

**RIGHT TO RESIDE – PERSONS OF NORTHERN IRELAND
– FAMILY MEMBERS – IS, JSA, ESA & SPC**

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Introduction

- 1 Changes¹ are being made to the Income Support (General) Regulations 1987, Jobseeker's Allowance Regulations 1996, State Pension Credit Regulations 2002, and Employment and Support Allowance Regulations 2008, and come into force from 24.8.20.

1 Social Security (Persons of Northern Ireland – Family Members) (Amendment) Regulations 2020 (SI 2020 No. 683)



- 2 These amendments reflect that from 24.8.20, family members of a relevant person of Northern Ireland can now apply for leave to enter, or remain, in the UK under the EU Settlement Scheme (“EUSS”)¹.

1 Immigration Rules, Appendix EU

- 3 The amendments add relevant definitions¹ to the income related benefit regulations.

1 IS (Gen) Regs, reg 21AA(5); JSA Regs, reg 85A(5); ESA Regs, reg 70(5); SPC Regs, reg 2(5)

- 4 The amendments ensure that an eligible family member of a person of Northern Ireland can access IS, JSA, ESA or SPC in broadly the same terms as a family member of an Irish national from the Republic of Ireland or other EEA citizens, if they apply to and are granted leave under the EUSS. This is done by adding a family member of a person of Northern Ireland to the list of persons exempt¹ from the habitual residence test, and is subject to the provision² that the relevant person of Northern Ireland (on whom the family member is relying) has a qualifying right of residence e.g. as a worker or self-employed person.

1 IS (Gen) Regs, reg 21AA(3B); JSA Regs, reg 85A(3B); ESA Regs, reg 70(3B); SPC Regs, reg 2(3B); 2 IS (Gen) Regs, reg 21AA(4)(zd); JSA Regs, reg 85A(4)(zd); ESA Regs, reg 70(4)(zd); SPC Regs, reg 2(4)(zd)

Background

- 5 The Belfast (Good Friday) Agreement 1998 affords people of Northern Ireland the right to hold both British and Irish citizenship, and to identify as Irish or British or both. Irish nationals from the Republic of Ireland are currently able to bring family members to the UK under EU law provisions, while people of Northern Ireland are subject to the UK’s domestic legislation.
- 6 As part of the 'New Decade, New Approach' agreement to the Northern Ireland Executive, a commitment was included to change the rules governing how persons of Northern Ireland bring their family members to the UK. This commitment is being implemented via a change to the Home Office Immigration Rules under Appendix EU. From 24.8.20, family members of persons of Northern Ireland will be able to apply for leave under the EUSS on the same basis as EEA nationals. These changes apply to eligible family members of all relevant persons of Northern Ireland, regardless of how they identify, whether they hold British, Irish or dual British-Irish citizenship and whether they live in Northern Ireland or elsewhere within the UK.
- 7 These amendments to the income related regulations make changes that will mean eligible family members will be able to apply for EUSS leave and access benefits on broadly the same terms as the family members of Irish citizens from the Republic of Ireland do in the UK.



Definitions

EEA National

- 8 “EEA national” is defined by reference to the Imm (EEA) Regulations 2016¹ (see DMG 073262).

Note: “A relevant person of Northern Ireland” is added to the Home Office definition² of “EEA citizen”.

1 Imm (EEA) Regs 2016, reg 2(1); 2. Immigration Rules, Appendix EU, Annex 1

Family Member

- 9 “family member” is defined by reference to the Imm (EEA) Regulations 2016¹ (see DMG 072900).

Note: the exception to the definition of being a family member, is that the criteria of the relevant person of Northern Ireland being an EEA national, does not apply for the purposes of paragraph (4)(zd) (i.e. the person of Northern Ireland is a qualifying person, or would be, but for fact they are not an EEA national). This exception to the definition of “family member” had to be included because of the provision² within the definition which states that the person with a qualifying right to reside must be an EEA national unless specified legislation³ applied (i.e. family members and extended family members of British citizens). As persons of Northern Ireland are British citizens, it is necessary to ensure that that specified legislation³ is not applied to them. Otherwise their family members would never be able to access benefits because the person of Northern Ireland would be unable to demonstrate cross border movement.

1 Imm (EEA) Regs 2016, reg 7(1)(a), (b) or (c); 2. reg 7(4); 3. reg 9

Relevant person of Northern Ireland

- 10 “Relevant person of Northern Ireland” means¹ a person who:

1. is

1.1 a British citizen **or**

1.2 an Irish citizen **or**

1.3 a British citizen and an Irish citizen **and**

2. was born in Northern Ireland and, at the time of the person’s birth, at least one of their parents was



- 2.1 a British citizen **or**
- 2.2 an Irish citizen **or**
- 2.3 a British citizen and an Irish citizen **or**
- 2.4 otherwise entitled to reside in Northern Ireland without any restriction on their period of residence

1 Immigration Rules, Appendix EU, Annex 1; IS (Gen) Regs, reg 21AA(5); JSA Regs, reg 85A(5); ESA Regs, reg 70(5); SPC Regs, reg 2(5); The Belfast Agreement (Good Friday Agreement), Annex 2.

Persons of Northern Ireland who will be able to apply to the EUSS

- 11 From the 24.8.20, the Home Office is opening the EUSS¹ to family members of persons of Northern Ireland. This immigration status will give those eligible access to benefits.

1 Immigration Rules, Appendix EU

- 12 Non-UK family members of persons of Northern Ireland will be able to apply to the EUSS if they have an established family relationship with the person of Northern Ireland and the person of Northern Ireland is resident in the UK before 31.12.20. Those eligible will have until 30.6.21 to apply for the EUSS.

Note: An established family relationship is one that is recognised under EEA law¹.

1 Immigration Rules, Appendix EU, Annex 1

DM Action

- 13 DMs will be required to establish
 - 1. eligibility i.e. whether the family member of a relevant person of Northern Ireland has a qualifying right to reside which allows eligibility to claim the relevant benefit (on the same basis as family members of Irish citizens with limited leave to remain (pre-settled status) under the EUSS) **and**
 - 2. entitlement i.e. whether the family member of a relevant person of Northern Ireland satisfies the conditions of entitlement for the relevant benefit and is entitled to receive the appropriate rate of that benefit e.g. as a family (couple rate and additional elements); the single rate only; or not entitled to claim at all.



Note: As a relevant person of Northern Ireland may identify as British, they have no restrictions on their access to Benefits (but will still need to satisfy the entitlement conditions of the relevant benefit being claimed).

EXAMPLES

Example 1 – family members with EUSS Limited Leave to Remain (pre-settled status) and deriving a qualifying right to reside

Gaelan is a relevant person of Northern Ireland, who has been married to his Third Country National (TCN) wife, Tracey, for 3 years. Tracey has 2 TCN children (Jon 16 and Judith 14). The family have lived in Ballymena for 3 years.

Gaelan has an Irish passport. Tracey, Jon and Judith were granted EUSS Limited Leave to Remain (pre-settled status) on 1.9.20. Gaelan was made redundant after working for 4 years and has made a claim to JSA on 7.9.20 for himself and his family.

As Gaelan is a relevant person of Northern Ireland who is a long term resident in the CTA, who is exercising a qualifying right to reside (i.e. has retained his worker status through redundancy), this means that his family members, Tracey, Jon and Judith, can also derive rights from Gaelan.

Example 2 – Family members with EUSS Limited Leave to Remain (pre-settled status) and deriving a qualifying right to reside

Kieran is 67 years old and is a relevant person of Northern Ireland, who is living with TCN Katie (a 43 year-old) and her 2 TCN children (Joe 16 and Jane 13). They have lived together for 2 years. Kieran retired on 1.9.20 and receives a state pension after working for 49 years.

Kieran has a British passport. TCNs Katie, Joe and Jane are granted EUSS Limited Leave to Remain (pre-settled status) on 24.9.20. On 28.9.20, Kieran makes a claim for SPC for himself and his family. Although as a mixed-age couple, Kieran cannot claim SPC and is advised to apply for UC.

As Kieran is a British citizen who is habitually resident in the CTA, he has immediate eligibility to UC. As a relevant person of Northern Ireland who is exercising a qualifying right to reside (i.e. Kieran retained his worker status after reaching retirement age), this means his family members can also derive rights from Kieran.



Example 3 – no relevant person of Northern Ireland household

Euan is a British national, who is not a relevant person from Northern Ireland. He met and married Kathleen, an American national, whilst he was working in the US. They have 2 children (Jack 5 and Jody 3).

The family return to the UK on 1.5.20. Euan has a British passport. Kathleen, Jack and Jody have been granted Home Office leave to enter the UK for 5 years with the condition of no recourse to public funds. Kathleen works part time as a receptionist. On 8.9.20, Euan makes a claim to JSA for himself and his family.

Euan and Kathleen have established habitual residence in the CTA, and as a British citizen who is habitually resident in the CTA, Euan has immediate eligibility to JSA. However, as Euan is not a relevant person of Northern Ireland, his family members cannot derive any qualifying right to reside from Euan and their immigration status means they have no recourse to public funds.

Euan has entitlement to the single rate of JSA. Kathleen is an ineligible partner and there is no entitlement for Jack and Jody. Even though Euan is an eligible claimant, the condition of no recourse to public funds denies eligibility to JSA for his family members. As Kathleen is part of the household, her earnings are taken into account.

Verification of status

- 14 Where TCNs self-identify as a family member of a relevant person of Northern Ireland during the claim process, DMs will need to verify their EUSS status. Claimants should be able to verify their EUSS leave on gov.uk, via a share code. A screen should be produced which will confirm identity, type of status (Indefinite Leave to Remain or Limited Leave to Remain) and the date of issue. For those granted indefinite leave to remain (settled status), they are treated in the same way as a UK national. For those granted limited leave to remain (pre-settled status), information will need to be obtained from the Home Office to confirm that limited leave to remain has been granted on the basis of the TCN being a family member of a person of Northern Ireland. The DM can establish this information through the Home Office, using the existing Evidence and Enquiry stencil.

Person from abroad / person not in Great Britain

- 15 Specified legislation¹ provides that a claimant is ineligible for benefits where they are a “person from abroad”, or a “person not in Great Britain”, for the purposes of SPC. A person is a person from abroad / a person not in Great Britain, if he or she is not habitually resident in the CTA² (UK, the Channel Islands, the Isle of Man or the Republic of Ireland). No person shall be treated as habitually resident without a



relevant right to reside in the place where he or she is habitually resident³. However, certain categories of people are exempt from this habitual residence test⁴.

1 IS (Gen) Regs, reg 21AA; JSA Regs, reg 85A; ESA Regs, reg 70; SPC Regs, reg 2; 2 IS (Gen) Regs, reg 21AA(1); JSA Regs, reg 85A(1); ESA Regs, reg 70(1); SPC Regs, reg 2(1); 3 IS (Gen) Regs, reg 21AA(2); JSA Regs, reg 85A(2); ESA Regs, reg 70(2); SPC Regs, reg 2(2); 4 IS (Gen) Regs, reg 21AA(3B) & (4); JSA Regs, reg 85A(3B) & (4); ESA Regs, reg 70(3B) & (4); SPC Regs, reg 2(3B) & (4)

- 16 These amendments create an exception¹ that where a family member of a relevant person of Northern Ireland has been granted limited leave to remain (pre-settled status) under the EUSS, that leave is relevant for the purposes of establishing habitual residence. This is subject to the provision that if the relevant person of Northern Ireland were an EEA national, the family member would have a right to reside not otherwise excluded by the income related benefits regulations.

1 IS (Gen) Regs, reg 21AA(3B); JSA Regs, reg 85A(3B); ESA Regs, reg 70(3B); SPC Regs, reg 2(3B);

- 17 The amendments provide that subject to certain conditions, a family member of a relevant person of Northern Ireland who has been granted limited leave to remain (pre-settled status) under the EUSS, will not be considered as being a person from abroad, a person not in Great Britain or a person to be treated as not being in Great Britain (as the case may be), thereby adding them to the list of persons exempt from the habitual residence test. The relevant conditions¹ are that, at the point the family member makes a claim,

1. the relevant person of Northern Ireland would be considered a qualified person, as
 - 1.1 a worker² **or**
 - 1.2 a self-employed person³ **or**
 - 1.3 a self-sufficient person⁴ **or**
 - 1.4 student⁵ **or**
 - 1.5 a person who has acquired a permanent right of residence⁶ **or**
2. the family member has retained a right of residence⁷.

Alternatively, where the family member would have a right to reside under the Imm (EEA) Regulations 2016 because of their relationship with a person of Northern Ireland, they will have access to income related benefits as long as that right to reside is not excluded by the relevant regulations⁸. The relevant person of Northern Ireland



would be treated as if they were an EEA national (as defined in the EEA Regulations⁹).

*1 IS (Gen) Regs, reg 21AA(4)(zd); JSA Regs, reg 85A(4)(zd); ESA Regs, reg 70(4)(zd); SPC Regs, reg 2(4)(zd);
2 Imm (EEA) Regs 2016, reg 6(1)(b); 3 reg 6(1)(c); 4 reg 6(1)(d); 5 Reg 6(1)(e); 6 Reg 15; 7 Reg 10;
8 IS (Gen) Regs, reg 21AA(3) & (3A); JSA Regs, reg 85A(3) & (3A); ESA Regs, reg 70(3) & (3A); SPC Regs, reg 2(3)
& (3A); 9 Imm (EEA) Regs 2016, reg 2(1)*

Summary

- 18 A family member of a "relevant person of Northern Ireland" is added to the list of persons exempt from the habitual residence test. This is provided that the person of Northern Ireland on whom the family member is relying would
1. be deemed to be a worker or self-employed person, but for the fact that they are not an EEA national **or**
 2. have a right to reside under the Imm (EEA) Regs 2016 if the person of Northern Ireland was an EEA national.
- 19 Family members of persons of Northern Ireland will have the same rights to access benefits on broadly the same terms as the family members of EEA nationals. Those eligible will either be granted Indefinite leave to remain (settled status) or limited leave to remain (pre-settled status) under the EUSS.
- 20 Those granted indefinite leave to remain will have the same access to benefits as a UK national does currently.
- 21 Those granted limited leave to remain (pre-settled status) will have the same access to benefits as the family members of Irish citizens. They will be able to access benefits where they are deriving a right from their person of Northern Ireland family member who is currently exercising a qualifying right to reside e.g. worker status. The holder can then apply for Indefinite Leave to Remain (settled status) after they have completed 5 years of residence.
- 22 Family members of persons of Northern Ireland without EUSS leave are not being granted access to income-related benefits under the proposed amendments.
- 23 No changes are being made to the status of a relevant person of Northern Ireland. They do not need to be included in the exemption list because they already have access to income-related benefits by virtue of their nationality, provided they meet the other eligibility requirements.



ANNOTATIONS

Please annotate the number of this memo (DMG 17/20) against DMG paragraphs:

072900 (Heading); 073262 (Heading)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E19, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 04/19](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: August 2020

The content of the examples in this document (including use of imagery) is for illustrative purposes only