

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CROATIA) AMENDMENT REGULATIONS 2013
2013 No. 1474

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 define Croatian nationals' access to income-related benefits in light of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 laid before Parliament by the Home Secretary. These are available at <http://www.legislation.gov.uk/ukdsi/2013/9780111539156/contents>.

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

3.1. These Regulations will come into force less than 21 days after being laid, in breach of the 21-day rule. The Department considers that it is necessary to breach the rule in order to bring the Regulations into force in time for the accession of Croatia the European Union ("EU") on 1st July 2013. If the Department brought the Regulations into force later in order to comply with the 21-day rule, there would be a risk of breaching EU law.

3.2. These Regulations are dependent for their full meaning on the Accession Regulations, and therefore could not be made until the Accession of Croatia Regulations had been made. The Accession Regulations are subject to the affirmative resolution procedure. They were laid in draft by the Home Office on 8th May 2013 and made on 12th June 2013. As a consequence of waiting until the Accession Regulations are made, the Department is unable to lay its Regulations 21 days before 1st July 2013.

3.3. The Department accepts that it would have been preferable for those Regulations to be made more than 21 days before coming into force. However, the date of making the Accession of Croatia Regulations was outside the Department's control. The Department apologises that it was necessary to breach the 21-day rule.

4. Legislative Context

4.1. Under the provisions of the Treaty of Accession of 9 December 2011 and subject to its subsequent ratification by the 27 EU Member States, Croatia will accede to the EU on 1 July 2013. The Accession Treaty contains a

derogation which allows Member States to restrict entry to their labour markets.

- 4.2. The European Union (Accessions) Act 2006 implements the Accession Treaty in UK law. In exercise of his powers under this Act and the European Communities Act 1972), on 8 May the Home Secretary laid regulations (“Accession (Croatian Immigration and Worker Authorisation) Regulations 2013”) implementing the transitional arrangements concerning the free movement of Croatian workers. These will take effect from the date of accession and last for five years, with the possibility of extension for a further two years. The Accession (Croatian Immigration and Worker Authorisation) Regulations 2013 will be made available on legislation.gov.uk in due course. The 2006 and 1972 Acts are available at:
<http://www.legislation.gov.uk/ukpga/2006/2/contents>
<http://www.legislation.gov.uk/ukpga/1972/68/contents>
- 4.3. As a result of the Home Office regulations, DWP will need to make consequential amendments to regulations for income-related benefits.
- 4.4. The income-related benefits regulations amended by this instrument are: Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) (“the income-related benefit regulations”). The income-related benefits regulations amended by this instrument are available at:
<http://www.dwp.gov.uk/docs/a6-2501.pdf>
<http://www.dwp.gov.uk/docs/a11-4001.pdf>
<http://www.legislation.gov.uk/uksi/2002/1792/contents/made>
<http://www.dwp.gov.uk/docs/a8-2501.pdf>
<http://www.legislation.gov.uk/uksi/2006/214/contents/made>
<http://www.legislation.gov.uk/uksi/2006/215/contents/made>
<http://www.legislation.gov.uk/uksi/2006/216/contents/made>
<http://www.legislation.gov.uk/uksi/2008/794/contents/made>
- 4.5. This instrument also amends the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I 2000/636) and updates a reference to the European Economic Area Agreement to ensure that it includes new Member States upon accession. This statutory instrument is available at <http://www.legislation.gov.uk/uksi/2000/636/contents/made>.

5. Territorial Extent and Application

- 5.1. This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1. The Accession Treaty allows Member States to impose transitional restrictions on access to their labour market to manage a smooth transition and minimise disruption. Member States may not apply transitional restrictions to EU citizens who are self-employed, but may apply restrictions to people who move to work or seek work.
- 7.2. The Home Office Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 establish a worker authorisation scheme during the period of transitional controls. Croatian nationals subject to worker authorisation will not have a right to reside in Great Britain for the purpose of seeking work and will only be able to commence employment, and enjoy a right to reside as a worker, if they obtain a worker authorisation document from the Home Office.
- 7.3. A worker authorisation document is granted if a Croatian worker is sponsored for a position which is in a shortage occupation and which satisfies the Resident Labour Market Test. The Resident Labour Market Test requires employers to show that a suitable settled worker is not available to fill a vacancy. Croatian workers can also apply for worker authorisation under the Tier 5 category of the immigration rules (temporary worker).
- 7.4. Croatian nationals will cease to be subject to worker authorisation when they have been working legally and continuously in the UK for a period of 12 months.
- 7.5. The Home Office regulations also specify the circumstances in which Croatian nationals will be exempt from the worker authorisation requirement, for example Croatian nationals who have been legally resident in the UK prior to the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 coming into effect. This will mean that they will have access to income-related benefits on the same basis as other EEA nationals, subject to meeting the normal conditions of entitlement.
- 7.6. Croatian nationals who meet the criteria for pre-existing immigration schemes for the most highly skilled and who obtain a registration certificate from the Home Office will have a right to reside on the same basis as other EEA nationals and are entitled to claim income-related benefits. Restricting access to benefits for this group of Croatian nationals would breach the standstill clause of the Accession Treaty, which states that Member States may not place transitional controls on accession state nationals that are stricter than those in place prior to EU accession.

- 7.7. The current social security regulations contain a general rule that claimants must have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland (an area collectively known as the “Common Travel Area”) to qualify for income-related benefits. Any claimant who does not have a right to reside in the Common Travel Area is a “person from abroad” or, for State Pension Credit, “a person not in Great Britain”. Anyone without a relevant right to reside cannot qualify for income-related benefits.
- 7.8. The Secretary of State proposes to amend the income-related benefit regulations with effect from 1 July 2013 so that Croatian nationals who are working in accordance with the worker authorisation scheme will not be treated as a person from abroad. They will be entitled to Housing Benefit when in authorised employment. Those working under 16 hours each week may be able to access income-based Jobseeker’s Allowance if their work is genuine and effective. Once they have completed 12 months authorised employment they will be able to claim income-related benefits on the same basis as other EEA nationals.
- 7.9. Family members of Croatian nationals legally working in the UK will have the right to income-related benefits, subject to the usual conditions of entitlement.
- 7.10. As Croatian nationals will not have a right to reside in the UK as a job seeker, they will not be entitled to claim income-related benefits.
- 7.11. Croatian workers who are exempt from the worker authorisation are entitled to claim income related benefits.
- 7.12. The entitlement described here will also apply under Universal Credit. Regulation amendment is not required for Universal Credit.
- 7.13. Informal consolidation of this instrument will be included in due course in the Department’s “the law relating to Social Security” (the Blue Volumes) which are available at no cost to the public on the internet at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>.

8. Consultation outcome

- 8.1. We have consulted representatives of Local Authorities on the regulations. We presented the Regulations to the Local Authority Association Steering Group and conducted a two-week consultation. We received no responses to this consultation. These Regulations have been presented to the Social Security Advisory Committee, which decided that it was not necessary to refer the Regulations for formal consultation. The regulations prevent widening entitlement to income-related benefits to these groups and the associated costs to the Exchequer.

9. Guidance

- 9.1. Revised guidance will be issued across the Department and made specifically available to benefit advisers, benefit processors and decision makers. This will be available at the time the Regulations come into force.

9.2. The Decision Makers' Guidance is also available at no cost to the public on the internet at <http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>.

10. Impact

- 10.1. There is no impact on business or civil society organisations.
- 10.2. There is no impact on the public sector.
- 10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1. The legislation does not apply to small business.

12. Monitoring and review

- 12.1. We cannot reliably estimate how many Croatian nationals may wish to come to the UK following accession and how many of those will be eligible for benefit. Data will be collected so that claims to benefits can be monitored.
- 12.2. If Her Majesty's Government wishes to extend transitional controls for a further two years, the Home Office will be required to provide the European Commission with evidence of the impact of new Croatian workers on the UK labour market.

13. Contact

- 13.1. **Simon Peters**, Department for Work and Pensions – tel. 0207 449 5253 or email: simon.peters@dwp.gsi.gov.uk can answer any queries on the instrument.