

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (HABITUAL RESIDENCE) (AMENDMENT)**  
**REGULATIONS 2014**

**2014 No. 902**

**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 This instrument makes minor and technical amendments to a number of income-related benefit regulations to provide consistency in the way an EEA national's right of residence is defined.

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

3.1 None

**4. Legislative Context**

4.1 Income-related benefit regulations contain a general rule that claimants must have a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (the Common Travel Area) and must be habitually resident to qualify for income-related benefits. This is known as the Habitual Residence Test. This instrument makes changes to a number of income-related benefit regulations to refer to the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) ("the Immigration (EEA) Regulations") rather than Directive 2004/38/EC to define the legal right of residence.

4.2 This instrument also amends the Universal Credit Regulations 2013 (S.I. 2013/376) ("the Universal Credit Regulations") in order to ensure consistency with the Immigration (EEA) Regulations.

**5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

**6. European Convention on Human Rights**

6.1 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 This instrument amends the following income-related benefit regulations:

- Regulation 21AA(4) of the Income Support (General) Regulations 1987 (SI 1987/1967)
- Regulation 85A(4) of the Jobseeker's Allowance Regulations 1996 (SI 1996/207)
- Regulation 2(4) of the State Pension Credit Regulations 2002 (SI 2002/1792)
- Regulation 10(3B) of the Housing Benefit Regulations 2006 (SI 2006/213)
- Regulation 10(4A) of the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)
- Regulation 70(4) of the Employment and Support Allowance Regulations 2008 (SI 2008/794)

7.2 Under these income-related benefit regulations a claimant who is not habitually resident in the Common Travel Area is defined as a "person from abroad", and such a person is not able to receive income-related benefits. In order to be treated as habitually resident a claimant needs to have a legal right to reside in the place where he or she is habitually resident.

7.3 Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State ("the Directive") sets out the qualifying rights to reside of EEA nationals. The Home Office have transposed the Directive into UK law through the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) ("the Immigration EEA Regulations").

7.4 To ensure consistency between the income-related benefit regulations and the Immigration (EEA) Regulations, the income-related benefit regulations are being amended to refer to the Immigration (EEA) Regulations rather than the Directive to identify those EEA nationals who are treated as habitually resident.

7.5 The effect of these amendments will also minimise the need to make repeated changes to income-related benefit regulations whenever changes are made to the Immigration (EEA) Regulations. For example, the Home Office have recently made amendments to Regulation 6 of the Immigration (EEA) Regulations by way of the Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 (S.I. 2013/3032) in order to restrict the extent to which a person who is involuntarily unemployed may retain the status of "worker" and also the length of time that a person can be a jobseeker.

7.6 This instrument also amends regulation 92 of the Universal Credit Regulations to ensure consistency with the Immigration (EEA) Regulations.

### 7.7 *Consolidation*

"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 A formal consultation has not been carried out by the Department for Work and Pensions on these Regulations. Consultation was not considered necessary for these changes as they make minor and technical amendments which are designed to provide consistency with provisions in existing legislation.

8.2 The amending Regulations were subject to statutory formal consideration by the Social Security Advisory Committee. The Committee considered the amendments at its meeting on 30 January 2014 and decided it did not wish to have the regulations formally referred.

## **9. Guidance**

9.1 The income-related benefits procedural guidance will be amended and further guidance will be provided to Decision Makers.

## **10. Impact**

10.1 This instrument has no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Government will monitor and evaluate the six month time-limiting provision as part of its regular review of policies on access to benefits by migrants.

## **13. Contact**

Satish Parmar, at the Department for Work and Pensions Tel: 020 7340 4330 or email: [satish.parmar@dwp.gsi.gov.uk](mailto:satish.parmar@dwp.gsi.gov.uk), can answer any queries regarding the instrument.