

Access to benefits for those who will have a “Zambrano” Right to Reside and Work

Equality Analysis for The Social Security (Habitual Residence)(Amendment) Regulations 2012

October 2012

The Social Security (Habitual Residence)(Amendment) Regulations 2012

Brief Outline

The Court of Justice of the European Union (CJEU) ruling on the case of Zambrano (C-34/09) provided that a non-European Economic Area (EEA) national who had been living and working in Belgium without a work permit, had a right to reside and to work so that his Belgian national children were not forced to leave the European Union (EU) and prevented from exercising their rights as EU citizens.

The Home Office are amending their regulations as a result. The Home Office regulations will provide a right to reside and a right to work to a non-EEA national who is a primary carer of a dependent British citizen only if the British citizen would otherwise be forced to leave the EEA and be deprived of exercising their rights as an EU citizen.

People who will have a Zambrano right will be entitled to claim contributory benefits such as contribution-based Jobseeker's Allowance, provided they meet the entitlement conditions for the benefit.

Under current legislation, most non-EEA nationals who have a right to reside and to work in the UK do not have an entitlement to claim income related benefits because their immigration status states that they have no recourse to public funds. To maintain this position, DWP will amend regulations so that an individual with a Zambrano right to reside will not have a right to claim income-related benefits.

The regulations for the following benefits will be amended: Income Support, income based Jobseeker's Allowance, income related Employment and Support Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit.

Evidence and analysis

UKBA management information provides some data on the characteristics of applicants for a right to reside under the Zambrano ruling. Currently 692 people (in 619 separate families) have applied for a Zambrano right to reside, and contain a non-EEA national primary carer of a British child and appear to meet the criteria which would give them this right. The small number of cases means that only a limited analysis is possible of the characteristics of people who would have a Zambrano right to reside. As the number of cases increase, further analysis of characteristics may be possible.

To assess the impact of the regulation amendments, UKBA data on characteristics of people who would have a Zambrano right is compared to Labour Force Survey data (LFS) on the characteristics of working age parents in the UK. This is the nearest most appropriate comparator as the successful applications to date have been made by non-EEA national primary carers of a British child. The LFS is only able to provide data on the basis of being a British national, an EU national (excluding British) or a non EU national. It does not provide the EEA data.

Gender

Background and Statistics

Most of those who have applied for a Zambrano right have been lone parents. UKBA administrative data shows that of those who would have a Zambrano right, 94 percent have not made their claim with a partner, suggesting they are lone parents. Of these 21 percent are men.

LFS data shows that 25 percent of families in the UK are lone parent families, of whom eight percent are lone parent men.

Risk of negative impacts and mitigation

The percentage of men applying for a Zambrano right is higher than we would expect given the number of male lone parents in the UK. At the moment there is insufficient data to assess why this may be the case.

The regulation changes will maintain the current policy position that non-EEA nationals can work and claim contributory benefits, but cannot claim income related benefits. This is a proportionate means of achieving the legitimate Government aim of encouraging migrants who can make a valuable contribution to our economy, whilst delivering fairness for the taxpayer by maintaining the current level of support the benefit system is able to provide to the general population. It is Government policy to ensure that only those people who are entitled under national law, European Union law and international law have access to income related benefits.

Disability

Background and Statistics

The Equality Act 2010 defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.

The UKBA does not collect data on disability and therefore we do not know how many people who have applied for a Zambrano right would meet the Equality Act definition of disabled or work limiting disabled.

LFS data on people who self report that they meet the Equality Act definition of disabled or work limiting disabled indicates that 16 percent of non-European Union (EU) working age parents are disabled compared to 17 per cent of all working age parents in the UK.

Percentage of working age parents self reporting disabled as defined under the Equality Act 2010, or work limiting disability, by nationality

	Nationality			
	Non EU	EU (excl. British)	British	All
Not disabled	84%	92%	82%	83%
Disabled	16%	8%	18%	17%

Risk of negative impacts and mitigation

Although there is no data on the number of people who have applied for a Zambrano right who are disabled, analysis of the LFS suggests that there is no significant difference in the percentage of non-EU national working age parents who self report they meet the Equality Act 2010 definition of disabled or work limiting disabled compared to the number of disabled working age parents in the UK population as a whole. Therefore the government does not envisage that an adverse or disproportionate negative impact on these grounds could arise.

The regulation changes will maintain the current policy position that non-EEA nationals can work and claim contributory benefits, but cannot claim income related benefits. This is a proportionate means of achieving the legitimate Government aim of encouraging migrants who can make a valuable contribution to our economy, whilst delivering fairness for the taxpayer by maintaining the current level of support the benefit system is able to provide to the general population. It is Government policy to ensure that only those people who are entitled under national law, European Union law and international law have access to income related benefits.

Race

Background and Statistics

This amendment to the regulations is designed to maintain the current policy position with regard to entitlement to income based benefits, irrespective of race or ethnicity.

The data from UKBA on those who have applied for a Zambrano right only collects information on nationality. Of those who would have a Zambrano right the most common nationalities are Nigerian, Jamaican and Ghanaian. Together these nationalities make up 57 percent of certificates granted to families with a non-EEA national primary carer of a British child.

In the UK, five percent of working age parents are non-EU nationals, of whom nine percent are Nigerian, Jamaican or Ghanaian.

The majority of non-EU nationals in the UK are employed. People who will have a Zambrano right are entitled to work in the UK and are also entitled to claim contribution-based Jobseeker’s Allowance or contribution based Employment and Support Allowance if they meet the entitlement conditions for these benefits.

Percentage of working age parents who are employed, unemployed and inactive by nationality

	Nationality			
	Non EU	EU (excl. British)	British	All
In employment	79%	89%	83%	83%
ILO unemployed	4%	5%	5%	4%
Inactive	17%	6%	13%	13%

Risk of negative impacts and mitigation

The percentage of those who would have a Zambrano right from Jamaica, Nigeria and Ghana appears to be disproportionately high when compared to the number of working age parents in the UK who hold the same nationalities. However, the distribution of nationalities amongst people who would have a Zambrano right to reside is likely to change as more people apply for this right to reside.

Moreover, non EU nationals are only slightly less likely to be in work than the UK population as a whole and there is no significant difference in the ILO unemployment rate.

The regulation changes will maintain the current policy position that non-EEA nationals can work and claim contributory benefits, but cannot claim income related benefits. This is a proportionate means of achieving the legitimate Government aim of encouraging migrants who can make a valuable contribution to our economy, whilst delivering fairness for the taxpayer by maintaining the current level of support the benefit system is able to provide to the general population. It is Government policy to ensure that only those people who are entitled under national law, European Union law and international law have access to income related benefits.

Age

Background and Statistics

Age profile of people who have a Zambrano right compared to UK working age parents

	Zambrano cases	Working age parents
18-24 yrs	5%	4%
25-34 yrs	52%	24%
35-44 yrs	34%	41%
45-54 yrs	8%	27%
55-64 yrs	1%	4%

Most people who would have a Zambrano right are aged between 25-44 years. This is similar to the distribution of ages of working age parents in the UK population.

There are fewer people who would have a Zambrano right aged between 45 and 54 years compared to working age parents in the UK population, but this is expected as UK mothers have a higher average age at childbirth.

Risk of negative impacts and mitigation

The Government does not envisage that an adverse or disproportionate negative impact on these grounds could arise.

The regulation changes will maintain the current policy position that non-EEA nationals can work and claim contributory benefits, but cannot claim income related benefits. People with a Zambrano right to reside will be entitled to claim State Pension if they have made sufficient contributions.

Religion or belief

The Department does not hold administrative data on religion or belief and benefit receipt. UKBA does not collect this information from those who would have a Zambrano right.

The Government does not envisage that a disproportionate negative impact on people on the grounds of religion or belief could arise.

Marriage and Civil Partnerships

The Department does not hold administrative data on marriage and civil partnerships and benefit receipt. UKBA does not collect this information from those who would have a Zambrano right.

The Government does not envisage that an adverse or disproportionate negative impact on these grounds could arise.

Pregnancy and maternity

The Department only holds information on pregnancy and maternity on its administrative systems where it is the primary reason for incapacity. It cannot therefore be used to accurately assess equality impacts. UKBA does not collect this information from those who would have a Zambrano right.

The Government does not envisage that an adverse impact or disproportionate negative impact on these grounds could arise.

Sexual Orientation

The Department does not hold administrative data on sexual orientation and benefit receipt. UKBA does not collect the information from those who would have a Zambrano right.

The Government does not envisage that an adverse or disproportionate negative impact on these grounds could arise.

Gender Reassignment

The Department does not hold administrative data that identifies transgender people and benefit receipt. Also UKBA does not collect this information from those who would have a Zambrano right.

The Government does not envisage that an adverse or disproportionate negative impact on these grounds could arise.

What was the outcome of these considerations?

The regulation changes will maintain the current policy position that non-EEA nationals can work and claim contributory benefits, but cannot claim income related benefits. It does not change the position for any of the protected characteristic groups. The policy is a proportionate means of achieving the legitimate Government aim of encouraging migrants who can make a valuable contribution to our economy, whilst delivering fairness for the taxpayer by maintaining the current level of support the benefit system is able to provide to the general population. It is also Government policy to ensure that only those people who are entitled under national law, European Union law and international law have access to income related benefits.

What are the next steps?

The amending regulations will be introduced as the Social Security (Habitual Residence) (Amendment) Regulations 2012.

When will the potential impacts be reviewed?

The Equality Analysis will be reviewed after one year of the revised regulations coming into force to ensure that the scope of the applicants for Zambrano rights has not significantly altered or impacted the equality analysis.

Sign off

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