

The Rt Hon Iain Duncan Smith
Secretary of State
Department for Work and Pensions
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

3 February 2014

Dear Secretary of State,

The Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013

Further to your letter of 16 December, I am writing to inform you of the outcome of the Committee's scrutiny of the above regulations (which were laid using urgency provisions permitted by section 173(1)(a) of the Social Security Administration Act 1992 and which came into force on 1 January) on 30 January.

The Committee also considered the draft Social Security (Habitual Residence) (Amendment) Regulations 2014 (which amend various sets of income-related benefit regulations following the amendments made to the Immigration (European Economic Area) Regulations 2006) alongside them.

The Committee considered, at some length, whether or not to take the regulations on formal reference as it has serious concerns regarding some aspects of implementation. However we concluded that, given that we are already very clear about the issues we want to draw to the Government's attention, a formal consultation would not be necessary on this occasion. Instead, the Committee concluded that I should write to you formally setting out those concerns.

The position of returning UK nationals

While acknowledging that currently a returning UK national generally needs to satisfy the habitual residence test in order to access entitlement to income-related benefits, the period needed to satisfy a decision-maker that they are habitually resident has commonly been considerably less than the three months introduced by these regulations for the purposes of income-related

JSA. It is also possible that the new rules may mean that UK nationals who, in the past would have been expected to satisfy the habitual residence test immediately upon their return, will now be subject to the three months period of exclusion.

This will, inevitably, impact UK nationals returning to the UK in a variety of circumstances – for example: following the end of a marriage in difficult circumstances; to assist with caring responsibilities for a close family member (but where Carer's Allowance is already in payment to someone else or otherwise not appropriate); following short periods of employment outside of the UK; and where a young person has been travelling overseas during a gap year or volunteering. We understand that an absence of just three months would be sufficient to trigger this element of the regulations.

It would be helpful to know what consideration the Government has given to the potential impact of this policy on UK nationals and whether any assistance will be made available to those without access to any alternative financial assistance.

We welcome the fact that the Government has, since the beginning of this year, started to collect management information through the application of the Habitual Residence Test in relation to the nationality of those claiming income-based benefits. This will enable the Government to build a clearer picture about the potential numbers of UK nationals likely to be affected by this policy. It is regrettable that historical data is not broken down in this way, as this will make evaluation more difficult initially.

Genuine Prospect of Work

We are, of course, mindful of the fact that the regulations relating to this proposal are dependent on Home Office legislation.

The guidance to DWP decision-makers on the new test of whether a person has a 'genuine prospect of work' will be essential to the effective implementation of this policy. It is imperative that the guidance is in place by 1 July - the point at which the six months' rule for the possible ending of JSA entitlement for certain EU migrants will have been reached. There is, therefore, some urgency about this.

We were advised at our meeting that Departmental officials had not yet started to draft the guidance, but would start to do so over the next month. We strongly urge you to ensure that the Department commences this task immediately, so that there is sufficient time to test it to ensure that it is legally robust and can operate satisfactorily before the proposal is implemented in July. The only example given to date is that a person with a letter confirming a job has been offered would have compelling evidence of a genuine prospect of work. We would want to see what other examples are being proposed within the guidance. The Committee would be happy to offer some observations on a draft version when it is ready if that would be helpful.

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Housing Benefit Amendment Regulations

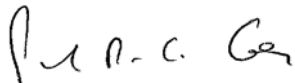
Finally, we are of course aware of the Government's announced plans to remove access to Housing Benefit for EEA jobseekers if they get income-based JSA. The Committee understands that the intention is to have those regulations in place by the beginning of April and that, given the challenging timescales involved, you have again been considering the possibility of invoking the urgency provisions permitted by section 173(1)(a) of the Social Security Administration Act 1992.

While we understand that the Department is operating at some pace on this issue, the Committee is keen to see the emerging draft proposals at the earliest opportunity – even if they are not in a final or polished state – which could obviate any perceived need to invoke the exceptional urgency provisions again so soon.

Our current understanding is that draft regulations will be presented to the Committee at our next meeting on 5 March but, given the time constraints to which you are working, we would consider scrutinising the draft regulations at an earlier date outside of that meeting if that would be helpful to you.

I would, of course, be very happy to discuss any aspect of this letter with you if that would be helpful.

Yours sincerely,



Paul Gray
Chair