

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INCOME-RELATED BENEFITS) (UPDATING AND
AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 872

1. Introduction

1.1 This explanatory memorandum has been prepared by 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 income-related benefits legislation to clarify that the existing rules on access to benefits for EEA (European Economic Area) and Swiss nationals remain in place for those granted limited leave to enter or remain under the EU Settlement Scheme (EUSS).

2.2 This instrument also clarifies 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. Zambrano carers are non-United Kingdom and non-EEA citizen primary carers of a British citizen child or adult dependent.

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 Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Corresponding legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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).

- 6.2 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.
- 6.3 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.
- 6.4 Regulation 21AA of the Income Support (General) Regulations 1987¹ 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 1987.
- 6.5 Regulation 85A of the Jobseeker's Allowance Regulations 1996² 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 listed as a right to reside insufficient to satisfy the habitual residence test. Regulation 3 of this instrument amends regulation 85A of the Jobseeker's Allowance Regulations 1996.
- 6.6 Regulation 2 of the State Pension Credit Regulations 2002³ 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 2002.
- 6.7 Regulation 10 of the Housing Benefit Regulations 2006⁴ makes similar provision for the purposes of claiming Housing Benefit. Regulation 5 of this instrument amends regulation 10 of the Housing Benefit Regulations 2006.
- 6.8 Regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁵ 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 2006.
- 6.9 Regulation 70 of the Employment and Support Allowance Regulations 2008⁶ 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 2008.
- 6.10 Regulation 9 of the Universal Credit Regulations 2013⁷ makes similar provision for the purposes of claiming Universal Credit. Regulation 8 of this instrument amends regulation 9 of the Universal Credit Regulations 2013.

¹ <http://www.legislation.gov.uk/uksi/1987/1967/contents>

² <http://www.legislation.gov.uk/uksi/1996/207/contents>

³ <http://www.legislation.gov.uk/uksi/2002/1792/contents>

⁴ <http://www.legislation.gov.uk/uksi/2006/213/contents>

⁵ <http://www.legislation.gov.uk/uksi/2006/214/contents>

⁶ <http://www.legislation.gov.uk/uksi/2008/794/contents>

⁷ <http://www.legislation.gov.uk/uksi/2013/376/contents>

- 6.11 These amendments clarify that a person who has limited leave to enter or remain in the UK under the EUSS must also be exercising a qualifying right to reside in the UK in order to be eligible for income-related benefits.
- 6.12 These amendments also clarify that a person who has limited leave to enter or remain under the EUSS and only has a right to reside as a Zambrano carer continues to not qualify for income-related benefits.
- 6.13 These amendments also replace references to the Immigration (European Economic Area) Regulations 2006⁸ so that they now instead refer to the Immigration (European Economic Area) Regulations 2016⁹, as the former have been revoked and replaced by the latter.

7. Policy background

What is being done and why?

- 7.1 DWP administers a range of income-related (means-tested) benefits where claimants must demonstrate a qualifying right to reside and be factually and habitually resident in the UK in order to be eligible.
- 7.2 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).
- 7.3 This instrument makes amendments to income-related benefits regulations to clarify that the current habitual residence rules on access to benefits for EEA nationals, Swiss nationals and Zambrano carers continue to apply whilst they hold limited leave to enter or remain granted under the EUSS.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018¹⁰, but relates to the withdrawal of the United Kingdom from the European Union because it relates to the EUSS.

9. Consolidation

- 9.1 There are no plans to consolidate any of the Regulations which are amended by these Regulations.
- 9.2 Informal consolidated text of instruments is available to the public free of charge via the National Archives' website: <http://www.legislation.gov.uk/>.

⁸ <http://www.legislation.gov.uk/uksi/2006/1003/contents>

⁹ <http://www.legislation.gov.uk/uksi/2016/1052/contents>

¹⁰ <http://www.legislation.gov.uk/ukpga/2018/16/contents>

10. Consultation outcome

- 10.1 A consultation has not been carried out as these regulations clarify that the existing rules on access to benefits for EEA and Swiss nationals and Zambrano carers continue to apply to those holding limited leave to enter or remain under the EUSS.
- 10.2 DWP has not consulted with the Social Security Advisory Committee due to the short timescale for making these clarifying amendments. However, the Committee have been notified of the intention not to consult due to urgency, and will be provided with an overview of the legislative changes.
- 10.3 DWP has not consulted with the Local Authority Associations¹¹ due to the short timescale for making these clarifying amendments. However, the associations have been notified of the intention not to consult due to urgency, and will be provided with an overview of the legislative changes.

11. Guidance

- 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. Guidance will also be provided to local authorities before these regulations are due to come into force.

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 it has no impact on business or civil society organisations.

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 under the EUSS.
- 14.2 These Regulations do not include a statutory review clause.

15. Contact

- 15.1 Edward Smith at the Department for Work and Pensions, Telephone: 020 3284 8352 or email: edward.smith@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ronan O'Connor, Deputy Director for EU and International Affairs, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

¹¹ The London Councils, the Local Government Association, the Welsh Local Government Association and the Council of Scottish Local Authorities

15.3 The Rt Hon Alok Sharma MP, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.