

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

**S.R. 2014 No. 98**

**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 sections 122(1)(d), 133(2)(i) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and now vested in it, and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The purpose of this instrument is to amend the Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405) 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. Background**

- 3.1. The Westminster Government has given commitment to tighten its measures to curb migrants' access to social security state benefits. Under EC Directive 2004/38 (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) 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

income-based Jobseeker's Allowance (JSA (IB)), but they can only access Housing Benefit (HB) if they are entitled to JSA (IB).

- 3.2. 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. The Housing Benefit Regulations (Northern Ireland) 2006 (the 2006 Regulations) provide that "persons from abroad" are not treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. Consequently, such persons from abroad are treated as not being liable to make payments in respect of a dwelling and are therefore not eligible to claim Housing Benefit (unless such persons are refugees).
- 3.3. Under the provisions of the 2006 Regulations, no person is considered to be habitually resident unless they have a right to reside. The Housing Benefit (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2014 amend the 2006 Regulations so that EEA workers are classed as "persons from abroad" as their only right to reside falls within regulation 10(4); consequently they are not classed as being habitually resident and therefore not entitled to Housing Benefit.

#### **4. Consultation**

- 4.1. This policy has not been subject to public consultation.

#### **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 and concluded that the changes 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.

## **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. A breach of parity in this matter may incur financial costs, both in the loss of benefit savings and in administration costs, which would have to be met by the Northern Ireland Executive from the Northern Ireland block grant.

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

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –
- (a) is not incompatible with any of the Convention rights;
  - (b) is not incompatible with Community law;
  - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and
  - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable.

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

- 10.1. The Regulations mirror those provisions contained in the Housing Benefit (Habitual Residence) Amendment Regulations 2014 (S.I. 2014/539), which were made on 5 March 2014 and came into force on 1 April 2014, and are in keeping with the principle of parity between Northern Ireland and Great Britain in social security matters.

## **11. Additional Information**

11.1. Not applicable.