rules on access to benefits for EEA and Swiss nationals remain in place for those granted limited leave to enter or remain under the EUSS.

10. Parity or Replicatory Measure

10.1. These Regulations are equivalent, in part, to the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), and are due to come into force on 7th May 2019.

11. Additional Information

11.1. The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 89) make corresponding amendments for Universal Credit.