

**EXPLANATORY MEMORANDUM TO**  
**THE HOUSING BENEFIT (HABITUAL RESIDENCE) AMENDMENT REGULATIONS**  
**2014**

**2014 No. 539**

**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](http://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 1<sup>st</sup> 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 31<sup>st</sup> 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](http://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](http://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](mailto:Anna.Bartlett1@dwp.gsi.gov.uk) can answer any queries regarding the instrument.