

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (PERSONS FROM ABROAD) AMENDMENT
REGULATIONS 2006**

2006 No. 1026

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. Description

2.1 This instrument makes amendments to the following income-related benefit regulations:

- the Council Tax Benefit Regulations 2006
- the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- the Housing Benefit Regulations 2006
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- the Income Support (General) Regulations 1987
- the Jobseeker's Allowance Regulations 1996
- the State Pension Credit Regulations 2002

2.2 The income-related benefit regulations all contain a habitual residence test. This instrument restates that test in a clearer manner.

2.3 This instrument also amends the income-related benefit regulations in consequence of the new Rights of Residence Directive 2004/38/EC (the "Directive").

2.4 The Regulations, with effect from 30 April 2006, amend the "right to reside" aspect of the habitual residence test in light, in particular, of Article 6 and Article 24(2) of the new Directive.

2.5 The Directive repeals and replaces EC legislation referred to in the existing income-related benefit regulations. The Regulations restate these references in the terms of the new Directive.

2.6 This instrument similarly updates references to EC legislation in the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (the "social fund regulations").

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

3.1 None.

4. Legislative Background

- 4.1 The habitual residence test was introduced into income-related benefit regulations by the Income-related Benefits Schemes (Miscellaneous Amendments) (No.3) Regulations 1994. There have been a number of modifications to the test over time. The most recent previous amendment to the test was the introduction of the right to reside requirement by the Social Security (Habitual Residence) Amendment Regulations 2004.
- 4.2 These amendments are made in light of the new Directive which must be transposed by 30 April 2006. The Directive, broadly, consolidates a number of existing pieces of EC legislation relating to rights of residence. The Home Office is responsible for transposing the Directive into domestic legislation through the Immigration (European Economic Area) Regulations 2006 which will come into force on 30 April 2006. These Regulations will come into effect on the same date.

5. Extent

- 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

- 7.1 A claimant is required to satisfy the habitual residence test to be eligible for Income Support, income-based Jobseeker's Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit ("income-related benefits"). It was introduced to prevent "benefit tourism" by people who come here from abroad and immediately claim benefits. Its purpose is to ensure that income-related benefits are paid to people with reasonably close ties to the UK and an intention to settle here.
- 7.2 The test was amended on 1 May 2004 when the Social Security (Habitual Residence) Amendment Regulations 2004 came into force. The modified test provides that no person shall be treated as habitually resident in the Common Travel Area (the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) if he or she does not have a right to reside here. Therefore anyone without a right to reside cannot qualify for the income-related benefits.

- 7.3 The “right to reside” requirement was added to prevent those who do not have a right to reside in the UK from becoming a burden on the UK’s social assistance system by being able to claim income-related benefits. This requirement has strengthened the test against such abuse of the benefits system by people who are not in work and who come to the UK to live on benefits for long periods of time. In particular, economically inactive EEA nationals do not have a right to reside unless they are self-sufficient.
- 7.4 As well as consolidating existing EC legislation concerning rights of residence, the Directive creates a new right to reside. Article 6 of the Directive provides for a new right to reside for all European Community (EC) nationals and their family members for the first three months of their stay in the United Kingdom, without any conditions or any formalities other than the requirement to hold a valid identity card or passport.
- 7.5 This means that if the current right to reside requirement is not amended after 30 April 2006 EC nationals and family members, who are not economically active could become eligible for income-related benefits if they are considered to be habitually resident and meet the other conditions of entitlement on the basis of this Article 6 right of residence. This differs from the current position where they do not have a right to reside in the UK unless self-sufficient and thus generally do not have access to income-related benefits.
- 7.6 However, the Directive also permits Member States, under Article 24(2) not to confer entitlement to social assistance on EC nationals during the first three months of residence unless they are workers, self-employed persons, persons who retain such status and their family members. Therefore the income-related benefit regulations are amended to ensure that EC nationals who reside solely on the basis of an Article 6 right (or equivalent Home Office regulations) are not given a right to benefit just because they have a right to reside. This ensures that the present policy in relation to economically inactive EC nationals continues.
- 7.7 Under Article 24(2) of the Directive, there is no obligation on Member States to confer social assistance during any period when an EC national is seeking employment and has a genuine chance of being engaged. Nevertheless, these Regulations will provide that EC work-seekers who have a right to reside under Article 39 of the EC Treaty and who are habitually resident will, provided they satisfy the other conditions of entitlement be eligible for income-based Jobseeker’s Allowance. An EC work-seeker on income-based Jobseeker’s Allowance will also, provided they satisfy the other conditions of entitlement, be eligible for Housing Benefit and Council Tax Benefit. However, for other benefits an EC work-seeker with a right to reside under Article 39 of the EC Treaty (or equivalent Home Office regulations) will not, under these Regulations, satisfy the “right to reside” aspect of the habitual residence test.
- 7.8 The policy intent is that the changes to the habitual residence test should apply in the same way to all EEA nationals – that is nationals of the European Economic Area states (nationals of Member States plus nationals of Norway, Iceland and Liechtenstein). The new Directive presently only applies to EC nationals (nationals of Member States). Eventually it is expected that the new

Directive will be extended to all EEA nationals. As it is likely that this will not happen before 30 April 2006 a provision has been added to the Regulations in order that all EEA nationals are treated in the same way. The provision will also apply to Swiss nationals who are to be treated the same as EEA nationals.

- 7.9 The Regulations continue to preserve existing transitional arrangements concerning changes to the income-related benefit regulations over time.
- 7.10 In consequence of the updating of terminology in the social fund regulations to reflect the new Directive and of the policy of treating Swiss nationals the same as EEA nationals Switzerland is included as a place where a funeral can take place for the purposes of funeral payments in certain circumstances.

Consultation

- 7.11 The Social Security Advisory Committee agreed that the regulations should not be referred to it for formal consultation. The local authority associations have also been consulted in relation to Housing Benefit and Council Tax. They have confirmed that they are content with the instrument as it relates to those benefits.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is nil.

9. Contact

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