EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT) (No.3) REGULATIONS 2014

2014 No. 2761

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations amend the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003, as amended) ('the 2006 Regulations') which transpose into UK law Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States ('the Directive').

2.2 The Regulations make a change to the 2006 Regulations relating to the circumstances in which jobseekers are entitled to a right to reside in the United Kingdom.

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

3.1 None.

4. Legislative Context

4.1 The Directive sets out the right of Union citizens and their family members to move and reside freely within the territory of the member States. It has been applied by the EEA Agreement to the remaining non-EU EEA States (Iceland, Norway and Liechtenstein). An agreement between the EU, its member States and Switzerland provides similar rights to nationals of Switzerland[1] ('the Switzerland Agreement). The 2006 Regulations, which transpose the Directive and implement the requirements of the EEA Agreement and the Switzerland Agreement, set out the rights of nationals of the European Economic Area ('EEA') and Switzerland (defined in the 2006 Regulations as 'EEA nationals'), their family members and those with certain other EU rights of residence, to be admitted to, and reside in, the UK. The 2006 Regulations also make provision for the granting, denial and revocation of residence documentation issued by the UK, and for removal or deportation from the United Kingdom in certain circumstances.

[1] The Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999 and which came into force on 1st June 2002.

4.2 Under regulation 14 of the 2006 Regulations, a 'qualified person' enjoys a right of residence in the UK for longer than 3 months. A 'jobseeker' is a type of qualified person. Regulation 6 of the 2006 Regulations defines 'jobseeker' in two ways. The first is a person who enters the UK in order to look for work (see regulation 6(5)(a)). The second is a person who is present in the UK seeking employment immediately after enjoying a right to reside in the UK in another capacity of qualified person (see regulation 6(5)(b)). Enjoyment of jobseeker status is conditional upon certain criteria being met. First, pursuant to regulation 6(6) of the 2006 Regulations, it is necessary for a person seeking to be a jobseeker to provide, from the outset, evidence that they are seeking employment and have a genuine chance of being engaged. Secondly, in order to enjoy jobseeker status for more than 'the relevant period' (the definition of which is amended by these Regulations; see paragraph 7.2 below), it is necessary for the jobseeker to provide 'compelling evidence' that they are looking for work and have a genuine chance of being engaged (see regulation 6(7)).

5. Territorial Extent and Application

5.1 This instrument extends and applies throughout the United Kingdom.

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

What is being done and why?

A. Qualified Person

7.1 These Regulations amend the definition of a relevant period during which a person is entitled to enjoy a right to reside in the United Kingdom in sole reliance on their status as a jobseeker pursuant to regulations 6(5)(a) or 6(5)(b) of the 2006 Regulations.

Length of 'the relevant period'

7.2 Regulation 3(2) of these Regulations amends regulation 6(8)(b) of the 2006 Regulations so that the relevant period is now defined as 91 days minus the cumulative total of any days during which jobseeker status has been enjoyed previously, not including any days prior to a continuous absence from the UK of at least 12 months. Regulation 6(9)(b) of the 2006 Regulations is also amended to reflect this change.

7.3 Pursuant to these amendments, a jobseeker who enters the UK to seek employment, pursuant to regulation 6(5)(a) of the 2006 Regulations, will enjoy the initial three month right of residence conferred by regulation 13 of 2006 Regulations and then a period of 91 days as a qualified person pursuant to regulation 6 of the 2006 Regulations. In other words, the jobseeker will enjoy a total right of residence of six months. This is consistent with Case C-292/98 *Antonissen*. As outlined in the existing paragraph 6(7) of the 2006 regulations, it will still be possible for a person to enjoy jobseeker status once the 'relevant period' has been exceeded, provided the

person concerned provides 'compelling evidence' that they are looking for work and have a genuine chance of being engaged.

7.4 A person who, pursuant to regulation 6(5)(b) of the 2006 Regulations, is already resident in the UK and who voluntarily becomes a jobseeker and seeks employment immediately after enjoying a right to reside in another capacity (pursuant to paragraphs 6(1)(b) to (e) of the 2006 Regulations) will enjoy a right of residence as a jobseeker for the 91 day period before being required to provide compelling evidence that he or she is looking for work and has a genuine chance of being engaged. This is consistent with *Antonissen* and the Directive, both of which define a jobseeker as a person who enters a Member State in order to look for work.

7.5 These Regulations have no impact upon the relevant period for a person retaining worker status pursuant to paragraph 6(2)(b) of the 2006 Regulations.

7.6 These changes are to reflect the requirements of *Antonissen*, which governs the protection from expulsion enjoyed by EU jobseekers who do not otherwise have a right to reside, and also the Directive. The changes ensure that a person who enters the United Kingdom as a jobseeker receives a right to reside for a total length of six months (the first three of which constitute the initial right of residence pursuant to regulation 13 of the 2006 Regulations and the second three of which are pursuant to regulation 6 of the 2006 Regulations). Those who voluntarily become jobseekers after having enjoyed a right to reside under the 2006 Regulations in another capacity are entitled to a total of three months as a jobseeker. This distinction reflects the emphasis of the Directive and the Court of Justice of the European Union (CJEU) on a jobseeker being a person who *entered* a Member State in order to look for work.

8. Consultation outcome

8.1 Consultation has been undertaken with other government departments. No external consultation was undertaken as these changes address the implementation of Directive 2004/38/EC and the decisions of the CJEU to which the United Kingdom is required to give effect.

9. Guidance

9.1 The Home Office will publish guidance on the effect of these changes. The primary source of such guidance will be on the following website: https://www.gov.uk/government/organisations/uk-visas-and-immigration

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation has no impact on small business.

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of these Regulations.

13. Contact

13.1 Deborah Morrison, European Union Free Movement Policy Team, Home Office, Tel: 0207 035 0655 or email: deborah.morrison@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.