



UNDOCUMENTED COMMONWEALTH CITIZENS RESIDENT IN THE UK – JSA, ESA, IS & SPC

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INTRODUCTION

- 1 On 25 April 2018 the Home Office published new measures for Commonwealth citizens in the UK who may not have documents demonstrating their right to be here (known as 'Windrush' cases). This information is for Commonwealth citizens who are long-term residents of the UK and do not have documents to demonstrate their status when making claims for benefit.

BACKGROUND

- 2 Claimants who apply for JSA, ESA, IS & SPC are required to have a legal right to reside and be factually habitually resident¹. These eligibility conditions place the primary responsibility on the claimant to provide evidence of their nationality and immigration status (see [DMG 073198 – 073201](#)).

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

- 3 It is acknowledged that some people, including those who may have lived in the UK for most of their lives, are having difficulty in providing the necessary evidence to



demonstrate their status and their right to work or access services in the UK. This memo provides guidance to DMs in relation to undocumented commonwealth citizens claiming JSA, ESA, IS or SPC.

COMMONWEALTH CITIZEN UNABLE TO PROVIDE DOCUMENTARY EVIDENCE OF IMMIGRATION STATUS

- 4 The Government is supporting the following groups/individuals to obtain documents to prove their right to live and work in the UK
 1. Commonwealth citizens who were settled in the UK on 1st January 1973, or who were not in the UK at that date, but had been settled in the UK for at least 5 years before that date. This group will be British citizens who have the right to reside in the UK, **and**
 2. Commonwealth citizens who had been living in the UK continuously for 5 years before 1983. These citizens are likely to have the right to reside in the UK **and**
 3. Commonwealth citizens who came to the UK after 1 January 1973. These citizens might not have the automatic right to reside in the UK, but they may have a form of British citizenship or have been given indefinite leave to remain or limited leave to remain **and**
 4. Commonwealth citizens who are British citizens by descent (i.e. one or both of their parents was a British citizen, or has been settled in the UK).
- 5 Claimants in these circumstances, who are applying for JSA, ESA, IS or SPC may be affected because they
 1. are not able to provide documentary evidence of their immigration status **or**
 2. are awaiting documentary evidence of their status from the Home Office Taskforce **or**
 3. have not applied for documentary confirmation of their nationality and status.
- 6 It is recognised that claimants who present themselves as falling within paragraph 3 above may already have a right to reside and are eligible to access services within the UK. Steps are being taken to encourage individuals to contact the Home Office Taskforce as soon as possible in order to obtain documentation that will demonstrate how long individuals have lived in the UK continuously, or to obtain support in making an application to remain in the UK.



- 7 During this period, DWP are supporting these claimants to obtain evidence of nationality, status and habitual residence and are working closely with the Home Office to help individuals get the documents to confirm their right of residence.

WORKING CLOSELY WITH THE HOME OFFICE

- 8 Where the claimant is unable to evidence their immigration status to allow access to an income-related benefit, and indicates they may meet one of the conditions in paragraph 4, details of the how to contact the Task force are below

Freephone number: 0800 678 1925 **or**

Email: commonwealthtaskforce@homeoffice.gsi.gov.uk

SUPPORTING EVIDENCE

- 9 Supporting evidence of nationality and residence could include
1. current passport OR most recent passport (including expired passports) where there is a reason that a current passport is not available
 2. their National Insurance contributions record
 3. employment records
 4. evidence of education
 5. where they have lived during their time in the UK; for example bills and letters
 6. Birth certificate, which will show evidence of nationality/Commonwealth citizenship

This is not an exhaustive list.

LEGAL AND HABITUAL RESIDENCE

- 10 Anyone claiming a DWP income-related benefit must be legally resident and habitually resident (see paragraph 2 above). Therefore people from the Windrush generation and other Commonwealth citizens who provide
1. reasonable evidence of their right to reside in the UK (which may include, but is not limited to, British citizenship) and



2. can show actual habitual residence

will satisfy this criteria and are eligible to claim.

- 11 Where the evidence of nationality and status provided to and held by DWP and the Home Office indicates that the balance of probabilities is that the claimant is likely to have legal and habitual residence, the DM may determine that the claimant is eligible to claim JSA, ESA, IS or SPC. The claim can go forward to be assessed for benefit entitlement.
- 12 Following the confirmation of nationality and status by the Home Office, [DMG 073235](#) et seq applies i.e. the individual is a person who has a legal right to reside in the UK (and therefore the CTA).

ANNOTATIONS

Please annotate the number of this memo (8/18) against DMG paragraphs

[073198](#) (Topic Heading); [073234](#) (Main Heading)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 23/16](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: [May] 2018

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