

Equality Analysis for Removal of Access to Housing Benefit for EEA Jobseekers

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Completed by: Anna Bartlett

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Introduction

This document records the analysis undertaken by the Department to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

In undertaking the analysis that underpins this document, where applicable, the Department has also taken into account the United Nations Convention on the Rights of Persons with Disabilities, and in particular the three parts of Article 19 which recognise the equal right of all disabled people to live in the community, with choices equal to others, and that the Department should take effective and appropriate measures to facilitate full enjoyment by disabled people of this right and their full inclusion and participation in the community.

Brief outline of policy or service

Under Directive 2004/38/EC European Economic Area (EEA) nationals have a right to move to another member state to seek work (referred to hereafter as “EEA jobseekers”). Those EEA jobseekers who come to the UK can claim Jobseeker’s Allowance (JSA), but they can only access Housing Benefit (HB) if they are entitled to income-based JSA (JSA(IB)).

As well as meeting the conditions of entitlement for those benefits, they must satisfy the habitual residence test (HRT). The HRT is a two-stage test of: the right to reside; and actual habitual residence in the UK. EEA jobseekers must show that they have come to the UK to seek work and have a genuine chance of being employed. They have to have been resident in the UK for more than 3 months to be considered habitually resident. If an EEA jobseeker satisfies the HRT (carried out by a DWP decision maker) and is entitled to income-based JSA, there is no requirement for the local authority to make a separate HRT decision when considering their entitlement to HB.

An EEA jobseeker who has not claimed, or who has claimed but is not entitled to, JSA(IB) does not have a right to reside for HB purposes and thus cannot meet the entitlement conditions for that benefit.

From 1st April 2014, an EEA jobseeker who is entitled to JSA(IB) will no longer satisfy the HRT for HB, thus removing their access to HB. The HB regulations are amended so that only EEA nationals who are entitled to JSA because they retain their worker status will continue to have a right to reside for HB.

Those unaffected by the measure (and so will remain entitled to HB) are:

(a) EEA jobseekers who are in receipt of both JSA(IB) and HB on 31st March 2014 until such time that their JSA or HB ceases, whichever occurs first;

(b) EEA nationals who are working in the UK for an employer, or as a self-employed person, or who retain their worker status during periods of involuntary unemployment or temporary incapacity for work; and

(c) UK nationals and citizens of the Republic of Ireland.

Evidence and analysis

This policy will remove, from 1st April 2014, access to HB for jobseekers on income-based JSA from the European Economic Area (EEA). Migrants from the EEA who are self-employed, in work or have been made involuntarily unemployed (and so retain their worker status) are exempt from the measure.

To accurately assess the characteristics of the group who will be affected by this policy we require data that identifies migrants' country of origin (so as to select EEA migrants) and their employment and benefit status. This information, along with data on protected characteristics would allow us to compare the characteristics of the affected group with the characteristics of those unaffected by the measure.

Administrative data

Benefit administrative data do not contain information on the nationality of claimants¹.

In order to create a dataset containing information on both nationality and benefit receipt necessary for evaluating this policy, Housing Benefit administrative data (SHBE) have been linked to data on registrations for a National Insurance number (NINo) made by adult overseas nationals entering the UK, which contains information on nationality².

Using the combined data, we can identify, via their National Insurance number, which of the EEA nationals who registered for a NINo during 2011/12 later claimed Housing

¹ Information on the nationality of benefit claimants is used to assess eligibility of claim, but is not recorded and retained on the administrative data system.

² Nationality is based on nationality at time of registration. Eire nationals have been excluded as they will not be affected by the policy.

Benefit passported from income-based Jobseeker's Allowance. This helps us to identify those who would be affected by the policy.

One issue with the data is that it is not possible to identify exactly which claimants have worked sufficiently between registering and making a claim to HB to be classed as a worker or retained worker (whose HB entitlement is not affected by the policy change), and which claimants are classed as jobseekers (and therefore will be affected by the change). As an approximation, HB claims made within six months of the month of the NINo registration³ are assumed to have not worked enough to be classified as workers. Claims made after this time are not included in the analysis. HB claims where the claimant is an EEA national but has a partner who is a British national are also excluded as the household will retain eligibility to HB through the British national.

Using this approach those affected by the policy are identified. The administrative data also records the **age** and **gender** of claimants, and so allows us to analyse whether the policy is likely to have a disproportionate impact on a particular gender or age group.

Survey data

Unfortunately, neither the benefit administrative data nor the NINo data contain information about the other protected characteristics of the affected group, including their ethnicity or disability status.

Due to this lack of information in the administrative data, analysis on **ethnicity** and **disability** is instead based on survey data.

We use the Family Resources Survey (FRS)⁴ as it contains information on ethnicity and disability as well as information on nationality, employment status and benefit receipt.

There are several limitations of the FRS data which means we cannot identify the specific group who will be affected by the policy and instead have to use an approximation of the affected group:

- The data do not identify migrants arriving from the EEA as opposed to from other areas. Therefore recent migrants⁵ from **anywhere outside of the UK** have been used as a proxy for EEA migrants.
- Another limitation is that the sample sizes for migrants are very small, which means that it is not possible to isolate jobseekers. Instead, the ethnicity and disability tables are based on foreign migrants to the UK, **regardless of employment or benefit status.**

³ The NINo data has two dates, the date of arrival and the date of registration. In line with the published NINo registration statistics, the later of these two dates is used to identify the date of registration.

⁴ Due to small sample sizes, information from the 2011/12, 2010/11 and 2009/10 surveys has been combined.

⁵ Recent migrants are defined as those who arrived in the UK within the last 3 years or less. This is approximate, as the exact length of time will depend on the month of arrival, and the date of their survey interview. For 2011/12 survey, we used those arriving in 2009 or later; for 2010/11 survey, we used 2008 or later; and for 2009/10 survey we used 2007 or later.

Comparison against UK population

UK nationals and Irish citizens are exempt from this measure, regardless of their employment status. By comparing the characteristics of those affected by the policy with the characteristics of the working age UK population as a whole, this Equality Analysis will explore whether, by restricting access to HB for EEA jobseekers only, this policy disproportionately affects protected groups. The UK population breakdowns are based on data from the Family Resources Survey.

Age⁶

There is some evidence that those aged below 35 are more likely to be potentially affected by the measure. This is because European migrants tend to be younger than the UK population as a whole.

Table 1: Age profile of those potentially affected by the policy, compared to the working age population of the UK

	EEA migrants with a passported JSA(IB) HB claim within 6 months of registering for a NINo	UK population, working age
16 to 24	30%	19%
25 to 34	36%	20%
35 to 44	20%	21%
45 to 54	11%	21%
55 to 64	3%	19%

Source: SHBE data linked with NINo registrations data, and FRS (2009/10, 2010/11, 2011/12)

Risk of negative impacts and mitigation

The group of migrants potentially subject to the new policy are disproportionately from younger groups. Migrants from the EEA are younger on average than the working age UK population, and combined with the reason for migration and access to the UK labour market, this means they have on average a higher employment rate (77.7% for EU nationals) than UK nationals 72.4%, and non-EU migrants 60.9%, although there is considerable variation by country depending on the main migration route⁷.

⁶ Age is based on the elder of the two for couples.

⁷ ONS Statistical Bulletin, Labour Market Statistics

It is legitimate for the UK to pay HB only if there is a genuine link between the EEA migrant and the UK labour market i.e. the person is working or is involuntarily unemployed following a period of genuine and effective employment in the UK.

Sex

The data do not suggest that this policy will have a significant disproportionate impact on either sex; 40% of those potentially affected are male compared to 42% who are female. However, single people are disproportionately more likely to be affected by the measure than couples. Only 18% of the affected group are part of a couple, compared to nearly half of the UK working age population.

Table 2: Gender of those potentially affected by the policy, compared to the working age population of the UK

	EEA migrants with a passported JSA(IB) HB claim within 6 months of registering for a NINo	UK population, working age
Single male	40%	27%
Single female	42%	26%
Couple	18%	48%

Source: SHBE data linked with NINo registrations data, and FRS (2009/10, 2010/11, 2011/12)

Risk of negative impacts and mitigation

Although a similar proportion of single males are affected as single females, it is possible that the measure will have a disproportionate impact on females as they are more likely to have primary child care responsibilities, which may act as a barrier to moving into work. Table 3 shows there are very few male lone parents relative to female lone parents; only 3% of single males have dependant children, compared to over a quarter of single females.

If childcare responsibilities make it more difficult for EEA jobseekers who are lone parents to move into work, lone parents may be more likely to spend longer on JSA, with no access to HB, and so could face an increased risk of homelessness.

Table 3: Breakdown by gender and those with no dependant children or at least one dependant children, for those affected by the policy

	EEA migrants with a passported JSA(ib) HB claim within 6 months of registering for a NINo	
% with/without child dependants, by gender	Childless	With child dependants

Single male	97%	3%
Single female	73%	27%
Couple	45%	55%

Source: SHBE data linked with NINo registrations data,

Table 4 shows that while the majority of the affected group are childless; nearly one in four has dependant children.

Table 4: Family type of those affected by the policy, compared to the UK working age population

	EEA migrants with a passported JSA(ib) HB claim within 6 months of registering for a NINo	UK population, working age
Single no child dependant	69%	45%
Single with child dependants	13%	8%
Couple no child dependant	8%	25%
Couple with child dependants	10%	23%

We have taken into account the United Nations Convention on the Rights of the Child and in particular the requirement of Article 3(1) that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of children shall be a primary concern.”

It is possible that the new policy could put some migrants and their families in a difficult financial position. It may have an affect children, but adults responsible for them can claim JSA(IB) for a period and in certain circumstances may be able to apply for support from the Local Authority, in particular Local Authority support is subject to statutory criteria e.g. under section 17 of the Children Act 1989 (for a child in need and their family) or section 21 of the National Assistance Act 1948 (provision of accommodation in certain circumstances).

Race

The data tell us that a significantly higher proportion of recent migrants are classed as being of ethnic minority origin, compared to the UK population as a whole. A

foreign national may be more likely to identify themselves as belonging to an ethnic minority.

Table 5: Ethnicity profile of recent migrants to the UK, compared to the UK working age population

	Recent migrants	UK population, working age
White	56%	88%
Ethnic minority	44%	12%

Source: Family Resources Survey (2009/10, 2010/11, 2011/12)

Further, it is likely that the ethnicity breakdown of European migrants will be different to those of migrants from other continents. Therefore, in using all foreign migrants to the UK as a proxy for the potentially affected group, it is unclear whether we have an accurate portrayal of the extent to which ethnic minorities will be affected by the measure, and so these results should be treated with some caution.

Risk of negative impacts and mitigation

To comply with the Public Sector Equality Duty, the Department has paid due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations. It is government policy that migrants should contribute to this country and not be drawn here by the attractiveness of our benefits system. Therefore the new policy is also likely to foster good relations by restoring people’s belief in the integrity of the UK benefit system.

It is possible that the new policy may put some migrants in a difficult financial position and that this may disproportionately affect those of ethnic minority origin. It is important to note that whilst this policy measure will remove access to HB for new EEA jobseekers, they are not left without UK state support. They can claim JSA(IB) for a period and in certain circumstances they may be able to apply for support from the Local Authority. Local Authority support is subject to statutory criteria e.g. under section 17 of the Children Act 1989 (for a child in need and their family) or section 21 of the National Assistance Act 1948 (provision of accommodation in certain circumstances).

Disability

The data do not suggest that disabled people are disproportionately more likely to be affected by the measure. In fact, recent migrants have a lower proportion of disability,

compared to the wider UK population. This is likely to be related in part to the fact that they tend to be younger.

Table 6: Recent migrants and the UK working age population, by self reported disability

	Recent migrants	UK population, working age
No DDA defined disability	92%	74%
Has DDA defined disability	8%	26%

Source: Family Resources Survey (2009/10, 2010/11, 2011/12)

Risk of negative impacts and mitigation

There is very limited data from administrative or survey datasets available for UK and EEA nationals who might be affected by this policy, broken down by whether or not they are disabled. However, given this policy is impacting on individuals who would otherwise claim benefits as jobseekers, it is possible that a smaller proportion of those affected would be disabled.

Migrants from the EEA are on average younger than the overall UK population aged between 16-64 and therefore less likely to be affected by work limiting disabilities.

While rates of disability are low among migrants, there is a risk that the policy could have a disproportionate impact on those who are disabled. Evidence on disability employment, published in February 2013 as part of the wider Fulfilling Potential “Building Understanding” evidence pack⁸, shows that in Great Britain, there is a 30 percentage point gap between disabled and non-disabled people’s employment rates, and 70 percent of disabled working age people say their impairment limits the amount or type of work they can do. This could indicate that disabled EEA migrants are likely to spend longer on JSA than those without a disability. Since they will not be eligible for housing support during this time, the policy could put disabled EEA migrants at increased risk of homelessness.

However, it should be noted that the figures for DDA disability used in the table are based on self-reporting of disability. A DDA defined disability could cover a wide range of conditions, not all of which are likely to affect a claimant’s ability to find employment. Evidence from the Labour Force Survey⁹ shows that employment rates for some conditions which are classed as ‘DDA only’, are close to or in some cases higher than the average non-disabled employment rate. This indicates that having a DDA disability does not automatically mean that an individual is unable to work.

For those that do have additional barriers to work, extra support is available – for example through appointments with Disability Employment Advisers (DEA) in local Jobcentres, or through early access to the Work Programme.

⁸ <http://odi.dwp.gov.uk/docs/fulfilling-potential/building-understanding-main-slide-deck.pdf>
⁹ <http://odi.dwp.gov.uk/docs/fulfilling-potential/building-understanding-main-slide-deck.pdf>

The Department has taken into account the United Nations Convention on the Rights of Persons with Disabilities. However, we do not have data to suggest that disabled people will be disproportionately impacted by the new policy.

Gender reassignment

The Department does not hold administrative data nor have ready access to survey data that would enable a robust analysis identifying transgender people and benefit receipt.

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

Sexual orientation

The Department does not hold administrative data nor have ready access to survey data that would enable a robust analysis on sexual orientation and benefit receipt.

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.

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

Religion and belief

The Department does not hold administrative data nor have ready access to survey data that would enable a robust analysis on religion and belief and benefit receipt.

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

Marriage and civil partnerships

The Department does not hold administrative data on marriage and civil partnerships and benefit receipt.

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

Decision making

HB is a tax-funded benefit which is available to help people, especially families, remain in their accommodation when they are unemployed, or in low-paid or part-time employment or when they are sick. Anyone claiming HB must satisfy the HRT in addition to satisfying the general eligibility criteria for HB.

Currently EEA migrants who are working or who are claiming JSA(IB) as a jobseeker have access to HB if they meet the qualifying conditions. The Government's position is that where the EEA national is working and contributing to the UK economy, they should be helped to live in accommodation suitable for their needs. However, an EEA national who has come to the UK to seek work should ensure that they have sufficient funds to pay for their accommodation rather than rely on UK tax-funded benefits.

Monitoring and evaluation

The Government will monitor and evaluate the removal of access to HB for EEA migrants as part of its regular review of policies on access to benefit by migrants.

When will the potential impacts be reviewed?

Local authority decision makers will be given contact details to ensure they can report problems should they occur. This is normal practice, and is in addition to the more corporate liaison arrangements between the Department and the local authority associations, which also provide local authorities with the means of raising issues with the Department.

Sign off

Andrew Parfitt