

# Benefits to be withdrawn from EEA jobseekers previously unaffected by the January 2014 changes

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In January 2014, the Government introduced a number of measures aimed at restricting EEA migrants' access to income-based JSA. A key change was the introduction of a statutory presumption that entitlement to income-based JSA ('JSA(IB)') would be limited to a period of three months (or six months for EEA nationals with retained worker status) unless the jobseeker could pass a Genuine Prospect of Work (GPoW) assessment.

On 9 February 2015, the DWP published [DMG Memo 2/15 – Extending GPoW Assessments to Stock EEA Nationals](#), which advises that the GPoW assessment will be extended to all remaining EEA nationals whose entitlement to JSA(IB) started prior to 1 January 2014. The Memo describes cases that fall within this group as 'stock cases'.

The Memo states that the DWP will identify those EEA nationals whose entitlement to income-based JSA began before January 2014 (the stock cases), and advise those claimants that a review of their right to reside in the UK and their continued entitlement to income-based JSA will be undertaken in three months' time at a GPoW assessment interview.

At the GPoW interview, the EEA national will be asked to "show what their right to reside is". In other words, the DWP will first establish whether the claimant's right to reside is based on being a jobseeker or if it is on some other basis (such as being a family member of an EEA national, a primary carer of an EEA child in education or by having a permanent right to reside). If the claimant does seek to rely on their right to reside as a jobseeker only, they will be asked to provide 'compelling evidence' that they have a genuine chance of being engaged in the near future.

According to the guidance, the three month period can be extended if there is "compelling evidence" that the claimant has a definite job offer, or is awaiting the

result of a job interview, or the claimant has relocated to a new area where they are likely to obtain work (paras 13-14).

If the EEA jobseeker is unable to satisfy the GPoW assessment, then they will lose the right to reside as a 'qualified person' under the EEA 2006 Regulations and will no longer be entitled to receive income-based JSA. They will also lose entitlement to Housing Benefit. If the claimant has dependant children, they will also cease to be entitled to Child Benefit and Child Tax Credits.

The first wave of Genuine Prospect of Work interviews will take place from 9 May 2015 onwards. The Memo states that in areas where there are "high volumes" that "a phased approach" will be taken.

Note that the three-month period will apply both to jobseekers and those who have retained worker status within this group of 'stock cases'. The justification given in the Memo is that the "relevant period" in the EEA 2006 Regulations is not being applied to stock cases "as all claimants will already have had much longer than this period by the time of their GPoW assessment interview" (para 9).

In Touchbase (DWP news for advisers and intermediaries), published on 16 February 2015, the DWP confirms that it has begun writing to this group of EEA nationals and, due to the numbers involved, the letters will be issued as part of a rolling programme over a number of weeks:

One month before their income-based JSA claim is due to stop, the claimant will receive a second letter reminding them about the change and inviting them to attend an assessment interview.

At the interview, they will be given the chance to show that they have a genuine prospect of work or, where appropriate, an alternative right to reside in the UK. Those who have an alternative qualifying right to reside will continue to receive income-based JSA.

If the claimant can provide compelling evidence that they have a genuine prospect of work, a short extension to income-based JSA might be considered. If not, their income-based JSA claim will stop.

DWP staff will seek to support any vulnerable people who might be affected by the change and will draw on specialised help where needed.

It is unclear exactly how many EEA jobseekers will be affected by this new guidance as the UK's benefit payment systems do not systematically record the nationality of benefit claimants (see Statistics on migrants and benefits: House of Commons

Library, Standard Note SN06955). However, according to [HB Bulletin G2/2015](#), published on 17 February 2015:

DWP will be notifying approximately 8,800 claimants that their JSA(IB) is due to cease in three months time, unless they can show a genuine prospect of work or prove an alternative right to reside.

Those EEA migrants in this group who cannot find work in the next three months face a stark choice – between remaining in the UK to face falling into destitution, or returning to their Member State of origin.

Some EEA migrants will approach their local authority for assistance. This could be problematic given that Schedule 3 of the Nationality Immigration and Asylum Act 2002 excludes EEA nationals from support provided under section 17 Children Act and section 21 National Assistance Act, save where its denial would amount to a breach of their human rights or the exercise of their EU rights.

The circumstances when a local authority would be required to provide support to EEA jobseekers affected by the changes to the benefit rules have been described in the *No Recourse to Public Funds (NRPF) Network* in its [response](#) to the Social Security Advisory Committee Consultation on the Housing Benefit (Habitual Residence) Amendment Regulations 2014, where it states that EEA jobseekers fall into two distinct groups:

(1) Newly arrived jobseekers who fail to find work and use up/have no funds to support themselves and any dependants.

Local authorities would consider whether the 'jobseeker' needs to be in the UK in order to exercise their right to reside in this capacity, and may offer assistance returning to their country of origin should they conclude this not to be the case. Such an assessment would require staff time and resources in order to undertake appropriate research. Temporary support may be provided pending the outcome of this assessment, particularly for families, when the service user is found to be destitute, and therefore there is a child in need.

(2) EEA nationals who are already present in the UK and are determined to be 'jobseekers' by the DWP when they claim JSA(IB) or housing benefit; they may have worked previously.

This scenario would require more investigation as the local authority would need to establish whether the EEA national has the right to reside in any capacity. They would need to check whether the EEA national has retained worker status, has acquired the right of permanent residence and also consider whether they have a right to reside on the basis of there being a child of a former worker in the family group. Again, local authorities would consider

whether the 'jobseeker' needs to be in the UK in order to exercise their right to reside in this capacity, should they conclude that they are not a qualified person on any other basis. This type of assessment would take up staff time and resources, with complex matters referred to in house legal teams. This can therefore delay the assessment process and a local authority may provide temporary support whilst the assessment is pending.

In both instances, should it be established that there is no necessity for support in order to prevent a breach of a service user's human rights or rights under European Community treaties, the local authority may offer assistance to enable return to their country of origin.

Given the above, practitioners should expect to see a dramatic increase in the demand for advice from EEA nationals who were previously entitled to income-based JSA prior to the changes introduced in January 2014 and who will be receiving letters from the DWP that their right to reside and therefore their entitlement to benefits is going to be reviewed.