

EXPLANATORY MEMORANDUM TO

The Jobseeker's Allowance (Habitual Residence) (Amendment) Regulations (Northern Ireland) 2013

S.R. 2013 No. 308

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 1 January 2014.

2. Purpose

- 2.1 The purpose of the regulations is to make amendments to the Jobseeker's Allowance Regulations (Northern Ireland) 1996 in relation to the definition of "person from abroad" with the effect that a person claiming a jobseeker's allowance who has entered the United Kingdom or the Common Travel Area (the Channel Islands, the Isle of Man or the Republic of Ireland) within the three months before making a claim, can only be treated as habitually resident in those places if they had already been habitually resident and were returning after a temporary absence.

3. Background

- 3.1 Currently, All migrants including British citizens, who have been absent from the UK for more than a temporary period, are subject to the Habitual Residence Test to assess their right of residence and whether they are factually habitually resident.
 - EEA Nationals who are in work or self-employed satisfy the right to reside element and are deemed to be factually habitually resident.
 - EEA nationals with job seeker status can satisfy the right to reside element of the test by demonstrating that they are actively seeking work and have a genuine prospect of work. UK nationals can satisfy the right to reside element of the test where they are a British citizen with a right of abode.
 - If the EEA jobseeker or returning UK national are unable to demonstrate they are factually habitually resident (the second element) they are treated as a 'person from abroad' and have an applicable amount of nil.

- 3.2 From 1 January 2014 there will be a new requirement to have been living in the UK or the Common Travel Area for a period of 3 months before an EEA national job seeker or a UK national who has lived or worked abroad can be treated as habitually resident.
- 3.3 The rationale for introducing this as a requirement of factual habitual residence is that EEA nationals (and their family members) who are workers/self employed (or who retain this status), are deemed to be factually habitually resident and so would not be caught by the new 3 month residence requirement.
- 3.4 The three months residence requirement does not apply to EEA nationals who make a claim to income-related JSA because they have become involuntarily unemployed having worked in the UK or Common Travel Area and satisfy the Habitual Residence Test because they have the right to reside as a retained worker.
- 3.5 This policy is being 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 Jobseeker's Allowance immediately. It strengthens and provides tighter definition for the existing Habitual Residence test which will simplify the application of the rule.

4. Consultation

- 4.1 In view of the urgent need to have the changes in place without delay from 1 January 2014 the regulations will be made and laid before Parliament without prior formal reference to the Social Security Advisory Committee. There are two principal reasons for the quick introduction.
- There is a need to give clarity to those EEA nationals planning to come to the UK from January. It is important that there is a clear understanding of the new regime so that people can plan accordingly.
 - It is necessary to reduce opportunities for those wishing to abuse the system before the change enters in operation and to avoid introducing inadvertent distortions to the decisions by EEA nationals around the timing of any plans to move to the UK i.e. avoid any sudden rush of migration ahead of the new rules coming into operation, which may not otherwise have happened.

The regulations will be referred to the Committee by the Department for Work and Pensions as soon as practicable after they are made and laid and any recommendations will be carefully considered.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have any

significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is 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 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) 2013 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 1st January 2014.

11. Additional Information

- 11.1 Not applicable