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.

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

[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.

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 reduce the amount of time for which a person with EU rights of residence is able to live in the UK as a 'jobseeker'. Broadly speaking, the current period of 182 days is reduced to 91 days. This is achieved by amending the definition of the '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. It is necessary to view the 91 day period in the context of the other rights of residence conferred by EU law, in particular the initial three month period of condition-free residence enjoyed by EU citizens upon entering another Member State. The 91 day 'relevant period' as a jobseeker does not begin until the expiry of the initial three month period of unconditional residence. When combined in this way, the initial three month period of unconditional residence, followed by 91 days as a jobseeker, confers upon a person who entered the UK in order to look for work a total right of residence of six months.

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" for which a person can enjoy jobseeker status is now defined as 91 days instead of 182 days. However, this 91 day period will (as was also the case for the previous 182 day period) be reduced by any days during which the person has previously enjoyed jobseeker status in the UK, unless that previous period was prior to a continuous absence from the UK of 12 months. A consequential change, to mirror the amendment to the time period, has also been made to Regulation 6(9)(b) of the 2006 Regulations which establishes the circumstances under which a person who has previously enjoyed jobseeker status in the UK may again enjoy that status (Condition C). This is to regulate the extent to which it is possible to enjoy repeat periods of residence as jobseeker. Where a person

has previously enjoyed a total of 91 days residence as a jobseeker, and has not subsequently been continuously absent from the UK for a total of 12 months, then he or she will only enjoy a further period of residence as jobseeker after an absence and if he or she can immediately provide compelling evidence that he or she is continuing to seek employment and has a genuine chance of being engaged.

7.3 Pursuant to these amendments, a jobseeker who enters the UK to seek employment, will enjoy the initial three month right of residence conferred by regulation 13 of the 2006 Regulations and then the period of 91 days pursuant to the amended regulation 6 of the 2006 Regulations. At the end of the 91 day period (as was also the case when the period was 182 days) the jobseeker will be required (as per Regulation 6(7) of the 2006 Regulations) to provide compelling evidence that he or she is continuing to seek employment and has a genuine chance of being engaged in the UK. If the person cannot satisfy that requirement then he or she will cease to have a right of residence as a jobseeker and consequently will cease to receive the benefits associated with that status and should, in the absence of any other right of residence, leave the UK voluntarily or face the possibility of removal.

7.4 A person who has not entered the UK as a jobseeker but who 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 (for example, as a student) will enjoy a right of residence as a jobseeker for the 91 day relevant period before being required to provide compelling evidence that he or she is continuing to seek employment and has a genuine chance of being engaged.

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 ensure that a person who enters the United Kingdom to look for work 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 (the 91 day period) are pursuant to regulation 6 of the 2006 Regulations) before being required to provide compelling evidence that he or she is continuing to seek employment and has a genuine chance of being engaged. However, he or she will only enjoy the benefits associated with jobseeker status for the 91 day period of residence pursuant to regulation 6 of the 2006 Regulations. A person who is already resident in the UK and who voluntarily becomes a jobseeker after having enjoyed a right to reside in another capacity is entitled to a total of 91 days of residence as a jobseeker before being required to provide compelling evidence that he or she is continuing to seek employment and has a genuine chance of being engaged.

7.7 These changes have been introduced to better reflect the case-law of the Court of Justice of the European Union, specifically *Antonissen* (C-292/89*),* which continues to govern the protection from expulsion enjoyed by EU jobseekers who do not otherwise have a right to reside, and which is reflected in the Directive. *Antonissen* establishes that Member States may limit the protection from removal afforded to a person who enters a Member State in order to seek employment to six months, unless the person can provide evidence that he or she is continuing to seek employment and has a genuine chance of being engaged. A person who is already resident in a Member State and who has enjoyed a right of residence in another

capacity before voluntarily becoming a jobseeker is not within the scope of the judgment in *Antonissen*, or the provisions in the Directive, both of which refer to a person who *entered* a Member State in order to look for work.

7.8 The Government has introduced a series of measures to address the abuse of free movement rights and to ensure that EU nationals who come to the UK do so for the right reason, to contribute to our society.

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.