EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT) REGULATIONS 2014

2014 No. 1451

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 number of changes to the 2006 Regulations relating to the circumstances in which jobseekers and involuntarily unemployed workers 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

[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.

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 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' (as now defined 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)).

4.3 A 'worker' is another type of qualified person. The Directive provides that a person may continue to enjoy worker status, and thus enjoy a right to reside as a worker ('a retained worker'), in certain circumstances upon becoming involuntarily unemployed. Where a person worked for less than 12 months before becoming involuntarily unemployed, regulation 6(2A) of the 2006 Regulations provides that worker status may be retained for a maximum of six months. Where a person was employed for more than 12 months upon becoming involuntarily unemployed, that person may retain worker status for longer than six months if, at the six month point, they are able to provide 'compelling evidence' that they are seeking work and have a genuine chance of being engaged (see regulation 6(7) of the 2006 Regulations).

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 provide that the six month period in which jobseekers are entitled to look for work may be split up over multiple periods of time. They also limit the extent to which a person may enjoy a right to reside as a jobseeker in circumstances when they have already been a retained worker or jobseeker for at least

six months, and the circumstances under which a person is entitled to a fresh period of residence as a jobseeker.

Length of 'the relevant period'

7.2 Regulation 3(3) of these Regulations amends regulation 6(7) of the 2006 Regulations to require the provision of 'compelling evidence' of a genuine chance of being engaged after the 'relevant period'. Prior to these amendments, regulation 6(7) required the provision of compelling evidence after six months. Regulation 3(4) inserts a new paragraph (8) into regulation 6 of the 2006 Regulations to define the 'relevant period'. In relation to retained workers who became involuntarily unemployed following a period of more than 12 months in work, the relevant period is defined as 'a continuous period of six months' (see the new regulation 6(8)(a)). In relation to jobseekers, the relevant period is 182 days, minus the cumulative total of any days during which jobseeker status has been enjoyed previously (see the new regulation 6(8)(b)). The effect of this amendment is to clarify that the six month period provided to jobseekers in order to look for work may be spread over a number of different periods as a jobseeker, but not exceeded. This change is to ensure that the six month cumulative period provided to jobseekers by EU law (see Case C-292/89 *Antonissen*) is not exceeded. The cumulative 182 day period will apply unless the person has been absent from the UK for a period of at least 12 months. 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.

Repeat 'jobseeker' periods

7.3 Regulation 3(4) of these Regulations also inserts new paragraphs (9) to (11) into regulation 6 of the 2006 Regulations. These paragraphs provide that a person may not enjoy the status of a jobseeker if they have previously enjoyed a right to reside in that capacity, or as an involuntarily unemployed worker, for 182 days or six months respectively, unless the person has been absent from the UK. Only absence during which the person has enhanced their prospects of being engaged in the UK will lead to the enjoyment of a new right of residence in the capacity of as a jobseeker. Consequently, the new paragraph (11) of regulation 6 provides that in the case of absence from the UK of less than 12 months, the person who is seeking to again enjoy the status of a jobseeker in the UK will be required to provide, from the outset, 'compelling evidence' that they have a genuine chance of being engaged. Those who are absent from the UK for more than 12 months since enjoying the above right to reside are entitled to a fresh period of residence as a jobseeker upon their return.

7.4 These changes are better to reflect the requirements of *Antonissen*, which governs the protection from expulsion enjoyed by EU jobseekers who otherwise do not have a right to reside, and also the Directive. Both *Antonissen* and the Directive define a jobseeker as a person who enters a Member State in order to look for work; neither makes provision for a person repeatedly to enjoy a right of residence while looking for work over an extended period.

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.