

**EXPLANATORY MEMORANDUM TO**  
**The Jobseeker's Allowance (Habitual Residence) (Amendment) Regulations**  
**(Northern Ireland) 2014**

**S.R. 2014 No. 263**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by the Jobseekers (Northern Ireland) Order 1995 and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 9 November 2014.

**2. Purpose**

- 2.1 This rule makes amendments to regulation 85A of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 so that claimants who have paid either Class 1 or Class 2 contributions whilst working abroad or who have been a Crown servant or member of Her Majesty's forces posted overseas will not be required to have been living in the Common Travel Area (the Channel Islands, Isle of Man or the Republic of Ireland) for the past 3 months in order to satisfy the habitual residence test. The existing requirement to have a right to reside in the Common Travel Area remains.

**3. Background**

- 3.1 The Jobseeker's Allowance Regulations (Northern Ireland) 1996 contain a general rule that claimants must have a right to reside in the United Kingdom (UK) or the Common Travel Area and must be habitually resident to qualify for income-related benefits. This is known as the Habitual Residence Test.
- 3.2 Regulation 85A of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 was amended on 1 January 2014 to introduce a 3 month residence requirement in addition to the existing habitual residence test. A person could not be treated as habitually resident unless they had been living in either the UK or the Common Travel Area for a qualifying period of 3 months and they had the right to reside in the Common Travel Area. A claimant for Jobseeker's allowance (JSA) who is not habitually resident in the Common Travel Area is a person from abroad for whom the applicable amount is nil (and will therefore not be entitled to JSA).

- 3.3 This 3 month residence requirement was introduced to protect the benefit system and to discourage people who do not have any established connection with the UK, or any prospect of work, from migrating to the UK and seeking to claim JSA immediately.
- 3.4 In accordance with EU law all migrant jobseekers, including any returning UK nationals became subject to the 3 month residence requirement. The resulting impact was that certain returning UK nationals who had previously satisfied the Habitual Residence Test immediately on return to the UK, were now excluded from receiving income-related JSA if their absence from the UK exceeded the 3 month qualifying period.
- 3.5 The perceived unfairness for certain groups of returning UK nationals was highlighted in a number of different quarters, including the Social Security Advisory Committee. These were predominantly UK nationals who had been posted to work abroad by the UK Government or a UK employer for a period of time (i.e. any time period exceeding 3 months) and had lost their job.
- 3.6 Following this amendment a person returning to the UK or the Common Travel Area will be exempted from the 3 month residence requirement if they have paid National Insurance contributions whilst abroad at some point during this 3 month period, for example if they have been posted to work abroad by a UK-based employer. This exemption will also apply to returning members of HM forces and crown servants, covering the same time period.
- 3.7 This policy is being introduced to safeguard people who recently contributed to the UK economy whilst being posted to work abroad, thus maintaining their connection to the UK. This policy continues to protect the benefit system by discouraging people who seek to migrate to the UK to claim Jobseekers Allowance immediately.

#### **4. Consultation**

- 4.1 The Social Security Advisory Committee discussed the corresponding Great Britain Regulations at their meeting on 3 September 2014 and after careful consideration agreed that they did not require them to be formally referred.

#### **5. Equality Impact**

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on introduction of the 3 month residence requirement in January 2014 and concluded that the proposals did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

5.2 Further screening of these legislative changes to exempt specified groups of returning nationals has not been conducted as the effect of these Regulations would be small and we consider that the impact on protected groups would be minimal and beneficial. The early indications are that relatively few people will be affected by these exemptions.

## **6. Regulatory Impact**

6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

## **7. Financial Implications**

7.1 No financial implications

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Jobseeker's Allowance (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2014 are not incompatible with the Convention rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. E.U. Implications**

9.1 Not applicable.

## **10. Parity or Replicatory Measure**

10.1 The Regulations mirror the Great Britain Regulations which are to come into force on 9th November 2014.

## **11. Additional Information**

11.1 Not applicable