

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (PERSONS OF NORTHERN IRELAND - FAMILY
MEMBERS) (AMENDMENT) REGULATIONS 2020

2020 No. 683

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 the income-related benefits legislation for family members of people of Northern Ireland¹ 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. 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 will be produced for Northern Ireland. One statutory regulation for social security benefits will be led by the Department for Communities in Northern Ireland. Another statutory regulation for Universal Credit will be led by the Department for Work and Pensions.

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.

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.

6. Legislative Context

Current income-related benefits regulations

- 6.1 Under existing legislation, individuals who wish to claim income-related benefits 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/EC² on free movement between EEA countries. This directive is implemented in domestic legislation through the Immigration (European Economic Area) Regulations 2016³. 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 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 2020⁴, 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 these benefits 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 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 residence⁵ or if they are a family member who has retained a right of residence⁶. 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

- 6.4 Regulation 21AA of the Income Support (General) Regulations 1987⁷ 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

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0038&from=EN>

³ <http://www.legislation.gov.uk/ukxi/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.

⁷ <http://www.legislation.gov.uk/ukxi/1987/1967/contents>

the purposes of claiming Income Support. Regulation 2 of this instrument amends regulation 21AA of the Income Support (General) Regulations 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.

- 6.5 Regulation 85A of the Jobseeker's Allowance Regulations 1996⁸ 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 instrument amends regulation 85A of the Jobseeker's Allowance Regulations 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.
- 6.6 Regulation 2 of the State Pension Credit Regulations 2002⁹ 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 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.
- 6.7 Regulation 10 of the Housing Benefit Regulations 2006¹⁰ makes similar provision for the purposes of claiming Housing Benefit. Regulation 5 of this instrument amends regulation 10 of the Housing Benefit Regulations 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.
- 6.8 Regulation 10 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006¹¹ makes similar provision 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 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.
- 6.9 Regulation 70 of the Employment and Support Allowance Regulations 2008¹² 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 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.

⁸ <http://www.legislation.gov.uk/ukxi/1996/207/contents>

⁹ <http://www.legislation.gov.uk/ukxi/2002/1792/regulation/2>

¹⁰ <http://www.legislation.gov.uk/ukxi/2006/213/regulation/10>

¹¹ <http://www.legislation.gov.uk/ukxi/2006/214/regulation/10>

¹² <http://www.legislation.gov.uk/ukxi/2008/794/regulation/70>

- 6.10 Regulation 9 of the Universal Credit Regulations 2013¹³ makes similar provision for the purposes of claiming Universal Credit. Regulation 8 of this instrument amends regulation 9 of the Universal Credit Regulations 2013 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 Universal Credit on broadly the same terms as family members of Irish citizens.

Impact of amendments

- 6.11 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.
- 6.12 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 1971¹⁴.

7. Policy background

What is being done and why?

- 7.1 The Government made a series of commitments in the ‘New Decade, New Approach’ (9 January 2020)¹⁵ 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.
- 7.2 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.
- 7.3 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.

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.

¹³ <http://www.legislation.gov.uk/ukxi/2013/376/regulation/9>

¹⁴ <http://www.legislation.gov.uk/ukpga/1971/77/section/3>

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

9. Consolidation

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

10. Consultation outcome

- 10.1 DWP consulted with the Social Security Advisory Committee (SSAC). This consultation was done through a regular committee meeting. The SSAC welcomed the proposed amendments and had no further comments. The consultation raised no, or no significant, issues with the Regulations.
- 10.2 DWP consulted with local authorities. The consultation was done through the Local Authorities Agency. The consultation raised no, or no significant, issues with the Regulations.

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 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 EU Settlement Scheme.
- 14.2 The regulation does not include a statutory review clause.

15. Contact

- 15.1 Samuel Tyler at the Department for Work and Pensions, Telephone: 07880 441956 or email: samuel.tyler@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ronan O'Connor, Deputy Director for the International Strategy Division, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Justin Tomlinson MP, Minister of State for Disabled People at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.