

The Housing Benefit (Habitual Residence) Amendment Regulations 2014 (S.I. 2014 No. 539)

Report by the Social Security Advisory Committee under Section 174(1) of the Social Security Administration Act 1992 and statement by the Secretary of State for Work and Pensions in accordance with Section 174(2) of that Act

Presented to Parliament by the Secretary of State for Work and Pensions pursuant to Section 174(2) of the Social Security Administration Act 1992.

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The Housing Benefit (Habitual Residence) Amendment Regulations 2014

INTRODUCTION

1. The Department welcomes the Social Security Advisory Committee's (SSAC) report on the Housing Benefit (Habitual Residence) Amendment Regulations 2014.
2. The Department would also like to thank the organisations who responded to the Committee's consultation for their considered and insightful contributions.
3. The regulations, which came into force on 1 April 2014, removed access to Housing Benefit (HB) for European Economic Area (EEA) jobseekers in receipt of income-based Jobseeker's Allowance (JSA(IB)). This policy change forms part of a package of measures which this Government has introduced to limit migrants' access to benefits to protect the benefits system, and discourage migration from people have little or no connection with the UK who do not have a firm offer or imminent prospect of work.
4. The Committee sought responses on the potential impacts of this policy change on particular groups and geographical areas, as well as the wider consequences of this policy on the package of migrants' access to benefits measures.
5. The Committee made 5 recommendations for the Department, covering 3 key areas: (a) homelessness; (b) monitoring and evaluation; and (c) the broader Government strategy for migrants. The recommendations and the Department's response to each of them are set out below.

THE COMMITTEE'S RECOMMENDATIONS

Homelessness

The Committee recommends that the Government, as a matter of urgency by the end of autumn 2014, consider what action is needed in order mitigate these potential unintended and harmful effects and to publish its findings.

6. The Government wishes to deter EEA migrants from coming to the UK if they do not have a firm offer of or realistic chance of securing work. Those who come to the UK to look for work should ensure that they have sufficient resources to pay for their accommodation needs, as well as other support that they or their family may need while here.

7. The best option for those EEA migrants who are unable to find work, who lack savings or support networks and who are at real risk of ending up destitute is to return home. There is a London reconnections service, funded by the Greater London Authority, and run by the homelessness charity, Thames Reach, which helps vulnerable rough sleepers from the EU return home. Local authorities (LAs) themselves may help reconnect those who are destitute as an alternative to rough sleeping. Further, the Department for Communities and Local Government (DCLG) has funded a voluntary sector led “Before You Go” awareness campaign in home countries about the dangers of coming to the UK without appropriate support such as a job, accommodation or some money in case there are short-term difficulties. This is run by the homelessness charity, Passage.

Monitoring and Evaluation

The Committee strongly recommends that the Government puts robust arrangements in place to monitor and evaluate the impact of the policy, and to identify accurately the total overarching costs and/or savings to the Exchequer. The data relating to the first year of its implementation should be published by autumn 2015, as part of the review of its impact.

8. The Department published a full Impact Assessment and Equality Analysis on the anticipated effects of the policy.

http://www.legislation.gov.uk/ukia/2014/67/pdfs/ukia_20140067_en.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322808/equality-analysis-eea-jobseekers.pdf

9. In line with our standard approach to the roll-out of new policies, the Department has no current plans to publish updates to either of these documents.
10. However, the Department recognises the need to continue to monitor and evaluate this policy, and has already committed to do so as part of its regular review of policies on access to benefit by migrants. This includes monitoring of management information to assess the effectiveness of policy delivery and analysis of administrative data to help understand the effect of the policy on claimant volumes.
11. Whilst a monitoring system on the scale envisaged in the recommendation would be both costly and of uncertain value, the Department wishes to strengthen the evidence base. We therefore commissioned Ipsos Mori, a highly respected independent social research consultancy, as part of the regular LA Insight Survey to conduct a wave of this survey dedicated to this policy. The fieldwork

was carried out in June to get early perspectives on the first few months' implementation of the policy. The published results can be found at:

https://www.gov.uk/government/publications?keywords=&publication_filter_option=research-and-analysis&topics%5B%5D=all&departments%5B%5D=department-for-work-pensions

12. The Department will look to include further questions on the effects of migrant access to benefit policies on LAs, in future waves of the Insight Survey, as appropriate.

The Committee recommends that particular consideration be given to the impact this policy has on local authorities. This should include a more comprehensive analysis to identify the wider costs for local authorities and a plan setting out how the additional financial pressures are to be addressed.

13. As stated above, the Department commissioned a survey of LAs on how they have implemented the policy and has published the results.

14. The survey shows that most LAs have been working to prepare their staff and systems, and many have been active in ensuring that affected claimants and their families have accurate information about the changes. LAs recognise that this policy and the associated processes are in the early stages of implementation and are keen to communicate fully and work closely with DWP as the policy progresses.

15. As part of its plans on implementing the reforms, DWP was engaging with LAs and representative groups ahead of both the changes and the survey, and has continued to do so. We will be addressing comments made in the recent survey in a variety of ways. These include building on what is already under way, including:

- identifying and sharing best practice;
- establishing single points of contact at local jobcentres to help LA staff;
- local engagement initiatives between our operational staff and their equivalents in LAs;
- reconciling the number of residency decisions against the number of LA referrals to improve adherence to agreed processes; and
- quality assurance of EEA migrant right to reside decisions to ensure that the information given to LAs allows them to make the correct decisions about HB applications.

16. More widely, we have conducted a 100% check of decisions affected by changes to migrants' access to benefits and are using this work to deliver improvements to our processes and to staff knowledge about

what they need to do to minimise impacts on LAs. We will continue to seek out improvements that can be made.

17. In order to ensure that this policy is implemented smoothly, LAs have received additional funding from the Department in order for them to provide any training and updates to guidance/processes. This additional funding was announced and paid to LAs in August 2014. Further funding for new burdens will be transferred by the end of the year.

Broader Government strategy for migrants

The Committee urges the Government to ensure that the relevant departments work together closely on this strategy - involving other delivery partners as appropriate - to ensure a consistent and fair approach which avoids unintended consequences.

18. The Government agrees that it is essential to ensure relevant Departments continue to work together on the migrants' access to benefits agenda. In the last year DWP, Home Office, HMRC, BIS, DCLG and LAs have taken forward a series of inter-locking policies to help ensure that a consistent approach is taken towards migrants' access to public services and benefits.
19. In addition the Government has attempted to ensure that there are appropriate legal safeguards in place to protect EEA and non-EEA workers from exploitation. These aspects sit alongside the other measures mentioned in this Response which the Government is taking forward to discourage inappropriate migration and to facilitate returns home in appropriate cases. We will continue to look for further synergies as this agenda develops further.

The Committee considers it vital that the Government takes urgent steps to develop a clear strategy for communicating the changes in a cohesive and accessible way to those who are likely to be affected, including returning UK nationals.

20. We agree with the Committee that EEA migrants should make informed choices before they come to UK, not after they arrive, as Government policy is that migrants should come here in order to contribute to our economy.
21. We brief our Embassies regularly about changes to migrants' access to benefits so that their communications can inform those citizens who are considering coming to the UK from another country. For example, ahead of introducing the recent changes to EEA migrants' access to benefits, DWP provided tailored information about each measure which has been used by the UK's labour attachés to provide specific advice to the employment services in their countries. This is so that the

information given to potential migrants is relevant and reflective of the current position.

22. Circumstances in other EEA countries differ widely, particularly in the area of access to welfare and the different types of welfare systems they employ. It is for this reason that our labour attachés, in conjunction with local employment service staff who have local knowledge, will need to consider how best to get the messages across, rather than trying to provide a 'one size fits all' approach on GOV.UK.
23. We would also note that the various measures involve some complexity and affect different claimants in different ways, which is why we normally prefer GOV.UK to address each measure individually. This way we avoid the risk of unintentionally misleading people. Nevertheless, in our communications package on GOV.UK, which we and others can use publically, we do explain the range of changes to migrants' access to benefits within an overall narrative of other welfare reforms. This is so that they can be understood within the context of other far-reaching changes. The document (Overview of the Welfare Reforms) can be found at:

<https://www.gov.uk/government/publications/welfare-reform-communications-toolkit>

The Right Honourable Iain Duncan Smith MP
Secretary of State for Work and Pensions
Caxton House
London
SW1H 9NA

30 June 2014

Dear Secretary of State

The Housing Benefit (Habitual Residence) Regulations 2014

1. Introduction

- 1.1 The Committee¹ considered the above regulations² at its meeting on 2 April. Put in its simplest terms, the policy introduced by the regulations means that European Economic Area (EEA) migrants, who in the past have had access to Housing Benefit (HB) by virtue of a successful claim to income-based Jobseeker's Allowance (JSA), will no longer be entitled.³ The Department for Work and Pensions estimates that this policy, which applies to new claimants only, will save the public purse about £10 million for 2014-15.⁴ Estimated savings thereafter are less certain, partly because they will be dependent on the potential behavioural impacts brought about by this policy.
- 1.2 This policy forms part of a package of measures being introduced by the Government which will affect permanent and temporary migrants to the United Kingdom from the EEA. These are designed to curb the extent to which EEA jobseekers access income-related benefits in this country by discouraging migration by those who do not have a specific

¹ Members of the Social Security Advisory Committee are listed at appendix 4.

² The Housing Benefit (Habitual Residence) Regulations 2014 are at appendix 5 together with the Explanatory Memorandum and the Impact Assessment produced by the Department for Work and Pensions.

³ This will therefore apply unless they are able to satisfy one of the tests relating to their status as a retained worker, being a family member of a retained worker, a refugee, a person afforded humanitarian protection, and so on. The full list of routes by which a person can establish an entitlement to HB is set out in regulation 10(3B) of the Housing Benefit Regulations 2006 (SI 2006 No 213).

⁴ See Impact Assessment at appendix 5.

job to come to in the UK and are unable to support themselves financially from the outset. A detailed summary of the wider measures to date are provided at appendix 3. They include:

- ***Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013***: these provide that a person cannot be treated as habitually resident until a period of three months' actual residence in the UK (and the common travel area) has elapsed. The regulations also contain a provision limiting entitlement to JSA for EEA nationals to six months unless, at the point at which the six months is reached, the person can show that he or she has a genuine prospect of employment.
- ***Immigration (European Economic Area) Regulations 2006***: the Home Office introduced legislation to transpose Directive 2004/38/EC of the European Parliament and of the Council into the Immigration (European Economic Area) Regulations 2006. One of the key effects was to restrict the extent to which the status of "worker" may be retained when a person is involuntarily unemployed.
- ***Definition of the status of a worker or a self-employed worker for the purposes of EU law***: The Government has introduced a minimum earnings threshold, set at £153 per week for 2014-15, which will help determine whether the test of work being "genuine and effective" has been satisfied and therefore whether the person should be accorded the status of a worker or a self-employed worker.
- ***The Child Benefit (General) and the Tax Credits (Residence) (Amendment) Regulations 2014***: HMRC has introduced legislation whereby a person must have been in the UK for three months before entitlement to child benefit and child tax credit is established.

1.3 During its consideration of the Housing Benefit (Habitual Residence) Regulations 2014, the Committee decided that it would be beneficial to gather information about potential impacts on particular groups and geographical areas, and to identify any potential unintended consequences that may have been introduced by this element of the wider package of measures. Accordingly, the Committee advised the Department that a formal reference of the Housing Benefit (Habitual Residence) Regulations 2014 was required. Because the regulations had already been laid at the point at which the Committee was invited to scrutinise them this decision was taken in accordance with section 173(4) of the Social Security Administration Act 1992.

1.4 The Committee published the details of the consultation exercise on 7 April, inviting comments by 30 May. The call for evidence sought input, in particular, on the following questions:

- (a) What impact will the legislation have on new EEA migrants to the UK, or for existing EEA migrants who lose their employment and who do not have the status of a retained worker? What impact will the removal of housing benefit have on the likelihood of EEA migrants coming to the UK as jobseekers?
- (b) Is there any evidence that EEA migrants experience particular difficulties in establishing whether or not they have retained worker status for benefit purposes? If so, what are the key issues and will the position change as a consequence of this legislation?
- (c) Local authorities are statutorily obliged to make help available under the Children Act 1989 and the National Assistance Act 1948. How will the new regulations affect the extent to which local authorities are currently required to make such an intervention, and the associated costs of doing so?
- (d) The Impact Assessment notes that 92% of those potentially affected by the policy are renting in the private rental sector; and that a third of those potentially affected live in London. What are the potential consequences (in terms of impacts, costs and behaviours) of this from the perspectives of the individuals, local authorities and private landlords?

1.5 The Committee is grateful to the 25 organisations⁵ who submitted thoughtful and detailed written evidence to the Committee. We are also grateful to officials of the Department for Work and Pensions for their co-operation and assistance throughout this process.

2. Considering the evidence

(a) *Impact on EEA migrants*

New EEA migrants

2.1 The Government's stated aim⁶ in introducing this measure is to discourage EEA migrants from entering the UK unless they have confirmed employment or can otherwise support themselves financially from the outset. The Government, therefore, intends to stop migrants accessing the support provided by the benefit system when entering the UK. The Department has not, however, provided any information on the extent to which it believes EEA migrants are currently coming to the UK in order to claim benefits. Respondents have raised a number of doubts about the robustness of some of the data provided by the Department for Work and Pensions in relation to this policy. The figures used in the Department's Impact Assessment states, for

⁵ The organisations who responded are listed at appendix 2.

⁶ See Impact Assessment at appendix 5.

example, that it bases its estimate of the likely numbers affected by the legislation on 3,000 who made a passported claim to HB out of 300,000 people who registered for a National Insurance number in 2011/12. It has been suggested to the Committee however that this fails to factor in those EEA migrants who may have a National Insurance number already and who would not feature in those statistics. It has also been noted that the data relating to National Insurance numbers does not distinguish between EEA migrants and others admitted into the UK and subsequently granted leave to remain, for example through being granted refugee status or accepted as a foreign spouse.⁷

- 2.2 Many of the respondents to the Committee's consultation also question whether this policy will prove to be an effective disincentive. Their experience is that EEA migrants do not come to the UK in order to claim benefits, but wish to find work and believe that they will do so within a short period of time. Some respondents have noted that, while restrictions on the rights of A8 nationals to claim benefits in the UK were lifted from May 2011, their observation was that that had not given rise to a significant increase in people arriving in the UK.
- 2.3 Respondents have also told us that numbers of EEA migrants coming to the UK are more closely related to the state of the economy and the ability of new arrivals to find work quickly. They suggest that EEA nationals coming to find work generally remain in close contact with friends and family in the country of origin, and the positive experience of members of the community who successfully find work in the UK is likely to be influential in encouraging others to follow them. If that is right, the fact that the UK's economy is reported to be in a healthy state of recovery compared to many other EU member states, would mean that more EEA nationals will arrive in the months to come, rather than less. In particular, there is a possibility that the measure is likely to result in more single men coming to the UK and sending their earnings home rather than bringing their families with them and spending their earnings in the domestic economy:

Another impact we foresee is that we will continue to get certain types of migrants and not others. Families and others who would wish to make a life here are now less likely to do so because of the risk of becoming destitute between periods of employment. Accordingly, we predict an increase in single men working here temporarily, living in basic conditions, and sending money home rather than spending their earnings in the economy.

Salvation Army

⁷ The figures used, their sources and the calculation methodology have been formally agreed by the Office for Budget Responsibility.

- 2.4 In stating the purpose of the legislation,⁸ the Government has drawn a distinction between those who come to the UK in order to contribute and those who do not. What this means in practice is that anyone coming to the UK in order to seek work will need to arrive with substantial resources to finance themselves during the initial stage of jobsearch. To some extent, this is already true. Before 1 January, EEA migrant jobseekers had to wait between one and three months on average to get any JSA or HB. The change in legislation will, however, intensify the need to be self-supporting for longer. York Law School note that even if an EEA migrant secures a job, they may still need to have recourse to private funds if the work is marginal and the remuneration is inadequate to cover basic living costs.

The legislation, in tandem with the new 3 month wait before a newly arrived EEA jobseeker can claim JSA (as provided for in Regulation 85A (2)(a) of the Jobseekers Allowance Regulations 1996, as amended by the Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013, Regulation 2), will make it difficult for an EEA national to come here to seek work unless they have private resources on which to rely while work seeking, since they will have three months without benefit, after which they could receive JSA but no HB. As JSA is currently paid at £72.40, for a single person 25 or over (and £57.35 for a single person under 25), and many people will be charged rent equal to or in excess of this, jobseeking without private means will be impossible. The current Local Housing Allowance rate for Harrogate Borough Council for a room in shared accommodation is £67.67.

York Law School

Existing EEA migrants

- 2.5 There may be an expectation that when an EEA jobseeker comes to the UK but fails to secure employment and has no other grounds to stay (for example, because they are in full time education or financially self-sufficient), they will return to their home country. Some of the respondents who deal with young homeless people and count EEA nationals amongst their clients have argued that there are a number of reasons why that might be difficult. For example, some migrants may have come to the UK at a very young age but without having acquired the right of permanent residence. For them, any connection with their 'home' country is now very tenuous and requiring them to return home could present significant difficulties.

⁸ See Impact Assessment at appendix 5.

... it seems the Government will expect unemployed EEA migrants to leave the country when their JSA and/or HB entitlement ends after six months. Considering the number of A8 migrants who slept rough prior to the lifting of the Transitional Arrangements in 2011 this appears optimistic. For example, some EEA migrants fear if they were to return to their country of origin they will fail the equivalent of the Habitual Residence Test (in a similar way as returning UK nationals have no entitlement to benefits for three months here). So their choices may be to be homeless in the UK where they possibly have some informal support network, or sleep rough in their "home" country from where they have not resided for a significant period of time.

Homeless Link

- 2.6 It is already the case that there are homeless EEA nationals in the UK for whom returning to their country of origin is not an option. In this context, the threat of the non-availability of HB may be less of a deterrent than might be expected.

There has been no increase in the number of EEA migrants who wish to return home since the benefit changes came in from January (JSA) and April (HB).

The main reasons that EEA nationals do not want to be reconnected is because they have a lack of work, family and support in their home countries.

The vast majority have been here many years but do not have worker status. Most of those surveyed say they will choose to stay in the UK in the hope of finding work regardless of whether they have access to benefits. This is despite the majority being unemployed for over a year whilst in accommodation. It is hard to see, should they become homeless, how their chances of getting a job will improve.

The Booth Centre

- 2.7 On the prospect of some existing EEA nationals having to leave their homes as a consequence of this change, most respondents were clear that this was likely to lead to an increase in overcrowding in sub-standard accommodation and that instances of homelessness and rough sleeping would rise. It was also suggested that the costs associated with homelessness would rise – for example, added dependence on the NHS as physical and mental health deteriorates, and additional demands on the prison service following a potential increase in criminal activity.

Homelessness is clearly damaging, in both human and financial costs, to individuals and communities. It is therefore important that those experiencing homelessness are given every opportunity to overcome and move on from homelessness as quickly as possible.

Consequently I do not believe that removing the ability to pay for the housing which may be a household's legal right under Scottish homelessness legislation is a positive or desirable step to take.

***Minister for Housing and Welfare
The Scottish Government***

- 2.8 The Law Centre in Northern Ireland makes reference to an evaluation of an emergency fund which was made available to migrants in Northern Ireland who had no access to full support from other means because of their immigration status. The fund provided small amounts of money at critical points in an individual's life when it was needed, for example upon becoming sick or unemployed. The finding of the report was that the fund resulted in cost savings overall to the public purse. The costs which would have been incurred had the fund not been accessed, were found to outweigh the monetary calls upon the fund.

By providing short-term assistance – such as accommodation or emergency living expenses – the fund successfully helped some individuals avoid a situation of destitution. This ultimately results in cost-savings to the public purse:

*'The ability of the fund to mitigate the effects of destitution has a wide range of "spend to save" factors. Including improved health preventing a deterioration of an existing illness resulting in hospitalisation; being "linked-in" to support organisations increases people's resilience and attendance at hospital appointments, solicitor's offices and benefits assessments. It is reasonable to conclude that in many instances, the issuing of £40 to cover short-term accommodation in a hostel over a weekend is significantly more cost effective than that person being housed by the state or forced into being admitted to hospital.'*⁹

This illustrates the need for DWP to look at costs more broadly: while this amendment may lead to a reduction in welfare expenditure, it could well displace costs to other agencies such as the NHS.

Law Centre (NI)

⁹ McCann & McKittrick, 'OFMDFM Emergency Fund - Pilot August 2011 – March 2012' (2012)

(b) Evidence of difficulties in establishing retained worker status

- 2.9 A number of respondents highlighted existing difficulties for the migrant community on the matter of establishing that they had the status of a retained worker for the purposes of satisfying EU law. They have suggested that many migrants are only able to obtain transient work associated with certain industries, for example agriculture, catering, hospitality etc. With minimal earnings and zero hours contracts, respondents note that it is not only difficult to establish retained worker status but that some employers are poor at record-keeping and tend to operate around the borders of legality. This is not the kind of situation where co-operating with an employer to produce the required documentation is likely to be easy. Examples have been provided where young people had been estranged from their families and were unable to provide the information and evidence sought by authorities, such as the provision of a utility bill.
- 2.10 The determination of the status of a retained worker was cited by a number of respondents as being a complicated area of law where decision-makers are frequently inexperienced. Respondents have noted that it is a common occurrence for decisions to be overturned on appeal. Language difficulties often compound the problem. One respondent noted that there is sometimes a reluctance to challenge an adverse decision, with some migrants even fearing that they might antagonise the relevant authority and be deported as a result.

It is our experience that unless the worker has immediately claimed JSA after losing their job local authorities have refused HB on the grounds that the gap between working and claiming JSA has caused the claimant to lose their worker status. These decisions are frequently overturned by Appeal Tribunals but the vast majority of EEA migrants refused HB on these grounds simply do not challenge these decisions due to language barriers, difficulty accessing specialist advice services with interpreters and even a fear that by challenging authority they may be jeopardising their right to stay in this country. In reality most EEA migrants who lose their jobs in this country are reluctant to claim benefits when this happens.

Wavertree Citizens Advice Bureau

- 2.11 Although this is an ongoing problem, the effect of the new legislation is that the test will need to be applied to individuals more routinely than it has done hitherto.

(c) Effect on Local Authorities (LAs)

- 2.12 The Department for Work and Pensions has highlighted the duties on LAs set out in the Children Act of 1989 and the National Assistance Act

of 1948. The Nationality, Asylum and Immigration Act 2002, in general, disengages LAs from their normal duties of providing support and accommodation in the case of EEA jobseekers. However some duties are retained under the Children Act and the National Assistance Act. A duty of care remains in respect of children and certain young people as well as in cases where the European Convention on Human Rights or other Treaty rights would otherwise be breached. While the Department told us they had not undertaken any formal consultation with local authorities prior to the laying of the regulations due to the urgency of delivering that legislation, the Committee is pleased to note that research is now being undertaken with them.

- 2.13 Respondents have suggested that there is a lack of a consistent approach in relation to local authority duties. They are often expressed in relatively vague terms and there is concern amongst respondents that some EEA migrants are already not getting the help that they should be receiving. That said, there is a recognition that local authorities are being placed in a very difficult position insofar as people will inevitably be turning to them for emergency help and the pressure on their limited budgets will be considerable.

We are concerned that the regulatory change proposed by the Department for Work and Pensions fails to take account of the range of legal duties that local authorities are required by Parliament to discharge to those residing within their administrative boundaries... The amendments will have the effect of removing central government's financial obligations to a cohort of UK resident EEA migrants but will not remove, and will likely increase, the obligations of local government to the same cohort.

**Chair
London Councils**

- 2.14 The Department for Work and Pensions' Impact Assessment refers to EEA migrants falling into difficult circumstances if they are unable to find employment and cites this as a risk. Clearly any such risks are heightened if the circumstances of the migrant indicate vulnerability, and the Impact Assessment identifies families with children as an example. Nonetheless the statement is made that "*families would not be left without state support*" and reference is made to two sources of help. The first is income-related JSA, but this would seldom extend beyond six months. The second is LA support under section 17 of the Children Act and section 21 of the National Assistance Act 1948. Although it is stated in the Impact Assessment that "*it is envisaged that any such costs to Local Authorities would be small and short-term*", no further evidence or rationale is provided.

- 2.15 Respondents have drawn the Committee's attention to the plight of family members of the jobseeker who become victims of domestic violence and need to leave the family home. As EEA migrants themselves, they too will be caught by the new legislation. Those who run refuges for such victims advise us that they would be unable to continue to provide support as they would not survive financially if residents were unable to access HB. Women's Aid, whose annual survey of service users last year indicated that 6 percent of their residents were of Eastern European origin, note:

The Department's Equality Analysis notes that younger migrants are more likely to be affected by the regulations, including those with child care responsibilities, especially lone parents who may find it more difficult to get work because of those responsibilities. An EEA national who leaves a partner because of violence may also have children and so not be in a position to find work immediately. There is also concern that the regulations may also apply to returning British nationals. In the context of fleeing domestic violence the survivor may not have a safe place to go to on their return to the UK, and so may also have to be reliant on a refuge space.

Women's Aid

- 2.16 Issues also arise for children and young persons who are estranged from their families. Centrepoin, for example, see many young people in this category. They may have come to the UK many years ago with their family but now have very limited and declining links with their country of origin and, because their parents have never acquired the status of permanent residence, may be impacted by this legislation. Their reason for seeking benefit is not through leaving employment but upon becoming homeless. The turmoil that estrangement and homelessness brings creates inevitable difficulties in securing a job in a climate where youth unemployment is already high. In the context of the new legislation it may be necessary for a young person to demonstrate that they have been dependent upon a parent who has been employed in the UK for five years but, as mentioned earlier in the report, obtaining the necessary proof may not be possible in some cases.

Homelessness

- 2.17 All of the comments received by the Committee in relation to homelessness were unanimous in their view that it will increase as a consequence of this legislation. Indeed St Mungo's Broadway is of the view that there has been an increase in EEA rough sleepers in the short period the legislation has been in operation.

Figures for the first quarter of 2014 show that 819, or 40 per cent, of the people counted sleeping rough in London were EEA nationals.

A comparison of the period during which the legislation has been in place with the same period last year shows that the number of EEA migrants who are sleeping rough for the first time in London has increased. The proportion of new rough sleepers in London who are EEA nationals has also increased.

St Mungo's Broadway

- 2.18 Respondents have noted, with some regret, that the success of the Government's "no second night out" policy is likely to be undermined by this policy. For example, if LAs are unable to offer support because the provisions of the Children Act and the National Assistance Act do not extend to single adults; or if hostels can no longer finance accommodation for homeless EEA migrants; or if migrants themselves have lost contact with their country of origin, a rise in rough sleeping seems almost inevitable. Church soup runs and similar informal arrangements might be the limit of available help.
- 2.19 The Law Centre (Northern Ireland) provided a particularly worrying example.

... the Law Centre has dealt with cases where the lack of access to Housing Benefit caused particular difficulties. By way of illustration, a Polish woman who gave up work when she was pregnant with her second child following domestic violence and the break down of her relationship subsequently spent almost two years living on £40 a week from social services causing real difficulties. In other cases, the lack of Housing Benefit led to homelessness. In a December 2005 case relating to work permits, a young woman lost her job and had no access to any financial support. She spent her savings in a hotel for ten days, became homeless, slept rough, contracted frostbite and subsequently had to have both legs amputated from the knee downwards. While an extreme example, the individual was a 27 year old, an initially healthy woman who under the rules introduced would have to meet day to day needs and accommodation costs on £72.40 a week (a sum unlikely to cover rent in some parts of Northern Ireland).

Law Centre (NI)

- 2.20 St Mungo's Broadway point to the unwanted side effect this legislation may have in creating a degree of bed blocking. In 2013 a study showed that 32 per cent of residents in supported accommodation

were ready to move on, but were unable to do so. The suggestion is that hostels may be reluctant to eject existing EEA migrants residents if it means that they will become rough sleepers, even though there may be others needing a bed. The Salvation Army has commented that if residents are asked to leave their accommodation, there is a risk that valuable work undertaken with alcohol or substance abusers will be undone. They also believe that there will be some cases where individuals will have little option but return to the trafficker who first brought them to the UK, living in exploitative sub-standard accommodation with little or no money in return for work¹⁰.

(d) Effect on the Private Rented Sector

2.21 The Residential Landlords Association notes the difficulties faced by landlords:

The landlord will be placed in the unenviable position of losing money through rent arrears, as well as having to take steps to evict the tenant. In the meantime, the arrears will continue to grow. Regrettably possession procedures can take a significant time particularly with growing problems in the County Court system due to the lack of resources. There will be no realistic prospects of the landlord recovering the money even though in turn the landlord may well have his or her own commitments such as mortgage repayments on a buy to let mortgage.

Residential Landlords Association

2.22 Whilst it cannot be predicted with certainty, it seems an almost unavoidable outcome that private landlords will become reluctant to let their properties to EEA migrants, even to those in typically secure forms of employment. The prospect of losing income if the tenant becomes unemployed is real. We have been advised that there is already some evidence of this happening.

2.23 Whilst some may be able to show that they have the status of a retained worker, the potential delay in establishing that status, and the limited period for which that status may benefit a migrant when it has

¹⁰ The UN Trafficking in People Protocol notes that: *“trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person the having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

been established, may both conspire to disincline a landlord from letting accommodation to a migrant in the first place.

We are also concerned at what may be an unintended consequence in that landlords may as a result discriminate against those who have recently arrived from other EU countries. Knowing of the non availability of housing benefit, and because a prospective tenant may lose a job which they have come to take up will then not be eligible to obtain payment of benefits, a landlord may prefer someone who has been settled here for some time or even a UK citizen. This could, therefore, make it harder for these individuals to find suitable accommodation.

Residential Landlords Association

3. Conclusions

- 3.1 The Committee is mindful of the need to ensure that limited public resources are used to best effect, and acknowledges that the Government has difficult choices to make in achieving that. Within that context, and having considered all of the evidence presented to the Committee by the Department and by respondents to this consultation, we make the following recommendations for the Government to consider.

Homelessness

- 3.2 Speaking in 2011, the Prime Minister noted that:

It is an affront to this country that last winter, one of the coldest on record, there were people still sleeping rough on our streets. While the temperature dropped below freezing, many were making do with doorways and cardboard boxes for beds. In a civilised society, this is totally unacceptable.

- 3.3 The consultation responses received by the Committee from organisations providing support to the homeless highlight the risk that this legislation is likely to undermine the Government's stated commitment to help those who are sleeping rough to move off the streets. **The Committee therefore recommends that the Government, as a matter of urgency by the end of autumn 2014, consider what action is needed in order mitigate these potential unintended and harmful effects and to publish its findings.**

Monitoring and evaluation

- 3.4 The Department has estimated that it will save £10 million per year from this measure although, as identified earlier in the report, there will be additional costs elsewhere that need to be offset against that.

There is also a suggestion that local authorities are concerned that they will be faced with a financial burden that will be challenging to meet. So while it is stated that there will be savings for the Department for Work and Pensions, there are likely to be other significant additional pressures on other areas of public spending (for example on the National Health Service, the police, education, local authority services etc), leading to serious doubts whether the regulations reduce expenditure overall. The Committee would therefore welcome greater transparency about the overall impact on public spending.

...in the Financial Times article of 26th November 2013, David Cameron stated:

'If people are not here to work – if they are begging or sleeping rough – they will be removed. They will then be barred from re-entry for 12 months, unless they can prove they have a proper reason to be here, such as a job'

...if the Prime Minister is implying the Government will remove all future EEA rough sleepers from the UK this will potentially have huge resource implications for the Home Office.

Homeless Link

- 3.5 **The Committee strongly recommends that the Government puts robust arrangements in place to monitor and evaluate the impact of the policy, and to identify accurately the total overarching costs and/or savings to the Exchequer. The data relating to the first year of its implementation should be published by autumn 2015, as part of the review of its impact.**
- 3.6 There is, inevitably, a degree of uncertainty in the accuracy of any estimates when behavioural effect is part of the analysis. It will be important to establish whether the policy intent is being achieved and whether there are unintended consequences that had not been anticipated. In particular, the impact on vulnerable migrants, for example victims of trafficking, should be looked at more closely and any unintended consequences addressed as soon as they are identified. Whatever the shortcomings of the evidence base upon which this policy was initiated, it is essential to have a more robust analysis of its impact going forwards.
- 3.7 It is regrettable that the views of local authorities were not sought through a formal consultation process before the implementation of this policy, although the Committee is pleased to note that the Department for Work and Pensions is now undertaking research with local authorities. **The Committee therefore recommends that particular**

consideration be given to the impact this policy has on local authorities. This should include a more comprehensive analysis to identify the wider costs for local authorities and a plan setting out how the additional financial pressures are to be addressed.

Broader Government strategy for migrants

- 3.8 The Committee notes that this policy forms part of a wider strategy relating to migrants which involve a number of Government departments, including the Home Office and HM Revenue and Customs. Some elements of this strategy are being developed and delivered at pace. **We urge the Government to ensure that the relevant departments work together closely on this strategy - involving other delivery partners as appropriate - to ensure a consistent and fair approach which avoids unintended consequences.**
- 3.9 The Committee also considers it vital that the Government takes urgent steps to develop a clear strategy for communicating the changes in a cohesive and accessible way to those who are likely to be affected, including returning UK nationals. There should be a single area on the GOV.UK website where those concerned can go to find out what the totality of the changes mean for them and take informed decisions based on the information provided. The Committee can see no reason why this single information hub should not be in place by the autumn 2014. The Government should also consider whether our Embassies have a role in publicising the new rules to ensure that EEA migrants considering a move to the UK can make informed decisions.
- 3.10 The Committee is grateful to a number of the respondents who put forward other detailed recommendations for the Government to consider. The Committee Secretary will share these with DWP colleagues for further consideration.

Paul Gray
Chair

APPENDIX 1

Summary of recommendations

Homelessness

1. The consultation responses received by the Committee from organisations providing support to the homeless highlight the risk that this legislation is likely to undermine the Government's stated commitment to help those who are sleeping rough to move off the streets. The Committee therefore recommends that the Government, as a matter of urgency by the end of autumn 2014, consider what action is needed in order to mitigate these potential unintended and harmful effects and to publish its findings.

Monitoring and Evaluation

2. The Committee would welcome greater transparency about the overall impact on public spending and strongly recommends that the Government puts robust arrangements in place to monitor and evaluate the impact of the policy, and to identify accurately the total overarching costs and/or savings to the Exchequer. The data relating to the first year of its implementation should be published by autumn 2015, as part of the review of its impact.
3. The Committee recommends that particular consideration be given to the impact this policy has on local authorities. This should include a more comprehensive analysis to identify the wider costs for local authorities and a plan setting out how the additional financial pressures are to be addressed.

Broader Government strategy for migrants

4. The Committee urges the Government to ensure that the relevant departments work together closely on this strategy - involving other delivery partners as appropriate - to ensure a consistent and fair approach which avoids unintended consequences.
5. The Committee considers it vital that the Government takes urgent steps to develop a clear strategy for communicating the changes in a cohesive and accessible way to those who are likely to be affected, including returning UK nationals. There should be a single area on the GOV.UK website where those concerned can go to find out what the totality of the changes mean for them and take informed decisions based on the information provided. The Committee can see no reason why this single information hub should not be in place by the autumn 2014. The Government should also consider whether our Embassies have a role in publicising the new rules to ensure that EEA migrants considering a move to the UK can make informed decisions.

APPENDIX 2

List of Respondents to the Consultation Exercise

1. Advice on Individual Rights in Europe (AIRE) Centre
2. Booth Centre
3. Centrepont
4. Community Links
5. Crisis
6. Gipsil Advice Service
7. Green Square Group
8. Homeless Link
9. Hounslow CAB
10. International Community Organisation of Sunderland
11. Law Centre (Northern Ireland)
12. London Councils
13. No Recourse to Public Funds Network
14. North West Regional Strategic Migration Partnership
15. Residential Landlords Association
16. Roma Support Group
17. St Mungo's Broadway
18. Salvation Army
19. Scottish Federation of Housing Associations
20. Scottish Government
21. Sefton CVS
22. Wavertree CAB
23. Wheatley Group
24. Women's Aid
25. York Law School

APPENDIX 3

WIDER PACKAGE OF MEASURES AFFECTING MIGRANTS FROM THE EUROPEAN ECONOMIC AREA

The Housing Benefit (Habitual Residence) Amendment Regulations 2014 form part of a package of measures affecting permanent and temporary migrants to Great Britain from the European Economic Area (EEA). Specifically they are designed to curb the extent to which EEA jobseekers may access income-related benefits in this country.

The initial trigger for this legislative activity was the fact that 1 January 2014 was the date upon which the right to freedom of movement within the EEA took effect for Romanian and Bulgarian nationals. As a result the Government introduced the Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013 (SI 2013 No 3196) which provided that a person cannot be treated as habitually resident in the UK and the common travel area (Channel Islands, the Isle of Man and the Republic) until a period of three months' actual residence has elapsed. This rule applies to new JSA claims from 1 January. The regulations also contained a provision limiting entitlement to Jobseeker's Allowance (JSA) to six months unless the person can show that they have a genuine prospect of employment.

The Department presented the Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013 to the Committee at its meeting on 30 January, the legislation having been introduced under the urgency provisions set out in section 173(1)(a) of the Social Security Administration Act 1992 ("the Administration Act". Although the Committee raised several questions with Departmental officials, particularly with regard to how this change would affect returning UK nationals, it decided that section 173(2) of the Administration Act should not apply, thereby exempting the Secretary of State from formally referring the regulations.

At the same time as the Department was introducing the Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013, the Home Office were introducing emergency legislation to transpose Directive 2004/38/EC of the European Parliament and of the Council into the Immigration (European Economic Area) Regulations 2006 (SI 2006 No 1003). One of the key effects of the Immigration (European Economic Area) (Amendment) (No 2) Regulations 2013 (SI 2013 No 3032 was to restrict the extent to which the status of "worker" may be retained when a person is involuntarily unemployed. The rule is that where a person has worked for more than 12 months before becoming involuntarily unemployed their status as a worker may be retained for up to six months whilst employment is sought. Beyond six months the person would need to provide compelling evidence that they had a genuine prospect of securing employment. If they have worked for less than 12 months they may retain their status as a worker for a maximum of six months. There is a further provision that a person may only retain the status of a jobseeker beyond six months if they are able to provide compelling evidence of seeking work and having a genuine chance of

being engaged. The indication from guidance we have seen to decision-makers would appear to draw the definition of “a genuine chance” narrowly. The intention is that the individual must either have a specific offer of a job to commence or come very near to it. Other aspects of European case-law and principles set out in various Directives are also contained within these Home Office provisions.

The Social Security (Habitual Residence) (Amendment) Regulations 2014 (subsequently enacted as SI 2014 No 539) were also presented to the Committee at our January meeting. These regulations simply harness themselves to the changes made to the Immigration (EEA) Regulations 2006 for the purposes of social security legislation. The intention is to ensure consistency of approach. We decided that these proposals did not need to be formally referred to the Committee. The fact that the Jobseeker’s Allowance (Habitual Residence) Amendment Regulations 2013 had already come into force by that time, thereby preventing any newly arriving Romanian or Bulgarian nationals from making a successful claim to JSA until three months had elapsed, explains the Government’s desire to ensure that the Social Security (Habitual Residence) (Amendment) Regulations should not come into force any later than 1 April 2014. In the event they did indeed come into effect from 1 April.

The Government subsequently announced that from 1 March 2014 there was to be a more robust approach to the rules regarding the definition of the status of a worker or a self-employed worker for the purposes of EU law. The key criterion is whether the work in question has been “genuine and effective” but because there is no statutory definition as to what constitutes genuine and effective work, the Government have introduced a minimum earnings threshold (“MET”) which will help determine whether the test has been satisfied and therefore whether the person should be accorded the status of a worker or a self-employed worker. This is not a legislative change but one which is to be set out in guidance for decision-makers.

The announcement is to the effect that the MET is to be set at £153 a week for the financial year 2014/15. This represents the level at which employed earners are required to pay a Class 1 National Insurance contribution. It also equates to hours of work at around 24 a week, paid at the National Minimum Wage.

HMRC has introduced legislation which amends the rules governing entitlement to child benefit and child tax credits. The intention is that the same rule by which a person must have been in the UK or the common travel area for three months before entitlement to an income-related JSA can be established will also apply to entitlement to child benefit and child tax credits. This legislation is due to come into force on 1 July 2014.

APPENDIX 4

Members of the Social Security Advisory Committee

Paul Gray (Chair)
Les Allamby
John Andrews
Simon Bartley
Adele Baumgardt
John Ditch
Keith Faulkner
Colin Godbold
Chris Goulden
Matthew Oakley
Nicola Smith
Diana Whitworth

Expert Adviser (Scotland) to the Committee

Jim McCormick

APPENDIX 5

THE DEPARTMENT'S REGULATIONS AND SUPPORTING DOCUMENTATION

Housing Policy Division
3rd Floor, Caxton House
Department for Work and Pensions

Denise Whitehead
5th Floor, Caxton House,
Social Security Advisory Committee
(SSAC) Secretariat

19 March 2014

Dear Denise,

Further to our preliminary discussion of the Housing Benefit (HB) Amendment Regulations at the meeting of the Committee earlier this month, we now wish to formally refer the final package to the Committee for its April meeting. As you are aware, the Regulations were laid on 11th March and are due to come into force on 1st April.

The Regulations remove access to HB for European Economic Area (EEA) jobseekers who are entitled to income-based Jobseeker's Allowance (JSA(IB)).

Some questions were raised by members of the Committee at the meeting earlier this month, which I have addressed below:

(1) The Equality Analysis states that local authorities may be statutorily obliged to make help available under the Children Act 1989 and the National Assistance Act 1948. And yet there has not been any official consultation with the local authorities. As these statutes may have limited application to the majority of EEA migrants can you identify the numbers in the category of jobseekers who will not receive any help?

At the meeting, officials stated that the Children Act 1989 and the National Assistance Act 1948 have been considered as part of the wider policy changes in the Migrants' Access to Benefits project. The Equality Analysis to support this measure shows that around 23% of the potentially affected group have child dependants. EEA jobseekers have not previously been eligible for homelessness assistance or social housing, and this will remain the situation. EEA jobseekers will still be able to get some state support (through JSA), although this will be limited.

(2) Of the 1% of EEA migrant jobseekers who might have been expected to claim HB, do you know how many of them would have made short-term claims (ie finding work quickly) or longer-term claims where denial of entitlement to HB would present a serious financial problem?

The supporting Impact Assessment for this measure has been published alongside the Regulations. Analysis suggests that of the around 300,000 EEA migrants who registered for a National Insurance number in 2011/12, around 3,000 later made a passported claim to HB as a jobseeker. The following table shows the durations of the HB claims for this group:

0-3 Months	19%
3-6 Months	24%
6-9 Months	15%
9-12 Months	11%
12+ Months	31%

In order to aid the discussion on 2nd April, I have pleasure in enclosing the following products:

- Regulations;
- Keeling Version;
- Explanatory Memorandum;
- Equality Analysis;
- Impact Assessment; and
- Circular to Local Authorities (issued on 14th March).

In the meantime, if you have any queries, please do not hesitate to contact me.

Yours sincerely

Anna Bartlett
Housing Policy Division

Tel: 0207 449 5533
Email: anna.bartlett1@dwp.gsi.gov.uk

2014 No. 0000

SOCIAL SECURITY

**The Housing Benefit (Habitual Residence) Amendment
Regulations 2014**

<i>Made</i> - - - -	<i>5th March 2014</i>
<i>Laid before Parliament</i>	<i>11th March 2014</i>
<i>Coming into force</i> - -	<i>1st April 2014</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 137(1) and (2)(i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a).

The Secretary of State has not referred proposals in respect of these Regulations to the Social Security Advisory Committee, as it appears to him that by reason of the urgency of the matter it is inexpedient to do so(b).

The Secretary of State has not undertaken consultation with organisations appearing to him to be representative of the authorities concerned, as it appears to him that by reason of the urgency of the matter it is inexpedient to do so(c).

Citation and commencement

1. These Regulations may be cited as the Housing Benefit (Habitual Residence) Amendment Regulations 2014 and come into force on 1st April 2014.

Amendment of the Housing Benefit Regulations 2006

2.—(1) In regulation 10(3B) of the Housing Benefit Regulations 2006(d)—

- (a) omit the “or” following sub-paragraph (i);
- (b) in sub-paragraph (k) omit “, an income-based jobseeker’s allowance”;
- (c) after sub-paragraph (k) add—

“;or

- (l) in receipt of an income-based jobseeker’s allowance and has a right to reside other than a right to reside falling within paragraph (3A).”.

(a) 1992 c.4. Section 175(1) was amended by Schedule 3, paragraph 29 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 137(1) is cited for the meaning of “prescribed”.
(b) See section 173(1)(a) of the Social Security Administration Act 1992 (c.5) (“the 1992 Act”).
(c) See section 176(2)(a) of the 1992 Act. The amendments to section 176 are not relevant to these Regulations.
(d) S.I. 2006/213. Paragraphs (3A) and (3B) of regulation 10 were inserted by S.I. 2006/1026. Relevant amendments are S.I. 2008/1082, 2009/362 and 2013/2536.

Saving

3.—(1) The amendment in regulation 2 does not apply to a person who, on 31st March 2014, is entitled to—

- (a) housing benefit; and
- (b) an income-based jobseeker's allowance,

until the first of the events in paragraph (2) occurs.

(2) The events are—

- (a) the person ceases to be entitled to that income-based jobseeker's allowance; or
- (b) the person makes a new claim for housing benefit.

Signed by authority of the Secretary of State for Work and Pensions

Freud

Parliamentary Under Secretary of State
Department for Work and Pensions

5th March 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit Regulations 2006 in relation to the definition of “person from abroad”.

Under regulation 10 of those Regulations, a claimant for housing benefit who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland is a person from abroad and treated as not having a liability to make payments in respect of the dwelling they occupy as the home. As a result, such a person is not entitled to housing benefit. However, under regulation 10(3B), a person in receipt of an income-based jobseeker's allowance is not a person from abroad.

Regulation 2 of these Regulations amends regulation 10(3B) so that a person who is in receipt of an income-based jobseeker's allowance and whose only right to reside falls within regulation 10(3A) is a person from abroad.

Regulation 3 contains a saving provision. The amendment will not apply to a person who is entitled to housing benefit and income-based jobseeker's allowance on 31st March 2014 until that person ceases to be entitled to that award of jobseeker's allowance or makes a new claim for housing benefit, whichever is earlier.

An assessment of the impact of these Regulations has been made. A copy of the impact assessment is available alongside the instrument on www.legislation.gov.uk.

**The Housing Benefit (Habitual Residence) Amendment Regulations
2014 – Keeling Version**

The Housing Benefit Regulations 2006 (SI 2006/213)

Regulation 10.— Persons from abroad

(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1 (treatment of claims for housing benefit by refugees) apply.

(2) In paragraph (1), “*person from abroad*” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

(3A) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

(a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;

(b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—

(i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or

(ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;

(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;

(c) Article 6 of Council Directive No. 2004/38/EC;

(d) Article 45 of the treaty on the Functioning of the European Union (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland); or

(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).

(3B) A person is not a person from abroad if he is—

(a) a worker for the purposes of Council Directive No. 2004/38/EC;

(b) a self-employed person for the purposes of that Directive;

(c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;

(d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

(e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;

(f) a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—

(i) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006 (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”), or

(ii) regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (right of residence of a Croatian who is an “accession State national subject to worker authorisation”);

(g) a refugee;

(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—

(i) discretionary leave to enter or remain in the United Kingdom;

(ii) leave to remain under the Destitution Domestic Violence concession; or

(iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;

(hh) a person who has humanitarian protection granted under those rules;

(i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; ~~or~~

(k) in receipt of income support, ~~an income-based jobseeker's allowance~~ or on an income-related employment and support allowance; **or**

(l) in receipt of an income-based jobseeker's allowance and has a right to reside other than a right to reside falling within paragraph (3A).

(6) In this regulation—

“*refugee*” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees.

EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT (HABITUAL RESIDENCE) AMENDMENT REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The purpose of this instrument is to amend the Housing Benefit Regulations 2006 (SI 2006/213) (www.dwp.gov.uk/docs/a8-2501.pdf) so that European Economic Area (EEA) nationals who come to the UK to seek work are not entitled to Housing Benefit (HB) even if they are receiving income-based Jobseeker's Allowance (JSA).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 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 JSA, but they can only access HB if they are entitled to income-based JSA.

4.2 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 and is entitled to income-based JSA, then there is no requirement for the local authority to make a separate HRT decision when considering their entitlement to HB.

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

4.4 The Government's intention to introduce this package of measures was set out by the Prime Minister in his Financial Times article of 26 November. So people have had time to understand the potential impacts of these changes.

4.5 New EEA jobseekers will still be able to get some state support, but it is right that this is limited. We need to protect the integrity of the UK benefits system and discourage benefit tourism.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Similar statutory rules are to be introduced to Northern Ireland.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 From 1st April 2014, an EEA jobseeker who is entitled to income-based JSA 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 receiving JSA because they have a right to reside other than as a jobseeker or as a family member of a jobseeker will continue to have a right to reside for HB (for example, where they retain worker status).

7.2 EEA jobseekers who are in receipt of both income-based JSA and HB on 31st March 2014 will be unaffected by the change until their JSA claim ceases, or they make a new claim for HB, whichever occurs first. This will include a claimant who moves to a new local authority.

7.3 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 unemployment or temporary incapacity for work are not affected by this measure.

7.4 UK nationals and citizens of the Republic of Ireland will not be affected by this measure.

- *Consolidation*

7.5 "Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk.

An explanation as to which instruments are maintained on each site is available [here](#).”

8. Consultation outcome

8.1 No consultation has been carried out and the instrument has not been scrutinised by the Social Security Advisory Committee or the Local Authority Associations as the urgency provisions have been used. The Regulations will be referred to the Committee once they are in force.

9. Guidance

9.1 Guidance will be made available to local authority and DWP staff prior to the regulations coming into force.

10. Impact

10.1 There is no impact on business but it is possible that charities or voluntary bodies may be affected.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring of the changes will be part of the general monitoring of HB claims as only a small number of claimants are likely to be affected. The Department will review the impacts of these regulations should any evidence of adverse impacts come to light.

13. Contact

Anna Bartlett at the Department for Work and Pensions Tel: 0207 449 5533 or email: Anna.Bartlett1@dwp.gsi.gov.uk can answer any queries regarding the instrument.

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

Date: 27 February 2014

Completed by: Anna Bartlett

Removal of Access to Housing Benefit for EEA Jobseekers

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

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.

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

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>

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.

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

Title: The removal of Housing Benefit from EEA jobseekers IA No: Lead department or agency: Department for Work and Pensions Other departments or agencies: None	Impact Assessment (IA)			
	Date: 27/02/2014			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries:				
Summary: Intervention and Options				RPC Opinion:

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0	£0	£0	No	NA

What is the problem under consideration? Why is government intervention necessary?

The Government recognises the contribution that migrants from the European Economic Area (EEA) make to the UK economy, and welcomes migrants coming to this country to work. The package of measures which restricts access to benefits by jobseekers from other member states is necessary to protect the UK's benefit system and to discourage people, who have no established connection or who have broken their connection with the UK, from migrating here without a firm offer of employment or imminent prospect of work. For this reason, it is legitimate to allow access to Housing Benefit (HB) only to those EEA migrants who are workers or are self-employed; and not those whose status is as a jobseeker.

What are the policy objectives and the intended effects?

Introduce legislation to remove access to HB for EEA jobseekers, even if they get income-based Jobseeker's Allowance (JSA(IB)).
This will help to avoid unnecessary costs to the benefit system by reducing the HB caseload by discouraging EEA nationals from coming to the UK with the primary intention of claiming benefits. Since HB would remain available to EEA citizens who are in work, self employed, or retain their worker status, the measure would also provide an increased work incentive to EEA jobseekers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- 1) Do nothing. Continue to allow EEA jobseekers access to Housing Benefit if they are in receipt of JSA(IB).
- 2) Remove the link between HB and JSA(IB) so that EEA migrants who are classified as jobseekers are no longer able to access HB even if they are in receipt of JSA(IB).

Option 2 is the preferred option as it will prevent those who have not contributed to the UK economy from being able to claim HB and helps to reduce welfare expenditure.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	MicroNo	< 20 No	SmallNo	Medium No	LargeNo
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Iain Duncan Smith..... Date:27/02/2014.....

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 6	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£10m	£10m	£70m

Description and scale of key monetised costs by 'main affected groups'

This policy generates exchequer savings to the Government from limiting access to Housing Benefit. These savings are estimated in the benefit section below. In the full economic analysis, these savings to government are offset exactly by the costs to the potential benefit recipients.

Other key non-monetised costs by 'main affected groups'

There will be some one-off implementation costs which have not been included due to uncertainty over operational impact. No knock-on impacts on statutory homelessness are assumed as migrants are not currently eligible for assistance under statutory homelessness measures, and this will remain the case.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£10m	£10m	£70m

Description and scale of key monetised benefits by 'main affected groups'

From 1st April 2014, EEA migrants classed as jobseekers will have no access to HB, even if they are on JSA(IB). We estimate that, of approximately 300,000 EEA migrants who registered for a National Insurance Number (NINo) in 2011/12, around 3,000 later made a passported claim to HB as a jobseeker (rather than a retained worker). The saving to the exchequer is estimated at a present value of £70m, based on costs of around £10m a year until 2018/19 (figures are rounded to the nearest £5m).

Other key non-monetised benefits by 'main affected groups'

Behavioural effects include the possibility that migrants may be less likely to come to the UK, or that they are more likely to find work as a result of the greater work incentives from lower out-of-work state provision.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The impact will depend heavily on individual behaviour in response to the policy, including future patterns of migration.

The level of savings depends on what proportion of those claiming income-based JSA have the status of a retained worker. This is difficult to establish as the current rules are not clear cut.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: n/a	Benefits: n/a	Net: n/a	No	NA

Evidence Base (for summary sheets)

Background information

What is the current policy?

Until 1st January 2014, EEA jobseekers could make a claim for JSA(IB) on entering the UK, provided they had passed the Habitual Residence Test (HRT). Since JSA(IB) was the only route by which they could access HB, they could access HB without delay too.

On 1st January 2014, a 3 month residence requirement for access to JSA(IB) was introduced. So currently, once EEA jobseekers have served the 3 month residence required and satisfied the HRT, they would be able to make a claim for JSA(IB), which would in turn give them access to HB. This measure will remove that access to HB from 1st April 2014.

Problem and solution

An EEA jobseeker can access Housing Benefit once they start claiming JSA(IB), without any requirement that they have been working in the UK.

The proposed solution is to remove access to HB for EEA jobseekers, and allow only those EEA migrants who are working or have recently worked in the UK to access Housing Benefit.

Policy rationale

The Government recognises the contribution that EEA migrants make to the UK economy, and welcomes migrants coming to this country to work and contribute to our economy. The measures on restricting access to benefits by jobseekers from other member states are necessary to protect the UK's benefit system from those who might seek to exploit it.

The proposal to remove EEA jobseekers' access to Housing Benefit is part of a package of measures designed to protect the UK's benefit system and discourage people who have no established connection or who have broken their connection with the UK, from migrating here without a firm offer of employment or imminent prospect of work.

The policy would deter any EEA migrants who wished to move to the UK with the primary aim of claiming benefits. It would lead to a reduction in the HB caseload, and hence to cost reductions.

Policy options

1. Do nothing
2. Remove access to HB for EEA jobseekers

Do nothing

This would mean that jobseekers can continue to access Housing Benefit funded by UK taxpayers, even if they have never worked in the UK.

Remove access to HB for EEA jobseekers

We propose to amend the Housing Benefit Regulations 2006 (SI 2006/213) to ensure that European Economic Area (EEA) nationals who come to the UK to seek work are able to access to Housing Benefit (HB) even if they are receiving JSA(IB).

Excluded from this measure are:

- a) UK nationals (and nationals from the Common Travel Area, such as Eire);
- (b) EEA jobseekers with retained worker status (i.e. EEA nationals who were in 'genuine and effective' work in the UK who were made involuntarily redundant and are claiming JSA);
- (c) EEA workers/self-employed; and
- (d) EEA jobseekers who were receiving JSA(IB) and HB on 31 March 2014 will not be affected this measure, until their JSA or HB ceases.

These groups will continue to have access to HB. This approach is designed to protect the UK's social security system from those who have made no contribution by means of taxation or social security contributions, whilst still allowing those who contribute the UK economy to receive HB if they need to.

We estimate that of the around 300,000 EEA migrants who registered for a NINo in 2011/12, around 3,000 later made a passported claim to HB as a jobseeker (rather than as a retained worker). The average housing benefit claim for these individuals is around £100 per week. Total expenditure on these claims is estimated to average around £10m per year over the next six years.

The vast majority (92%) of those potentially affected by the policy are renting in the private rental sector. More than three quarters are single people or childless couples. Around a third of those potentially affected live in London, ten per cent live in Scotland and three per cent live in Wales.

Risks

One key uncertainty in estimating the effect of the policy is a lack of evidence about the number of EEA migrants that have been assessed to have "worker" or "retained worker" status by decision makers. Both retained workers and jobseekers may claim income-based JSA, and administrative data do not identify claimants' status. In order to infer how many HB claimants passported from income-based JSA would be exempt from the measure through their status as a retained worker, we have had to make a number of assumptions. Claims made six months or more after NINo registration¹ are not included in the analysis as they are assumed to be workers or retained

¹ 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.

workers. All claims longer than three months after the previous claim are excluded on the basis that the claimant is more likely to have worked in the meantime and hence be classified as a retained worker on their return. If these assumptions lead to an over-estimate of the proportion of HB claimants passported from income-based JSA who are retained workers, then savings will actually be higher than our estimates suggest.

There is further uncertainty over the likely behavioural response to the policy. Firstly, it is hard to predict the impact the policy will have on migration. It is possible that the reduction in social security support for migrant jobseekers will deter some EEA nationals from moving to the UK. A reduction in migration would have consequences for the wider economy that are difficult to quantify.

The second behavioural uncertainty revolves around labour market incentives. The reduced access to out-of-work benefits for EEA migrants may lead to higher employment levels amongst the affected group. This would have knock-on effects on the economy as a whole, but also directly affects the HB savings that come from this measure. By moving into low-paid work, an EEA migrant becomes eligible for in-work HB. If more EEA migrants move into work as a result of the policy than would otherwise have done so it will generate benefits to the wider economy and exchequer, but if some of those additional workers claim HB it would reduce the amount of HB saved which has been estimated in this paper.

Finally, the policy would increase the risk that EEA migrants could fall into difficult circumstances were they unable to find employment, particularly if they were vulnerable, such as families with children. Families would not be 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). It is envisaged that any such costs to Local Authorities would be small and short-term.

Conclusion

The second option, namely the removal of access to HB for EEA jobseekers is preferred. This is because it will make it less easy for migrants to access the benefits system without contributing through tax or social security contributions. This will lead to a reduction in welfare expenditure.

Housing Benefit Circular

Department for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

HB A6/2014

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	For information
SUBJECT	The Housing Benefit (Habitual Residence) Amendment Regulations 2014

Guidance Manual

The information in this circular affects the content of the HB Guidance Manual. Please annotate this circular number against *Part C, Chapter 4.230*.

Queries

If you

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The Housing Benefit (Habitual Residence) Amendment Regulations 2014

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The Housing Benefit (Habitual Residence) Amendment Regulations 2014

Background

1. The government has recently implemented a number of measures to limit access to United Kingdom (UK) means-tested benefits for nationals of European Economic Area (EEA) countries whose right of residence in the UK is based on their status as a jobseeker.
2. Since 1 January 2014, EEA nationals entering the UK to seek work have been unable to claim income-based Jobseeker's Allowance (JSA(IB)) until they have been resident here for three months. This also applies to UK nationals and Irish citizens coming or returning to the UK from outside the Common Travel Area (CTA). Please note that the Channel Islands and Isle of Man are part of the UK for nationality purposes.
3. These reforms will now be extended so that even if an EEA jobseeker is entitled to JSA(IB), they will not be able to access Housing Benefit (HB). This will be effective from 1 April 2014.

Current position and unaffected cases

4. Workers, the self-employed, and those who are not currently employed but who retain their worker status, are required under the European Union (EU) treaties to have the same access to social security as nationals of the host Member State. EEA nationals exercising their treaty rights to live and work in the UK have a right to reside and are exempt from the Habitual Residence Test (HRT) due to HB Regulation 10(3B)(a) to (c) and have full access to HB if they are workers, self-employed, or retain their worker or self-employed status.
5. An EEA national retains their worker status if they are involuntarily unemployed and are registered as a jobseeker with the relevant employment office and are actively seeking genuine and effective work. For HB purposes, they demonstrate that they retain their worker status by claiming JSA, National Insurance (NI) credits only (if their household income is too high for JSA(IB) and their contribution based JSA entitlement is exhausted or they have insufficient NI contributions), or Income Support (IS). The Court of Appeal ruled that although Jobcentre Plus is a relevant employment office, a claim for JSA isn't the only way an EEA national can register as a jobseeker. Therefore, a claimant can be receiving IS and retain their worker status so long as they have stated on their HRT form that they are seeking work. They will also need to provide evidence to confirm that their previous work was genuine and effective, see new guidance in circular HB A3/2014.
6. Worker status and self-employed status can be retained where a person is temporarily unable to work as a consequence of an accident or illness. Self-employed status can only be retained during periods of temporary incapacity; if a person ceases trading for another reason then they do not retain self-employed status and are counted as jobseekers.

7. While the European Treaties provide that EEA nationals who are not working can reside in another Member State in order to search for work as jobseekers, there is greater scope for their access to benefits to be restricted. HB Regulation 10(3A) already provides that a person who has a right to reside by virtue of being an EEA jobseeker shall not be treated as habitually resident in the CTA.
8. Under the current legislation it is possible for an EEA jobseeker, who would ordinarily be excluded from HB via Regulation 10(3A), to qualify for HB if they are in receipt of JSA(IB). Regulation 10(3B)(k) provides that any person in receipt of one of the working age means tested benefits administered by the Department for Work and Pensions (DWP) (JSA(IB), income-related ESA (ESA(IR)) and IS) is not a person from abroad. If a claim for HB is received from someone getting JSA(IB), then regardless of their nationality they are automatically exempt from the HRT and can access HB.
9. The amendments in SI 2014/539 remove access to HB for EEA jobseekers who make a new claim for HB on or after 1 April 2014. EEA nationals who are self-employed, are workers or who are unemployed but retain their worker status have the same rights to HB as a UK national and their situation remains unchanged. The JSA decision maker will record on the Customer Information System (CIS) notepad if someone is a retained worker; a HB claim from such a person should be dealt with in the same way as it was before 1 April.
10. EEA jobseekers who are entitled to HB and JSA(IB) on 31 March 2014 will be protected until they have a break in their claim for HB or JSA. If their JSA ends because they have started work, then as long as you are satisfied that their employment is genuine and effective they will be able to access in-work HB as either a worker or a self-employed person. Claimants receiving in-work HB beyond 1 April will continue to be able to access HB, if they become entitled to JSA(IB) on or after that date, but only if they retain their worker status. If they are a jobseeker then their HB entitlement ends from the Monday following the cessation of work.

Common Travel Area nationals

11. The CTA consists of the UK, the Channel Islands, Isle of Man and the Republic of Ireland. Nationals of the Channel Islands and Isle of Man are British citizens. As a national of the CTA they have a right to live in the UK, and if they have come here directly from the Irish Republic, Channel Islands or Isle of Man they are treated as being habitually resident in the UK.
12. UK nationals and Irish citizens who have come or returned to the UK after a period of absence outside the CTA are subject to the same three month waiting period for JSA(IB) as newly arrived migrants from EEA countries. However, as they have a right to reside in the UK they are eligible for HB if they can also demonstrate that they are habitually resident.

Irish nationals

13. Irish citizens are also EEA nationals but don't have to show that they are in the UK under the Residence Directive as they can come to the UK under the CTA agreement. If a claimant provides evidence that they are an Irish national, whether or not they have any other nationality, then the 1 April 2014 restrictions will not apply to them. They can be awarded HB, either based on entitlement to a DWP income-related benefit or if they prove to the authority that they otherwise satisfy the means test.

1 April 2014 – who is no longer entitled?

14. HB Regulations 10(3) and (3A) already provide that a person with a right to reside in the UK that derives solely from their status as an EEA jobseeker is not treated as habitually resident. From 1 April 2014, the regulations will be amended so that being entitled to JSA(IB) will no longer grant access to HB for jobseekers from EEA countries. As discussed above, this will not apply to UK nationals, or CTA (inc. Channel Islands etc) citizens as they are CTA nationals whose right to be in the UK comes from national law and the CTA agreement.
15. Arrangements will be made for Jobcentre Plus to notify you where an award of JSA(IB) has been made to someone as an EEA jobseeker so that you are aware they should not be able to access HB. Details of the clerical notification procedure and the marker on CIS are discussed below, while an example of a notification e-mail is included at Annex C.
16. The exclusion from HB applies to all EEA jobseekers whose new claim is made or treated as made on or after 1 April 2014, regardless of whether they entered the UK before or after 1 April. It also applies to EEA nationals who have been receiving in-work HB, who become unemployed on or after 1 April and who do not retain worker status. Transitional protection is limited to those EEA jobseekers entitled to HB and JSA(IB) on 31 March 2014 (as outlined in paragraph 10).

Procedures for notification of status by DWP

17. From 1 April 2014, the Electronic Transfer of Data (ETD) notification will be replaced by a secure email for **EEA jobseekers only**. This will be sent through a GSE/GCSX/GSX account. This will show the claimant's entitlement to JSA and that they have been classified as an EEA jobseeker following their HRT. A copy of the notification is attached at Annex C. EEA jobseeker HRT notification emails will be sent to the same address as each local authority (LA) uses for iWorks (IWK4) notifications. If this is likely to cause problems, or if an LA intends to change the address it uses for iWorks communications, please contact the Local Authority Support Team.
18. Certain jobseekers will be excluded from this measure because they will be claiming reserved rights from a family member, in these cases the ETD will not be suppressed. You will receive your ETD notifications for all other claimant groups as per current processes. There are no changes to the Automated Transfer to Local Authority Systems (ATLAS) notifications: LAs will continue to receive these per the current arrangements.

Checking a jobseeker's status via CIS

19. Once a decision has been made on the JSA(IB) claim, the JSA agent will input the decision into the DWP system. The agent will also put the claimant's HRT status on the notepad. You will be able to view this information on the CIS.

New claim for HB made via DWP

20. You will receive your Local Authority Input Documents (LAID) as normal. However, if the claimant is subject to an HRT, DWP staff will put a note on the system to that effect. It will appear in the notes section of the LAID when received by the LA. This will be the first indication that the claimant could be subject to the changes in the regulations.
21. For new claims, when the agent inputs the decision on the system they will suppress the ETD notification where the claimant is deemed to be an EEA jobseeker. In these cases, the ETD will be replaced by an email through the GSE/GCSX/GSX route which will provide details of the claimant's entitlement to JSA but explain that they are deemed an EEA jobseeker. There are no changes to the processes for ETD notifications for EEA retained workers or UK nationals. The LA will continue to receive these as per current processes.
22. The LA should not set the interest markers on CIS for the HB claim where the claimant is subject to an HRT until the outcome of the DWP HRT is known. Where the claimant is deemed to be an EEA jobseeker, DWP would not want to continue to share information with the LA for that person. However, if the claimant is deemed to be an EEA retained worker or a UK national the marker on CIS should be set to start receiving ATLAS notifications.

New claim for HB made directly to LA

23. For new claims made directly to the LA, you will need to undertake some additional checks to see if the claimant has been subject to an HRT. You will need to check CIS to confirm the claimant's entitlement to JSA and the notepad screen for their HRT status.
24. Where an EEA jobseeker makes an HB claim and there is no entitlement to JSA, an LA should signpost the claimant to their Jobcentre to make a claim for JSA.
25. Once the claim has been processed the LA will receive a LAID (where appropriate) and a secure email to show that the claimant is entitled to JSA but has been classified as an EEA jobseeker. Where the claimant is deemed to be a UK national or an EEA retained worker you will receive an ETD notification showing the claimant's entitlement to JSA. You will need to check CIS to get the claimant's HRT status. In both cases it is then for the LA to decide whether that claimant is eligible for HB. However, if the claimant's status is an EEA jobseeker, they should not be able to access HB.

Changes to ongoing HB awards

26. Where there is a change in the claimant's circumstances this could mean that the claimant requires a new HRT. For these cases the LA would receive an ETD/ATLAS notification of the change that has been made and they would need to check CIS notepad to obtain the claimant's residency status details following their HRT. Where the claimant has been deemed an EEA jobseeker the LA would have to take appropriate action to decide whether the claimant still had access to the benefit.

Further advice and information

27. We have provided some examples of various scenarios at Annex A, and some Questions and Answers at Annex B.

Annex A

Examples

Example 1

Mr. A, a French national, arrives in the UK on 1 March 2014. He claims JSA(IB) and an award is made with effect from 1 June 2014 after he has completed the 3 month residence requirement. He claims HB on 1 July. The LA checks the CIS notes, which record that Mr. A is an EEA jobseeker, so his HB claim is refused as he doesn't have a qualifying right to reside for HB purposes and fails the HRT.

Outcome: claimant is not able to access HB

Example 2

Mr. B, a Dutch national, has been in receipt of JSA(IB) and HB since 2 September 2013. As an existing HB recipient, the 1 April 2014 changes do not affect him and his HB continues in payment. On 1 June 2014 he signs off JSA as he has started work as a window cleaner. He continues to receive in-work HB due to his self-employed status. After six months he finds his business has to close as the area where he works is no longer accessible due to flooding and he is unable to find new custom. He claims, and is awarded JSA(IB). As he has lost his self-employed status, the right to reside element of the HRT must be applied to him again and as an EEA jobseeker claiming after 1 April 2014 he is not entitled to HB.

Outcome: claimant is not able to access HB

Example 3

Miss C, a Greek national, has been in full-time employment for several years and has not needed to claim HB, but on 1 June 2014 she is made redundant and claims JSA along with HB. She is awarded contribution-based JSA and as she has retained her worker status she is able to access HB.

Outcome: claimant is able to access HB

Example 4

Mr. D, a UK national, returns to the UK on 1 May 2014 to resume his habitual residence after 6 months spent working in Australia on a fixed-term contract. He claims JSA on 15 May, but as a newly arrived migrant he must satisfy the 3 month residency requirement and will not be awarded any JSA until 1 August 2014. On 1 June he claims HB and provides the LA with evidence that he has £5,000 in savings and is withdrawing £80 per week to meet his living expenses whilst he waits for JSA. As he has returned to live in the UK and is resuming his previous habitual residence, the LA decision maker decides that he is habitually resident in the UK so satisfies the HRT. He is awarded HB based on his low income.

Outcome: claimant is able to access HB

Example 5

Miss E, a Portuguese national, is a self-employed taxi driver. On 1 June 2014 she is injured in a road traffic collision. She informs the LA that she intends to resume her business in a few months once she has recovered but in the meantime she cannot work. As she is temporarily unable to work as a result of the accident, she retains her self-employed status for HB purposes and is eligible to claim. This is the case whether or not Miss E also qualifies for ESA (IR).

Outcome: claimant is able to access HB

Example 6

Miss F, a German national, has been receiving HB since 1 April 2013 as a self-employed person. On 1 May 2014 she claims JSA(IB) as her business closed due to lack of custom. As she has already met the three month residence requirement she is awarded JSA immediately as a jobseeker. Along with the LAID, Jobcentre Plus send the LA an email advising that the claimant is a jobseeker, since a self-employed person doesn't retain their status as self-employed during periods of unemployment. She is no longer entitled to HB and her HB award ends from the Monday following her cessation of self-employment.

Outcome: claimant is not able to access HB

Example 7

Mr. G, a Swedish national, arrived in the UK on 1 February 2014 and started full-time work. As he was living in an area with above average rental costs, he claimed HB, which was awarded on the basis that he was an EEA worker. On 15 June 2014, he became involuntarily unemployed and claimed JSA. As he had not been paying NI for a sufficient period, he did not qualify for JSA(C). However as he had been working continuously for over three months and his gross earnings exceeded the Minimum Earnings Threshold, the JSA decision maker decided that he retained worker status. JSA(IB) was awarded and the ETD notification was sent to Mr. G's LA as normal.

Outcome: claimant is able to access HB

Annex B

Questions & Answers

Q1. What do these changes mean for non-EEA nationals?

A. The object of these regulations is to remove entitlement to HB for EEA nationals who are residing in the UK as jobseekers and make a new claim for HB with effect from 1 April 2014. It also applies to existing recipients of HB who have a change in their circumstances which requires the right to reside test to be applied to their HB again and they are classified as jobseekers. The position of non EEA nationals making a claim for HB is unaltered and LAs should continue to apply existing guidance.

Q2. How should couples be treated where one person is an EEA jobseeker and the other is a CTA national?

A. This reform only removes EEA jobseekers' access to HB and does not affect their EU treaty rights to reside in the UK whilst they search for work. If a claim for JSA(IB) is received from a CTA national who has an EEA partner, the couple rate will be awarded just as it would be if the partner were a CTA national. The rule whereby non-EEA partners with no recourse to public funds are disaggregated from DWP income-related benefits arises under immigration law and does not apply to a partner who is an EEA jobseeker. In the case of HB, the CTA national should be advised to make the claim (similar to the situation of a couple where one person is an ineligible student) and entitlement would be assessed as normal.

Q3. How should changes of address be dealt with?

A. Transitional protection continues as long as a claimant entitled to HB and JSA(IB) on 31 March 2014 continues to receive both benefits. Where a claimant moves address within a LA area, then as this is a change of circumstances to an existing award the claimant remains eligible for HB so long as there is no interruption to the JSA award. Where a claimant moves from one LA to another, their HB award ends and a separate claim is required from the new authority. Transitional protection expires and the claimant will not be entitled to HB from the new LA, unless there is a change to their status.

Q4. How do the restrictions on EEA jobseekers' access to HB link with the new Minimum Earnings Threshold (MET) / genuine and effective work guidance?

A. The new, more exacting test for genuine and effective work introduced on 1 March 2014 and discussed in Circular HB A3/2014 is likely to influence HB decisions in two areas. The first is when someone who is involuntarily unemployed does not retain worker status, as they did not meet the requirement to be a worker; the second is where someone who moves from JSA into work or self-employment is not engaged in genuine and effective work.

A person who approaches DWP to claim JSA after a period in employment will be treated as a jobseeker and not a retained worker where the employment they were previously engaged in did not meet the MET and fails the enhanced scrutiny of whether it was genuine and effective. So long as that claimant has been in the UK for three months, they will be immediately eligible to claim JSA(IB), but as an EEA jobseeker will not be eligible for HB.

A jobseeker entitled to HB and JSA(IB) as of 31 March 2014 will receive transitional protection, which comes to an end if their JSA or HB award ends. Where a claimant moves from JSA(IB) into work, either as an employee or on a self-employed basis, the LA should apply the new MET / genuine and effective test. If the claimant's earnings are less than the MET and the work is not genuine and effective, the claimant is not a worker or self-employed person and so their HB entitlement will end.

Q5. How is retained worker status determined?

A. Article 7(3) of Directive 2004/38/EC provides that status as a worker is to be retained where a claimant is "in duly recorded involuntary unemploymentand has registered as a jobseeker with the relevant employment office". Annex B to Chapter C4 of the HB Guidance Manual contains background information on retention of worker status. The Court of Appeal has ruled that since the UK has no fixed procedure for determining whether someone is "registered as a jobseeker" a claim for IS, as well as a claim for JSA, can meet the criteria as long as in the course of making the claim for IS the claimant has stated that they are seeking work. Since 1 March 2014 in addition to being involuntarily unemployed and claiming JSA, NI credits only or IS, an EEA national must also provide evidence to show that their earnings in their previous employment satisfied the MET and where they didn't, that the work was genuine and effective.

Q6. What does this change mean for family members of EEA jobseekers?

A. Family members of jobseekers who are looking for work have a right to reside as a jobseeker if they also claim JSA(IB), and will be caught by the exclusion from HB just as any other EEA jobseeker would be.

The eligibility for JSA and HB of those jobseekers who are family members of EEA workers and self-employed persons will not be affected. Such individuals have clearly defined status under the Residence Directive and full eligibility for HB and other benefits.

Q7. How does an LA proceed if the claimant disputes their DWP designation as a jobseeker?

A. Whilst JSA(IB) and HB are two different benefits with independent decision making processes, the same legislation and tests are being applied to the same facts when determining the question of whether a claimant is a jobseeker or a person with retained worker status, so consistent decisions should be made. LAs should request that Jobcentre Plus provide the reasons for their decision that someone is not a retained worker if necessary. If Jobcentre Plus confirms their decision, follow normal dispute procedures.

Q8. What happens where the HB claim does not coincide with a JSA claim?


A. Directive 2004/38/EC provides that retention of worker status requires registration with the relevant employment office, which in the UK is Jobcentre Plus, so in any case where the question of whether a claimant is a retained worker or a jobseeker arises a DWP benefit should have been claimed and you will be able to check the DWP records on whether an EEA national is a jobseeker or a retained worker.

Even if there is no HB claim made alongside the claim to JSA, the JSA agent will still record on CIS the decision on whether an EEA national is a jobseeker or has retained worker status. This information will also be needed for DWP purposes, so the CIS notepad should be updated to ensure that the HRT decision remains visible.

In the unlikely event that the decision is not visible, a LA can contact the nearest Jobcentre Plus to obtain it per business as usual. The DWP agent will check that the LA officer is on the Apollo register before sharing any information regarding the case.

Annex C

Notification template

 Department for Work & Pensions	Office Address:
	Our phone number is: Code Number If you have a textphone, you can call on Code Number

To:

About Income based Jobseeker's Allowance

Name:

National Insurance Number:

Address:

The above named claimant has been classed as an EEA Jobseeker following the Habitual Residency Test.

Yours sincerely

For Manager

If you need to contact us please use the number at the top of this letter.

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