

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: VTR 406

19 February 2014

Dear F Angelov,

Thank you for your Freedom of Information request received 26 January 2014. You asked;

In your reply to my previous FOI to you entitled "Benefit Criteria" (Ref: VTR 17) you mentioned that if EEA nationals satisfy habitual residence test for the purposes of benefit claims they will be treated equally to nationals but then proceeded to state that "a new statutory presumption will mean that EEA jobseekers and retained workers will then only be able to claim JSA for 6 months, after which compelling evidence must be presented that they have a genuine prospect of finding work". Could you, please, provide me with more information regarding this presumption, whether it applies only to EEA nationals and not to UK nationals and if possible provide citation to the statute if it is publicly available at the present time. If not could you give me the source of your information about this statute, so I can make myself familiar with the content. Could you also confirm that EEA citizens who are not UK nationals will have to satisfy a different, more-restrictive test than nationals, due to the requirement to show compelling work prospect evidence, which requirement I am under the impression, does not apply to UK nationals.

The new six months statutory presumption measure is in the Home Office's Immigration (European Economic Area)(Amendment) (No.2) Regulations 2013 - see: <http://www.legislation.gov.uk/uksi/2013/3032/contents/made>

Also you stated: "Under domestic legislation, economically inactive EEA nationals and their family members cannot claim income related benefits." With reference to this bit could you please:

1 Provide me with information whether UK nationals who are economically inactive will be eligible for income related benefits and whether the economically inactive restriction only applies to non UK EU nationals?

2 Provide me with information whether EU citizens with permanent residence (or unconfirmed permanent residence i.e.. the individual is permanent resident without having applied for such confirmation) under EU law will still be subject to those different tests and presumptions which are more restrictive than for UK nationals?

Under EU law, an EEA national exercising their right of free movement will have a right to reside in the UK if they are someone who is a worker; a self-employed person; a job seeker; a self-sufficient person or a student. Economically inactive EEA nationals will have a right to

reside if they have sufficient resources for themselves, and any family members, in order not to become an unreasonable burden on the UK social assistance system, and they must have comprehensive sickness insurance. UK nationals, including those who are economically inactive, are not exercising free movement rights under EU law and they have a right to live here under UK laws. EU citizens and members of their family who have resided legally in the UK for a continuous period of five years will have a permanent right to reside and are treated in the same way as UK nationals for benefit purposes.

Further information on these issues are in the Department's Decision Maker's Guide at this link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269058/dmgch0703.pdf

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central FoI Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwp.gsi.gov.uk or by writing to DWP, Central FoI Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk