EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (HABITUAL RESIDENCE) (AMENDMENT) REGULATIONS 2009

2009 No. 362

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Instrument makes amendments to the following income-related benefit regulations:

- the Income Support (General) Regulations 1987 (S.I. 1987/1967)
- the Jobseeker's Allowance Regulations 1996 (S.I. 1996/2007)
- the State Pension Credit Regulations 2002 (S.I. 2002/1792)
- the Employment and Support Allowance Regulations 2008 (S.I. 2008/794)
- the Housing Benefit Regulations 2006 (S.I. 2006/213)
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)
- the Council Tax Benefit Regulations 2006 (S.I. 2006/215)
- the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216).

2.2 The Regulations, with effect from 18 March 2009 insert a category to the list of persons who are excepted from having to satisfy the habitual residence test for income-related benefits. The additional category excepts people who left Zimbabwe to move to and settle in Great Britain having accepted an offer of assistance to return to the UK from Her Majesty's Government, having been resident in Zimbabwe immediately before they left.

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

3.1 None

4. Legislative Context

4.1 The habitual residence test was introduced into income-related benefit regulations by the Income-Related Benefits Schemes (Miscellaneous Amendments) (No.3) Regulations 1994. There have been a number of modifications to the test over time.

4.2 These Regulations will exempt, from the habitual residence test, people who arrived in Great Britain from Zimbabwe on or after 28 February 2009 who had been resident in Zimbabwe before they left for the UK and who accepted an offer of assistance from Her Majesty's Government to move and settle them in the UK.

The exemption will only apply to people who arrive in the UK on or after 28 February 2009 but before 18 March 2011.

5. Territorial Extent and Application

5.1 This instrument applies to all of Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

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**

7.1 A claimant is required to satisfy the habitual residence test to be eligible for Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit ("income-related benefits"). The test was introduced to prevent "benefit tourism" by people who come here from abroad and immediately claim benefits. Its purpose is to ensure that income-related benefits are paid to people with reasonably close ties to the UK and an intention to settle here.

7.2 The test also provides that no person shall be treated as habitually resident in the Common Travel Area (the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) if he or she does not have a right to reside here.

7.3 "Habitual residence" is not defined in any of the regulations but case law has established that, except in cases where EU citizens are exercising their rights as migrant workers, to be habitually resident in the Common Travel Area, a claimant must (i) have a settled intention to reside here, and (ii) have been resident for an "appreciable period of time".

7.4 The British Government has offered help, in returning to the UK, to vulnerable British Nationals who are increasingly unable to support themselves in Zimbabwe and who are unable to move to the UK without assistance. To ensure those returning to the UK under this scheme are not left without any resources when they arrive in the UK, this instrument waives the second part of the habitual residence test (the requirement to demonstrate residence for an "appreciable period of time") for them in relation to income-related benefits. The effect is that the people under the resettlement package will have access to income-related benefits immediately on their arrival in the UK, providing they satisfy any other conditions of entitlement. The Department for Communities and Local Government is making similar regulations to

allow this group immediate access to accommodation provided by local authorities or housing associations.

8. Consultation outcome

8.1 These Regulations have not been referred to the Social Security Advisory Committee although informal consultations at official and Ministerial level have taken place which have not identified any major concerns. Nor, in respect of the provisions in these Regulations relating to housing benefit or council tax benefit, has the Secretary of State consulted with organisations appearing to him to be representative of the authorities concerned. Until February 18th 2009 it was inexpedient to refer them because of diplomatic advice that there could be reprisals to UK citizens that would put the policy in jeopardy should it become public. Following the sending of offer letters to UK citizens in Zimbabwe, there were media reports of our intentions, notably in the Times on February 18th 2009. We then laid the regulations as soon as possible after that date so as to allow for the normal Parliamentary scrutiny period of 21 days. If a formal consultation had been launched, our best advice is that the regulations would not have come into force by the time they were needed. These Regulations shall be referred to the Social Security Advisory Committee as soon as practicable after the date on which they have been made.

9. Guidance

9.1 Guidance will be issued to decision makers to advise them of this change and a bulletin issued to all benefit processors.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulations specify that only people who leave Zimbabwe and arrive in the UK on or after 28 February 2009 but before 18 March 2011 will be exempt from the habitual residence test, if they meet all of the other conditions of entitlement for benefit. There is no intention to review the regulation but the numbers of claims made by people returning from Zimbabwe will be monitored.

13. Contact

Ursula Brennan at the Department for Work and Pensions Tel: 0207 499 5257 or email: Ursula.a.brennan@dwp.gsi.gov.uk can answer any queries regarding the instrument.