EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (HABITUAL RESIDENCE) AMENDMENT REGULATIONS 2013

2013 No. 3196

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument introduces a three-month residence qualification to be served by people who have recently arrived in the UK, seek to claim Jobseeker's Allowance and are not classed as European Economic Area (EEA) workers. The new provisions clarify and strengthen the existing provisions relating to persons from abroad.

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

3.1 This instrument breaches the 21 day rule as, to achieve the policy intention, the regulations need to come into force on 1 January 2014.

3.2 The Department regrets this breach of the 21 day rule. The Prime Minister announced this measure at the end of November when it became apparent that to the Government that additional measures are needed. These measures can only be achieved through statutory change.

4. Legislative Context

The Jobseeker's Allowance Regulations 1996 http://www.dwp.gov.uk/docs/a11-4001.pdf contain a general rule that claimants must have a right to reside in the UK, the Channel Islands, Isle of Man or the Republic of Ireland (the Common Travel Area) and must be habitually resident to qualify for income related benefits. This is known as the Habitual Residence Test. This instrument adds a specific residence provision to that test.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

7.1 Any claimant who does not have a right to reside in the Common Travel Area is defined as a "person from abroad" and such a person is not able to receive income-related benefits.

7.2 Following this amendment a person entering the UK, who is not already habitually resident, will not be able to qualify for Jobseeker's Allowance as soon as they arrive in the UK. Instead, they will need to serve a three month period of residence in the UK or the rest of the Common Travel Area. In practical terms, the amendment means that a claimant cannot be treated as being habitually resident until they have lived in the UK or the Common Travel Area for three months.

7.3 This policy is being introduced to protect the benefit system and to discourage people who do not have any established connection with the UK, or any prospect of work, from migrating to the UK and seeking to claim Jobseeker's Allowance immediately. It strengthens and provides tighter definition for the existing Habitual Residence test which will simplify the application of the rule.

- **Consolidation**

7.4 Informal consolidation will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes) which are available on the internet at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/ at no cost to the public.

8. Consultation outcome

No consultation has been carried out and the instrument has not been scrutinised by the Social Security Advisory Committee as the urgency provisions have been used. The Regulations will be referred to the Committee once they are in force.

9. Guidance

The Jobseeker's Allowance procedural guidance will be amended and further guidance will be provided to Decision Makers.

10. Impact

10.1 There is no impact on business but it is possible that charities or voluntary bodies may be affected. However, the increased clarity this policy brings to the Habitual Residence Test should, over time, reduce the numbers of people who might otherwise rely on charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Government will monitor and evaluate the three month residence condition as part of its regular review of policies on access to benefits by migrants.

13. Contact

Laura Smethurst at the Department for Work and Pensions Tel: 020 7449 7499 or email: laura.smethurst@dwp.gsi.gov.uk can answer any queries regarding the instrument.