EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (PERSONS OF NORTHERN IRELAND - FAMILY MEMBERS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

SR 2020 No. 130

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) on behalf of the Department for Work and Pensions, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to Universal Credit legislation covering Northern Ireland 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 Universal Credit on broadly the same terms as family members of citizens of the Republic of Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

4.3 This instrument relates to Universal Credit only. A separate statutory regulation for social security benefits will be led by the Department for Communities in Northern Ireland.

5. European Convention on Human Rights

[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.

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

Current Universal Credit Regulations and amendments

6.1 Under existing legislation, individuals who wish to claim Universal Credit must both be 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.

6.2 People of Northern Ireland can access Universal Credit by virtue of being British citizens, Irish citizens or both with rights under CTA arrangements. Their family members, however, cannot access Universal Credit unless they are granted a qualifying immigration status by the Home Office. This instrument changes the Universal Credit 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 as a family member of a relevant person of Northern Ireland to access Universal Credit on broadly the same terms as a family member of a citizen of the Republic of Ireland.

6.3 Family members of citizens of the Republic of Ireland granted LLR under the EU Settlement Scheme can access Universal Credit 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 Universal Credit.

6.4 Regulation 9 of the Universal Credit Regulations (Northern Ireland) 2016 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

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0038&from=EN
[3] http://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] For example, if they have divorced the Irish citizen or if the Irish citizen has died.

purposes of claiming Universal Credit. Regulation 2 of this instrument amends regulation 9 of the Universal Credit Regulations (Northern Ireland) 2016.

Impact of amendments

6.5 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 Universal Credit if their person of Northern Ireland was in a comparable position to an EEA national exercising a qualifying EU treaty right in the UK.

6.6 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].

6.7 Section 87 of the Northern Ireland Act 1998 ("the 1998 Act") places a statutory duty on the Minister for Communities and Secretary of State for Work and Pensions to consult with one another with a view to securing, to the extent agreed between them, a single social security system. Though certain aspects of social security were devolved to the Scottish Government under the Scotland Act 2016, the Minister for Communities and the Secretary of State for Work and Pensions continue to work together in order to ensure parity between the benefit system in Northern Ireland and those benefits which are reserved in Great Britain, or in England and Wales. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

6.8 The Welfare Reform Act 2012 provided, amongst other things, for the introduction of Universal Credit (UC) and Personal Independence Payments (PIP).

6.9 The Welfare Reform and Work Act 2016 made further provision in connection with social security, including amendments in relation to the benefit cap, employment and support allowance, and universal credit.

6.10 On 17 November 2015 "A Fresh Start: The Stormont Agreement and Implementation Plan" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provided a time-limited power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council could then confer power on the Secretary of State or a Northern Ireland Department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 was made on 9 December 2015 making provision corresponding to the Welfare Reform Act 2012. The Welfare Reform and Work (Northern Ireland) Order 2016 was made on 12 October 2016 making provision corresponding to the social security provisions of the Welfare Reform and Work Act 2016.

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

6.11 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, and with the agreement of the Department for Communities, the Department for Work and Pensions is laying this instrument on behalf of Northern Ireland in order to deliver the changes equally across both Great Britain and Northern Ireland.

7. Policy background

What is being done and why?

7.1 The Government made a series of commitments in the 'New Decade, New Approach' (13 January 2020) 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 people of Northern Ireland have broadly the same family reunification rights as family members of Irish citizens.

7.2 The Home Office have amended the Immigration Rules to define a person of Northern Ireland as an EEA national. This allows the family members of persons of Northern Ireland to apply to the EUSS. The EUSS will give these family members the same rights 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.

7.3 This instrument ensures that those granted limited leave to remain under the EUSS have the same access to Universal Credit as the family members of Irish citizens. They will be able to access Universal Credit through deriving a right to reside[8] from their person of Northern Ireland family member.

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

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

9. Consolidation

9.1 There are no plans to consolidate any of the Regulations which are amended by these Regulations. This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or ("Blue Volumes"). It will be available to the public at no cost via the internet at: https://www.communities-ni.gov.uk/services/law-relating-social-security.

10. Consultation outcome

10.1 None.

11. Guidance

[8] A right to reside is defined in the Immigration (EEA) Regulations 2016. An EEA national is exercising a right to reside if they are a worker, self-employed, a student, have permanent residence, are self-sufficient or are a retained worked.

11.1 Information relating to these changes to legislation will be incorporated into online guidance, leaflets, forms and manuals where appropriate. Internal guidance and standard operating procedures will also be updated.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 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 EUSS.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Anne McCleary at the Department for Communities. Telephone: 02890 839332 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and Carer's Allowance at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson MP, Minister for Disabled People at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.