

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY AND COUNCIL TAX REDUCTION SCHEMES
(AMENDMENT) REGULATIONS 2022

2022 No. 449

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument removes, for the purposes of accessing State Pension Credit and Housing Benefit, the exception from being a person subject to immigration control for nationals of the 27 countries¹ which have ratified either the European Convention on Social and Medical Assistance² or the Council of Europe Social Charter³, signed in Turin on 18th October 1961. This will mean that nationals from these countries will be treated the same as those arriving from the rest of the world and will only be able to access these benefits after five years of lawful residence in the UK. This instrument also removes the specific exception from being a person subject to immigration control (who must not be included in a billing authority's council tax reduction scheme) for persons who are nationals of a state which has ratified the above international agreements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument, in respect of the provisions amending State Pension Credit and Housing Benefit, is England and Wales and Scotland. In respect of the provisions amending the Local Council Tax Support schemes, extend to England and Wales.
- 4.2 The territorial application of this instrument, in respect of the provisions amending State Pension Credit and Housing Benefit, is England and Wales and Scotland. In respect of the provisions amending the Local Council Tax Support Schemes, apply to England only.

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.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236972/hbgm-c4-people-from-abroad-annexes.pdf

² <https://rm.coe.int/16800637c2>

³ <https://rm.coe.int/168006b642>

6. Legislative Context

- 6.1 This instrument amends the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000⁴ (S.I. 2000/636) “the 2000 regulations”, amending regulation 2(1) and regulation 2(1A) of the 2000 Regulations to remove paragraph 4 of Part 1 of the Schedule from being relevant to persons making a claim for Housing Benefit or State Pension Credit. The instrument also amends the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012⁵ (S.I. 2012/2885) “the 2012 regulations”.
- 6.2 Section 115 of the Immigration and Asylum Act 1999⁶ (“the 1999 Act”) excludes persons subject to immigration control from access to specified income-related benefits. A person subject to immigration control, as defined in Section 115(9) of the 1999 Act, includes an individual who does not have leave to enter or remain in the UK or does have leave to enter or remain but has a No Recourse to Public Funds condition attached to their leave. European Economic Area (EEA) citizens are no longer automatically exempt from being a person subject to immigration control under Section 115(9) of the 1999 Act and have equivalent status to non-EEA nationals entering the UK, unless for example they are covered by the Withdrawal Agreement⁷ and/or have leave under the European Union Settlement Scheme.
- 6.3 However, the 2000 regulations provide a number of exemptions to Section 115 for the purpose of access to specified benefits. Regulation 2 and paragraph 4 of Part I of the Schedule to the 2000 regs specify that a person who is a national of a country that has ratified the European Convention on Social and Medical Assistance or the 1961 Council of Europe Social Charter, and who is “lawfully present” in the UK, is not excluded under Section 115 from certain income-related benefits, including State Pension Credit and Housing Benefit. This means that currently nationals who are subject to immigration control and from countries that have ratified the European Convention on Social and Medical Assistance, or the 1961 Council of Europe Social Charter, may be eligible to access State Pension Credit and Housing Benefit if they are lawfully present in the UK and meet the eligibility requirements of the relevant benefits legislation.
- 6.4 Section 13A of the Local Government Finance Act 1992⁸ (“the 1992 Act”) requires each billing authority in England to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of person, whom the billing authority considers are in financial need. Regulation 13 of the 2012 Regulations states that persons subject to immigration control are a class of person within scope of paragraph 2(9)(b) of Schedule 1A to the 1992 Act and therefore must not be included in an authority's local council tax reduction scheme. An exception to this is a person who is a national of a state which has ratified the European Convention on Social and Medical Assistance or a state which has ratified the 1961 Council of Europe Social Charter who is lawfully present in the United Kingdom.

⁴ <https://www.legislation.gov.uk/ukSI/2000/636/contents/made>

⁵ <https://www.legislation.gov.uk/ukSI/2012/2885/contents/made>

⁶ <https://www.legislation.gov.uk/ukpga/1999/33/section/115>

⁷ https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en

⁸ <https://www.legislation.gov.uk/ukpga/1992/14/contents>

7. Policy background

What is being done and why?

- 7.1 There is a clear Government manifesto commitment that European Economic Area citizens arriving in the UK from 1 January 2021, and not eligible for leave under the European Union Settlement Scheme⁹ or otherwise eligible under the Withdrawal Agreement, will have the same access to benefits as non-EEA citizens. EEA citizens need to apply for and obtain relevant leave under the points-based immigration system, which for most will be subject to a no recourse to public funds condition for five years. This means that there will be no access to benefits until such time as these EEA citizens obtain indefinite leave to remain (or otherwise have the no recourse condition lifted¹⁰).

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 The European Convention on Social and Medical Assistance was ratified by the UK in 1954 and extends cooperation in the social field between signatories. Article 1 effectively provides that nationals of the countries who have ratified the above treaty and are “lawfully present” in another country that has ratified the same treaty, and are without sufficient resources, are entitled equally and on the same conditions to “social and medical assistance” to that countries own nationals. The UK Government lists its laws and regulations to which the European Convention on Social and Medical Assistance applies in Annex I of the European Convention on Social and Medical Assistance.
- 7.3 The UK has also ratified the 1961 Council of Europe Social Charter (but not the revised charter of 1996) and has accepted many of its paragraphs, including Part II, Article 13 paragraph 4. With the exception of Bulgaria, Lithuania, Romania, Slovenia and Liechtenstein, all EEA countries have ratified either the European Convention on Social and Medical Assistance, the 1961 Council of Europe Social Charter, or both. In addition, Turkey has ratified both treaties and North Macedonia has ratified the 1961 Council of Europe Social Charter.
- 7.4 Nationals of countries which have ratified the European Convention on Social and Medical Assistance, or the 1961 Council of Europe Social Charter are currently able to access State Pension Credit, Housing Benefit and Local Council Tax Support, notwithstanding their person subject to immigration control status and despite State Pension Credit, Housing Benefit and Local Council Tax Support not being listed to the Annex in the treaties.

Why is it being changed?

- 7.5 Unless the regulations are amended, nationals of states which have ratified the European Convention on Social and Medical Assistance or the 1961 Council of Europe Social Charter may continue to be eligible for State Pension Credit, Housing Benefit and Local Council Tax Support, despite their person subject to immigration control status. This is contrary to Government commitments that EEA citizens

⁹ <https://www.gov.uk/settled-status-eu-citizens-families>

¹⁰ <https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change>

arriving under the new points-based immigration system will have the same access to benefits as non-European Economic Area nationals currently do.

- 7.6 Housing Benefit, State Pension Credit and Local Council Tax Support are not listed in Annex I of the European Convention on Social and Medical Assistance and are not deemed to fall within the definition of social assistance for the purposes of compliance with the European Convention on Social and Medical Assistance, or 1961 Council of Europe Social Charter Article 13.4. Therefore, the exception to a person subject to immigration control status for the European Convention on Social and Medical Assistance/1961 Council of Europe Social Charter nationals applying for Housing Benefit, State Pension Credit or Local Council Tax Support is not required by the treaties.

What will it now do?

- 7.7 This instrument is amending the relevant legislation so that for State Pension Credit and Housing Benefit claims, made on or after the legislation comes into force on 3 May 2022, nationals of countries that have ratified the European Convention on Social and Medical Assistance or the 1961 Council of Europe Social Charter and who are persons subject to immigration control will be placed on an equal footing with other third country nationals who arrived in the UK on or after 1 January 2021. This will not impact those who have existing claims prior to 03 May 2022. For Local Council Tax Support, the changes amending their regulations will take effect from 1 April 2023, being the commencement of the next financial year, as this is the earliest date these changes can take effect under the Local Government Finance Act 1992.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because of the broad policy rationale detailed in the above paragraphs.

9. Consolidation

- 9.1 There are no plans to consolidate any of the regulations which are amended by this instrument.

10. Consultation outcome

- 10.1 Consultation has taken place with Local Authority Associations in relation to Housing Benefit. No issues were raised. No further consultation exercise was conducted for the changes to remove the exemption from a person subject to immigration control status for the European Convention on Social and Medical Assistance/1961 Council of Europe Social Charter nationals for the purposes of accessing State Pension Credit as this is the continuation of a well-established policy, and commitment, to ensure EEA citizens, not in scope of the Withdrawal Agreement, are provided with an equivalent level of access to benefits as those from the rest of the world. This instrument maintains the consistency of Local Council Tax Schemes with the wider benefits regime and has not been subject to specific consultation. Billing authorities are familiar with the Government's policy to maintain this consistency.
- 10.2 The Social Security Advisory Committee (SSAC) has been consulted on the proposed regulations and have confirmed they are content.

11. Guidance

- 11.1 Guidance and training for Department for Work and Pensions staff about these amendments will be made available before this instrument comes into force.
- 11.2 The Department for Levelling Up, Housing and Communities (DLUHC) will send a Council Tax Information Letter (CTIL) to council tax colleagues within Billing Authorities to clearly explain the regulations and any implications they have for Local Council Tax Support Schemes. The CTIL will be sent immediately after the regulations are laid to ensure that authorities have sufficient warning to adjust their Local Council Tax Support schemes prior to the new tax year (2023-24). DLUHC will monitor any questions received and provide advice as necessary

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 A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is a departmental commitment to review the impacts of policies and establishing the extent to which objectives have been met. DWP will continue to regularly monitor and review its policies on access to benefits by migrants. DWP will review the impact of this legislation on a regular basis beginning at a time deemed appropriate by the Department.
- 14.2 DLUHC will monitor planned changes to regulations to ascertain any implications for their internal and external stakeholders (e.g. billing authorities).
- 14.3 The instrument does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Carl Stallwood at the Department for Work and Pensions Email: INTERNATIONALACCESSTO.BENEFITPOLICYTEAM@DWP.GOV.UK can be contacted with 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 David Rutley, Minister for Welfare Delivery at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.