



Law Centre (NI)

**Response to Social Security Advisory Committee on
changes to Housing Benefit (Habitual Residence)
Amendment Regulations 2014**

June 2014

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About the Law Centre

1. Law Centre (NI) is a public interest law non-governmental organisation. We work to promote social justice and provide specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides a specialist legal advice service, representation, training information and policy comment in five areas of law: social security, mental health, immigration, community care and employment. Law Centre services are provided to over 350 member organisations in Northern Ireland.
2. We welcome this opportunity to feed into Committee's examination of the Housing Benefit (Habitual Residence) Amendment Regulations 2014. These regulations came into force on 1st April 2014 and remove access to Housing Benefit for EEA jobseekers who are entitled to income-based Jobseeker's Allowance.

Lack of consultation

3. We note that the amendment was introduced under the urgency provisions, meaning that there was no prior consultation or scrutiny by the Social Security Advisory Committee or Local Government Associations. We also note the paucity of data on which the DWP has based this legislative change: the Impact Assessment describes the lack of evidence about the number of affected migrants as a 'key uncertainty' in estimating the effect of the change.¹ We think this is extremely unsatisfactory given the possible adverse impacts that this policy could have. We do note that the figures provided for 2011/2012 suggest that a tiny proportion of EU migrants actually end up claiming income-based Jobseeker's Allowance and Housing Benefit as migrants.

Impact in Northern Ireland

4. We anticipate that this change in policy will affect EEA migrants living in Northern Ireland, however, as of yet, we are not aware of any EEA national being refused Housing Benefit for this reason – no doubt due to the fact that the amendment has been in force for just two months. However, we are aware of 'future' cases such as a woman who is currently on maternity leave and who plans to apply for Jobseeker's Allowance at the end of this period:

¹ Impact Assessment, page 4

we believe that she will be affected. The Law Centre is liaising with our members to monitor the impact and will keep the SSAC informed.

5. Unfortunately we are not able to provide any estimates of affected individuals: neither the Social Security offices nor the Northern Ireland Housing Executive district officers record applicants by nationality.²
6. Earlier experience with, for example, the outworking of the Home Office Workers Registration Scheme during the A8 transitional period, suggest that those actually affected will suffer severe hardship. In particular, the Law Centre has dealt with cases where the lack of access to Housing Benefit caused particular difficulties. By way of illustration, a Polish woman who gave up work when she was pregnant with her second child following domestic violence and the break down of her relationship subsequently spent almost two years living on £40 a week from social services causing real difficulties. In other cases, the lack of Housing Benefit led to homelessness. In a December 2005 case relating to work permits, a young woman lost her job and had no access to any financial support. She spent her savings in a hotel for ten days, became homeless, slept rough, contracted frostbite and subsequently had to have both legs amputated from the knee downwards. While an extreme example, the individual was a 27 year old, in initially healthy woman who under the rules introduced would have to meet day to day needs and accommodation costs on £72.40 a week (a sum unlikely to cover rent in some parts of Northern Ireland).

Risk of homelessness

7. We are very concerned that this amendment will result in a rise in homelessness. EEA migrants are not currently eligible for assistance under statutory homelessness provisions. The relevant Northern Ireland legislation is the Allocation of Housing (Eligibility) Regulations (NI) 2006 and 2007 which provide that migrants are not eligible for housing assistance if they are not habitually resident or if their right to reside derives only from their status of jobseeker

Risk to persons fleeing domestic violence

8. We have a particular concern that this amendment may affect the ability of victims of domestic violence accessing refuges/shelters due to access being linked to Housing Benefit.

² Northern Ireland Human Rights Commission, 'No Home from Home investigation into homelessness for people with no or limited access to public funds' 2009), pg 152-3.

Restricted eligibility to social services support and accommodation

9. An EEA migrant who is affected by these provisions is unlikely to be eligible to receive assistance from social services. The key piece of legislation governing the provision of social services and healthcare in Northern Ireland is the Health and Personal Social Services (NI) Order 1972 as amended. It places a general duty on the Department of Health, Social Services and Public Safety to promote the social welfare of the people of Northern Ireland. The duty is delegated to local Health and Social Care Trusts and grants wide powers in provision of services. However, these powers are greatly restricted by section 54 of the Nationality, Immigration and Asylum Act 2002 and its Schedule 3. Specifically, the 2002 Act provides five 'ineligible' categories of those who are not entitled to support, including EEA nationals and their dependents.
10. In addition to restricting the 1972 Order, the 2002 Act also restricts the broader discretionary provisions available to *families* that are contained within the Children (Northern Ireland) Order 1995. Crucially, however, the restricting provisions do not apply to services that are provided *directly* to a child. Thus, if an EEA family becomes homeless by virtue of this amendment, it is possible that social services could be required to provide accommodation to the child but not to her family, thus resulting in the break up of a family unit.
11. The restrictions imposed by the 2002 Act do not, however, prevent the provision of support or assistance in instances to avoid a breach of a person's rights under the European Convention on Human Rights or Treaty rights. In theory, therefore, an EEA national who falls within the ineligible category could be entitled to Social Services' support if they can show that a human rights breach is likely. However, this requires a high legal threshold under Article 3 freedom from inhuman and degrading treatment following the *Limbuela* case.³ It is the Law Centre's experience that it is difficult to obtain Social Services' assistance via this route partly due to the difficulties in providing the necessary evidence of destitution. Therefore, while in theory the law provides a 'safety net' for all migrants in need of social services assistance, the reality is that this safety net is not always effective. Noting this difficulty, the NI Human Rights Commission has recommended that training is provided to all government agency staff to ensure familiarity with the procedures and circumstances for referring a homeless non-UK national who is excluded from accessing homelessness assistance to the relevant Health

³ R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuela; R v Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals) [2005] UKHL 66

and Social Care Trust for an assessment of entitlement to assistance.⁴
Despite this recommendation, our experience is that difficulties remain.

12. Where a person does succeed in demonstrating their eligibility to services through community care provisions, the type of support is not limited and therefore this could result in considerable expenditure for the local Health and Social Care Trust. Consequently, we would ask the Social Security Advisory Committee to request that the Department of Health, Social Services and Public Safety to monitor this situation, namely:

- The number of instances in which EEA migrants request support under these community care provisions and the reasons for such request;
- Specifically, any instances where support is only provided to an EEA child as opposed to their family;
- And, where any support is provided under community care provisions, the cost of such support.

We believe that this additional information is necessary in order to assess whether the government's financial calculations are accurate.

Particular impact on lone parents

13. The government's equality analysis recognises that childcare responsibilities may make it more difficult for EEA jobseekers who are lone parents to move into work.⁵ Consequently, lone parents are likely to spend longer as jobseekers with no access to Housing Benefit and therefore could face an increased risk of homelessness. This is much more likely to affect women than men as only 3% of single men have dependant children compare to over a quarter of single women.

14. We wish to highlight that this risk of homelessness is compounded in Northern Ireland given the absence of adequate childcare arrangements. Although the Programme for Government committed Northern Ireland to developing and implementing a childcare strategy to ensure the provision of a fit-for-purpose childcare infrastructure in Northern Ireland, progress has been extremely slow. The December 2012 target for delivery of a finalised strategy is long overdue. Our concern is that, without a comprehensive Childcare Strategy in place, female lone parents are going to be disproportionately affected by

⁴ Northern Ireland Human Rights Commission, 'No Home from Home investigation into homelessness for people with no or limited access to public funds' 2009), Chapter 3

⁵ Equality Analysis page 7

these provisions – firstly due to their gender and secondly due to their geographical location.

Short-term needs

15. SSAC is interested in knowing how many affected EEA migrant jobseekers are likely to find work quickly.⁶ Unfortunately we cannot provide the answer to this, however, we would like to highlight an evaluation report of an emergency fund available for migrants that was funded by Northern Ireland's Office of the First Minister and Deputy First Minister. This fund demonstrated that small sums of money provided at key moments (e.g. where a person becomes unemployed) provides a significant bridge to allow migrants to get back on to their feet. The fund was available to different categories of migrants who were unable to access full state support due to their immigration status. By providing short-term assistance – such as accommodation or emergency living expenses – the fund successfully helped some individuals avoid a situation of destitution. This ultimately results in cost-savings to the public purse:

The ability of the fund to mitigate the effects of destitution has a wide range of “spend to save” factors. Including improved health preventing a deterioration of an existing illness resulting in hospitalisation; being “linked-in” to support organisations increases people’s resilience and attendance at hospital appointments, solicitor’s offices and benefits assessments. It is reasonable to conclude that in many instances, the issuing of £40 to cover short-term accommodation in a hostel over a weekend is significantly more cost effective than that person being housed by the state or forced into being admitted to hospital.⁷

16. This illustrates the need for DWP to look at costs more broadly: while this amendment may lead to a reduction in welfare expenditure, it could well displace costs to other agencies such as the NHS.

Other changes

17. We do have experience of the impact of earlier changes. In particular, the new three month habitual residence test is impacting on returning UK nationals. In one case, a claimant who went abroad for a fixed four month period to volunteer, returned to be told that he would not be entitled to income based JSA for three months. This decision was overturned following Law Centre intervention as habitual residence was never lost. In a second case, a

⁶ Letter from Anna Bartlett to SSAC dated 19 March 2014 paragraph 2

⁷ Jude & McKittrick, 'OFMDFM Emergency Fund - Pilot August 2011 – March 2012' (2012)

claimant returning from completing a Masters and placement at a university abroad has also been required to wait three months – an appeal is pending. It is therefore clear that the policy rationale for the three months habitual residence test is having ramifications considerably beyond the purpose put forward by the Departments when introducing the provision for returning UK nationals.

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