



Context briefing: migrants

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This short update builds on insights offered in the initial briefing paper on this topic published in September 2014

(<http://www.welfareconditionality.ac.uk/publication-category/briefing-papers>).

Section one outlines reductions in the welfare rights of European Economic Areaⁱ (EEA) migrants that have occurred since 2014. Section two highlights English language requirements and changes in rules governing migrants' access to interpreting services when claiming JSA.

Restricting the welfare rights of EEA migrantsⁱⁱ

People coming from EEA countries to live in the UK do not enjoy unrestricted access to social welfare benefits and services. Since May 2004 they have only been able access specified social assistance benefitsⁱⁱⁱ provided they satisfy 'right to reside' rules which basically require people to be economically active and able to support themselves above the social assistance level. Similarly, since 2006 under EU law, *Rights of Residence Directive 2004/38/EC*, every EEA person moving to the UK, including those deemed to be economically inactive, has a right to reside for three months. However the *Social Security (Persons from Abroad) Amendment Regulations 2006* SI 2006/1026 altered this position with the government stating that inactive persons would not be able to claim benefits if their right to reside was based solely on Directive 2004/38/EC. Subsequently the European Commission began proceedings against the UK Government stance, arguing that the new rights to reside requirements contradicted the non-discrimination principle that underpins EU law as the new policy discriminated against non-EEA nationals resident in the UK. Nonetheless, since 2014 the UK Government has instigated several changes to further curtail the social assistance rights of EEA migrants (see Figure 1 below); changes it sees as necessary in order to curtail benefit tourism, reduce expenditure and retain the integrity of the UK benefit system (Kennedy, 2014).

Date	Change in UK policy
January 2014	EEA nationals claiming income based JSA will not be considered 'habitually resident' unless they have been living in the Common Travel Area for three months
January 2014	From the outset of their claim, EEA nationals will need to offer evidence that they are 'seeking employment' and have a 'genuine chance of being engaged' to be eligible for income-based JSA. Continued receipt of JSA will only continue after six months if they can provide 'compelling evidence' that they are actively seeking work and have a 'genuine prospect of work'.
March 2014	A new minimum earnings threshold (initially set at £153 per week) established. This is to be used to determine whether an EEA national is in 'genuine and effective work' and therefore has a right to reside in the UK as a 'worker' or 'self-employed person'.
April 2014	EEA nationals whose only right to reside is derived from their status as 'jobseeker' are no longer able to access Housing Benefit. Existing EEA national HB claimants can continue to receive it. EEA 'workers' or 'self-employed persons' who retain their worker status on stopping work – eg, due to incapacity – will not be affected.
July 2014	New EEA jobseekers arriving in the UK will need to live in the country for three months in order to claim Child Benefit and Child Tax Credit.
February 2016	UK government negotiates two changes at the European Council meeting <ol style="list-style-type: none"> 1) A seven-year 'emergency brake' to restrict access to in-work benefits for newly arriving EEA migrant workers for up to four years after they start working in the UK. 2) Child benefit payments payable to EEA migrants living in the UK to be linked to the cost of living in the countries where the child(ren) reside. Rules apply immediately for new arrivals, and for all existing claimants from 2020.

Figure 1: Changes to EEA nationals' rights to social benefits in the UK (Sources: HMT/DWP 2014; Kennedy, 2014; Sibley and Collins, 2014; O'Brien 2015).

The restrictions on EEA migrants' rights introduced in 2014 by UK Government have been subject to much critical discussion. O'Brien (2015) highlights four key objections.

1. That the changes are incompatible with the principles underpinning the Consolidated version of the Treaty on the Functioning of the European Union (TFEU) and incompatible with EU law and many of the prior judgements of Court of Justice of the European Union (CJEU).

2. That the restrictions have a negative impact on all EEA migrants, not just those who are inactive, as the rules and test are to be universally applied to all such migrants.
3. That the reforms are based on a gendered (see also Sibley and Collins, 2014) and individualist ideology that is likely to disproportionately impact on the most vulnerable EEA migrants such as lone parents and disabled people, and promote child poverty and destitution.
4. That 'the entrenched administrative xenoscepticism', which the new rules generate, is likely to promote intolerance and error on the part of those who implement the new rules in their day to day work.

Support for non-English speaking JSA claimants

Routine access to interpreters for new JSA claimants whose first language is not English (with the exception of Welsh) ceased on 9 April 2014. Moving forward,

Jobcentre Plus staff will be given discretion to use interpreter or translation services where they consider this is necessary and beneficial to the Department to do so. For example, if it was necessary for an understanding of the claimant commitment, or if a claimant was particularly vulnerable. But this will not be the general rule (HMT/DWP, 2014).

Additionally, Jobcentre Plus staff now have the right to require JSA claimants whom they consider to have poor spoken English to undertake English language training in order to improve an individual's language skills and enhance their chances of getting a job. Those who refuse to engage with language training or are deemed to be not making the required effort to improve their English language proficiency after six months can be subject to benefit sanctions (HMT/DWP, 2014).

About the project

Welfare Conditionality: Sanctions, Support and Behaviour Change is a major five

year programme of research funded under the Economic and Social Research Council's Centres and Large Grants Scheme, running 2013-2018. The project aims to create an international and interdisciplinary focal point for social science research on welfare conditionality and brings together teams of researchers working in six English and Scottish Universities: University of Glasgow, Heriot-Watt University, University of Salford, Sheffield Hallam University, University of Sheffield and the University of York, which acts as the central hub for this collaborative partnership.

Central to our work is a desire to inform international policy and practice through the establishment of an original and comprehensive evidence base on the efficacy and ethicality of conditionality across a range of social policy fields and diverse groups of welfare service users.

For further information about the project visit www.welfareconditionality.ac.uk or contact the Project Manager, Vici Armitage, on 01904 321299 or email info@welfareconditionality.ac.uk

About the author

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ⁱ The EEA countries are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden. Switzerland isn't a member of the EEA but is treated as an EEA country for certain benefits.

ⁱⁱ Discussions in this section are taken from Dwyer et al. (2016) forthcoming.

ⁱⁱⁱ These are: Income Support, income-based JSA, income-related ESA, Pension Credit, Housing Benefit Council Tax reduction, Child Benefit, Child Tax Credit, Universal Credit and housing assistance from local authorities.