

## EXPLANATORY MEMORANDUM TO

### THE SOCIAL SECURITY (INCOME-RELATED BENEFITS) (UPDATING AND AMENDMENT) (EU EXIT) REGULATIONS (NORTHERN IRELAND) 2019

2019 NO. 89

#### 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 the [Universal Credit Regulations \(Northern Ireland\) 2016](#) (“the Universal Credit Regulations”) to clarify that the existing rules on access to benefits for European Economic Area (EEA) 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 Universal Credit (UC) 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 dependant.

#### 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.

#### 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 regarding human rights is required.

#### 6. Legislative Context

- 6.1 Section 87 of the [Northern Ireland Act 1998](#) (“the 1998 Act”) places a statutory duty on the Minister for Communities and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for

- the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 6.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rate.
  - 6.3 The [Welfare Reform Act 2012](#) (“the 2012 Act”) introduced a number of reforms which included the introduction of UC in Great Britain.
  - 6.4 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 may 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](#) (“the 2015 Order”) was made on 9 December 2015 making provision corresponding to the 2012 Act.
  - 6.5 The Universal Credit Regulations, which were made in exercise of the powers in the 2015 Order, supported the introduction of UC in Northern Ireland.
  - 6.6 Under this existing legislation, individuals who wish to claim UC must have a right to reside and be habitually resident in the Common Travel Area (CTA).
  - 6.7 For the purposes of accessing UC, 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.
  - 6.8 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.
  - 6.9 Regulation 9 of the Universal Credit Regulations sets out circumstances in which a person is to be treated as not being in Northern Ireland for the purposes of determining whether a person meets the basic condition of entitlement that he or she is in Northern Ireland. A person is a person to be treated as not being in Northern Ireland if he or she is not habitually resident in the CTA. No person shall be treated as habitually resident without a relevant right to reside in the place where he or she is habitually resident. However, certain categories of people are exempt from this habitual residence test.
  - 6.10 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 UC.
  - 6.11 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 UC.
  - 6.12 These amendments also replace reference to the [Immigration \(European Economic Area\) Regulations 2006](#) so that they now instead refer to the [Immigration \(European](#)

[Economic Area\) Regulations 2016](#), as the former have been revoked and replaced by the latter.

## **7. Policy background**

### *What is being done and why?*

- 7.1 DfC 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 the Universal Credit 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 2018](#), but relates to the withdrawal of the United Kingdom from the European Union because it relates to the EUSS.

## **9. Consolidation**

- 9.1 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: [SSPLD Blue Volumes](#).

## **10. Consultation outcome**

- 10.1 A consultation has not been carried out as these regulations clarify that the existing rules on access to UC for EEA and Swiss nationals and Zambrano carers continue to apply to those holding limited leave to enter or remain under the EUSS.

## **11. Guidance**

- 11.1 The appropriate guidance will be amended for staff and decision makers in advance of this instrument becoming operational.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, civil society organisations or the public sector.

12.2 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 UC 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 Anne McCleary at the Department for Communities can be contacted with any queries regarding the instrument: Telephone: 028 90823332 or email:

[Anne.McCleary@communities-ni.gov.uk](mailto:Anne.McCleary@communities-ni.gov.uk).

15.2 Anne McCleary, Director of Social Security Policy and Legislation Division, at the Department for Communities can confirm that this Explanatory Memorandum meets the required standard.

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