

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (AMENDMENT)
(EU EXIT) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 281

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 section 115(3) and (4) of the Immigration and Asylum Act 1999 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71) (“the Immigration Regulations”). These changes will ensure that the Immigration Regulations operate in line with the new immigration system and take account of the fact that some Association Agreements (AAs) no longer apply to the UK after EU Exit.

3. Background

- 3.1 Under the new immigration system, EEA migrants arriving from 1 January 2021 are treated in the same way as migrants from the rest of the world. This means they are classified as a Person Subject to Immigration Control, and therefore will typically have no recourse to public funds for 5 years. However, nationals of 25 EEA Member States which are signatories to the European Convention on Social and Medical Assistance (ECSMA) and the 1961 European Social Charter (ESC) could still be able to claim Universal Credit, despite the no recourse to public funds condition due to a provision in domestic legislation.
- 3.2 Current legislation allows Persons Subject to Immigration Control from ECSMA/ESC countries to access certain benefits, including Universal Credit. This legislation has not applied to EEA citizens before, as they were not classified as Persons Subject to Immigration Control, and in any case had Universal Credit access rights under EU law. The change in immigration status of EEA migrants from 1 January 2021 has not therefore been reflected in the legislation.
- 3.3 The Immigration Regulations are therefore being amended to ensure that nationals from the 25 Member States (and Turkey and North Macedonia) who are signatories to ECSMA/ESC are not able to access Universal Credit (if they have no recourse to public funds), by ensuring the domestic legislation operates in line

with the new immigration system. This does not apply when Universal Credit was claimed prior to 28th October 2021.

- 3.4 The EU has AAs with a number of non-EU countries, to which the UK was party as an EU member. The AAs primarily cover trade issues but some agreements provide for equal treatment in social security for workers from these countries in the UK. The equal treatment provisions mean the UK has to pay certain non-contributory benefits to nationals of these countries who are working in the UK before the end of the Transition Period. This is the case even where their immigration status means they have no recourse to public funds.
- 3.5 As a result of the UK's exit from the EU, the Westminster Government has been transitioning the EU AAs into bilateral (trade) agreements and, following collective agreement, reproducing the former arrangements in them. This includes replicating the social security equal treatment provisions in the UK transitioned agreements. Where an AA has not been transitioned, for example, where negotiations between the UK and the third country are still ongoing, there will no longer be an international agreement in place to underpin the exception which allows access to relevant benefits.
- 3.6 The Immigration Regulations are therefore being amended to make clear that nationals of a country where the AA has not been transitioned will not be able to access relevant benefits unless they had claimed the benefit before 28th October 2021.

4. Consultation

- 4.1 There is no requirement to consult on 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 the legislative proposals for these Regulations and has concluded that they 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 there is no significant impact on costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 None for the Department.

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) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (c) do 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 Great Britain Regulations are the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1505) which came into force on 1st January 2021.

11. Additional information

11.1 Not applicable.