

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RECIPROCAL AGREEMENTS) (MISCELLANEOUS
AMENDMENTS)
REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 207

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 (NI) Assembly.
- 1.2 The Statutory Rule is made under paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (2018 c. 16) (the “2018 Act”) and is subject to the negative resolution procedure.

2. Purpose

- 2.1 This Rule corrects deficiencies in NI legislation following the end of the transition period. It aligns the statute book with certain arrangements which are already set out in international agreements, and removes certain redundant provisions, so providing legislative clarity, with some savings provisions where appropriate.
- 2.2 The impact of the relevant European Union (EU) law before exit day is set out in section 3 of this Memorandum. The regulations reflected in domestic law, the obligations of the United Kingdom (UK) under EU law whilst a member state of the EU.
- 2.3 These regulations will align domestic regulations with the position following EU exit, as set out in section 3 of this Memorandum. They tidy up domestic legislation to align it with the position under the UK’s new social security arrangements with the EU, the European Economic Area (EEA) European Free Trade Area (EFTA) states¹ and Switzerland and they restore the social security position, which was in place immediately before exit day, for individuals in scope of the [Convention on Social Security between the UK and Ireland](#) (“the UK-Ireland Convention”), for the purpose of Winter Fuel Payments (WFPs).

¹ The EEA EFTA states are Iceland, Liechtenstein and Norway

3. Background

- 3.1 The UK's arrangements on social security with the EEA and Switzerland are now governed by the [Withdrawal Agreement](#) (and parallel agreements with the [EEA EFTA states](#) and [Switzerland](#)), the [Trade and Cooperation Agreement](#) (TCA) for the EU, and with Ireland by the UK-Ireland Convention. The UK is in the process of negotiating arrangements with the EEA EFTA States and separately with Switzerland similar to those in place under the TCA with the EU.
- 3.2 Provisions of the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 (S.R. 2000 No. 91) ("the Social Fund Regulations") were made in the context of the UK being a member of the EU, to fulfil the UK's obligations under Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 ("the EUSSC Regulations").
- 3.3 The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 281) ("the 2015 Regulations") were made under section 2(2) of the [European Communities Act 1972](#) ("the 1972 Act") in compliance with the UK's European treaty obligations.
- 3.4 Provisions of the regulations listed in 3.2 and 3.3 are EU-derived domestic legislation. The 2018 Act repeals the 1972 Act but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic legislation on and after exit day. These provisions are, therefore, retained EU law under section 6(7) of the 2018 Act.
- 3.5 There are deficiencies in the operation of these provisions of retained EU law which this Rule corrects pursuant to the power in paragraph 1(1) of Schedule 2 to the 2018 Act.

The Social Fund Winter Fuel Payment Regulations

- 3.6 WFPs were introduced as part of the then government's initiative to tackle fuel poverty amongst pensioners and are paid each winter as a lump sum to individuals who have reached state pension age and are ordinarily resident in NI in the qualifying week in September (equivalent provisions cover Great Britain). Individuals covered by the EUSSC Regulations who met the qualifying conditions for WFPs, and had a genuine and sufficient link to the UK, could receive the payment if they were habitually resident in an EEA state or Switzerland in the qualifying week. This was restricted in 2015 to only Switzerland and those EEA states listed in the Schedule to the Regulations as they have an average winter temperature equal to, lower than, or close enough to be statistically equivalent to, the warmest winter area of the UK.
- 3.7 The TCA with the EU states at Annex SSC-1, Part 3(i) that WFPs are not within its scope. As a result, the UK will not pay WFPs to people who reside in the EU unless they are in full scope of the Withdrawal Agreement with the EU or parallel agreements with the EEA EFTA states or Switzerland, and have a genuine and sufficient link to the UK. Regulation 2(a) of these Regulations amends references

in the Social Fund Regulations to align them with the position under these agreements.

- 3.8 WFPs will continue to be made to beneficiaries of the UK-Ireland Convention, namely UK and Irish nationals who are habitually resident in Ireland, who have a genuine and sufficient link to the UK. This Rule also amends the Social Fund Regulations to align them with this position.

The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations

- 3.9 The social security reciprocal agreements with Canada, New Zealand, and the former agreement with Australia, include provisions applying to persons resident in the UK who had previously been resident in the named country. These specify that, for the purpose of calculating entitlement to a retirement pension in the UK, legislation mentioned in the agreements is modified so that those persons are treated as if they (or, in some cases their spouse) had paid national insurance contributions in the UK during the periods in which they were resident in Australia, Canada or New Zealand. The agreement with New Zealand also contains similar provisions for widows and orphans benefits, and the former agreement with Australia contains similar provisions for widows benefits.
- 3.10 The Social Security (Australia) Order (Northern Ireland) 1992 (S.R. 1992 No. 269) was revoked in 2001, with savings provisions for individuals with periods of residence in Australia prior to 1 March 2001, and those savings provisions continue to have effect to the extent provided for by virtue of section 299 of the Pensions Act 2004 (2004 c. 35).
- 3.11 The 2015 Regulations set out how the provisions of the agreements with Canada, New Zealand and Australia noted above, relate to persons who (a) were an EEA national (inclusive of the UK, at the time) or a Swiss national, (b) fell within the personal scope of the EUSSC Regulations, (c) were habitually resident in an EEA state or Switzerland and (d) had a genuine and sufficient link to the UK. This meant that a UK, an EEA or a Swiss national who retired in the EEA or Switzerland after a period of residence in, for example New Zealand, could benefit from the provisions when calculating their UK State Pension. This was as a result of the EU Commission taking the position that the requirement for a beneficiary to be resident in the UK imposed a restriction on a citizen's free movement rights.
- 3.12 Following the end of the transition period, free movement has ended and new arrangements for social security coordination are in place under the TCA with the EU. Regulation 4(1) of these Regulations will therefore revoke the 2015 Regulations. This will align the position with that of persons retiring to countries outside of the EEA or Switzerland.
- 3.13 Savings provisions are included at regulation 4(2) of these Regulations for individuals resident in an EEA state or Switzerland on 31 December 2021, while they remain resident in that state. This will mean that individuals resident in the

EEA or Switzerland, already receiving a UK State Pension which is partially based on years of residence in the named country, or an individual resident in the EEA or Switzerland by 31 December 2021 yet to claim their UK State Pension but which would be partially based on years of residence in the named country when they come to claim it, would not be impacted while they continue to reside in that state, or if they return to the UK. This was announced by the [UK government](#) on 30 April 2021. These provisions never extended to individuals who were not EEA or Swiss citizens, so those citizens from so-called “third countries” will see no change.

- 3.14 Regulation 3(3)(a) of these Regulations will amend the 2015 Regulations to clarify that the savings provisions apply to UK nationals, as well as EEA and Swiss nationals, now that UK nationals are no longer EEA nationals. In addition to replacing the reference to the EUSSC Regulations with references to the Withdrawal Agreement with the EU, or equivalent agreements with the EEA EFTA states or Switzerland, regulation 3(3)(b) of these Regulations will also insert a reference to the TCA, to ensure that the provisions will extend to UK nationals who move to the EEA or Switzerland between 1 January 2021 and 31 December 2021 and who are not covered by the EUSSC Regulations.

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 There are no significant financial implications 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 (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021 (S.I. 2021/811) which come into force in accordance with regulation 1.

11. Additional Information

11.1 The Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021 also make amendments to the European Network of Employment Services (EU Exit) Regulations 2018 (S.I. 2018/1283) and to the Transfer of State Pensions and Benefits Regulations 2007 (S.I. 2007/1398). These amendments extend to Northern Ireland.