

Introducing an entitlement to work condition for contributory benefits and statutory payments

Equality impact assessment

October 2011

Screening assessment for introducing a entitlement to work condition for contributory benefits, statutory payments and Maternity Allowance

Brief outline of the policy or service

1. Under current legislation anyone subject to immigration control does not qualify for means-tested, non-contributory benefits. However, National Insurance Contributions (NICs) paid by individuals working in the UK when they have no right to do so could give title to the award of contributory benefits and statutory payments. While there it is not the policy intention for contributory benefits and statutory payments to be available to illegal workers, the current position means there is no provision which prevents an illegal worker from legally qualifying for these benefits or payments.
2. The entitlement criteria to the benefits concerned require amending to address this issue.
3. The change in policy is the introduction of the entitlement to work as a condition of entitlement for contributory Employment and Support Allowance, contribution based Jobseeker's Allowance, Maternity Allowance and all Statutory Payments. The introduction of this condition of entitlement will ensure that people who have no legal entitlement to work in the UK have no legal entitlement to contributory based benefits and payments – even if they have paid NICs during the period that they were working illegally. If they have no entitlement to work, they will not be entitled to receive these benefits.

Approach to assessing the impact on equality

4. This change affects a limited number of people who apply for a work-related contributory benefit or statutory payment when they have either never been entitled to work in the UK or do not have a current entitlement to work in the UK. The measure concerns illegal workers and the data that we have is extremely limited. For these reasons we have carried out a screening assessment as opposed to a full equality impact assessment.

Consultation and involvement

5. Establishing the levels of risk of access to these benefits by illegal workers is difficult to quantify as there are obviously no official figures available on the numbers of people who are working illegally and the numbers who are likely to claim the respective benefits. We have no indicators on our administrative data to tell us how many people are claiming benefits for which entitlement was earned while working illegally.
6. There is no official government estimation for the number of illegal workers in the UK, Published estimates of the illegally resident foreign population include a very broad definition of illegal immigrants, including both children and adults, working and non-working. Of those adults who may be working, some may be in part-time or temporary casual jobs and a proportion will be working illegally and not paying taxes. Many of those who are illegally resident will have arrived on a visitor visa, overstayed and then depart without ever working. Of those illegal residents who are working in jobs in which they pay tax and national insurance contributions, it is not clear how many of these would actually go on to claim a contributory benefit, statutory payment or Maternity Allowance.
7. Therefore, due to the difficulty in obtaining information on illegal workers we do not know if all groups will be equally affected by the legislation. Research by the London School of Economics and the Institute of Public Policy Research suggested that there may be around 620,000¹ adults who could be illegally present in the UK and who do not have a right to work. Although a large proportion of this number will have arrived on visitor visas, are unlikely to be working (or working more than occasionally) and will in due course leave, if we assume that half this number were employed, and half of these employed in jobs where they were paying tax and national insurance contributions, this would produce an estimate of 155,000 people (or 0.5% of the number of people working in the UK) who might be eligible to claim the range of contributory-based benefits or statutory payments despite having no entitlement to work in the UK. It should also be noted that the impact has been estimated and is based on broad assumptions, and so the results are necessarily only indicative. We have however undertaken research to establish that limited provisions are available for people who may become destitute due to having no legal entitlement to these benefits or payments.
8. A formal consultation process has not been completed with the individuals who will be affected by these changes as they are, by definition, acting illegally and therefore difficult, if not impossible, to identify.

¹ The LSE central estimate of 533,000 irregular migrants includes children. Using figures provided within the LSE report, an estimate of the number of children born prior to entry in the UK has been calculated and deducted. Figures quoted in the IPPR report for legal residents who may be clandestine workers have then been added to give an estimated number of 620,000 for the illegally resident population. All estimates are subject to caveat. The nature of people living in the UK illegally means that there is a lack of official data in respect of this group.

Impact of the introduction of an entitlement to work condition for contributory benefits and statutory payments

Disability

9. The definition of disability for the purpose of equality impact assessment is now that contained in the Equality Act 2010, and was previously that defined by the Disability Discrimination Act.
10. There is no reason to believe that the policy will have a negative or disproportionate impact on disabled people. However, as mentioned, we are unable to provide robust data as we do not collect information on the numbers of disabled people who are illegally working in the country but paying tax and NICS and who may go on to access a contributory benefit or statutory payment dependent upon them having been in that employment. All customers who claim contributory benefits or statutory payments will be required to have an entitlement to work as a condition of entitlement to that benefit.

Race

11. As mentioned, we are unable to provide robust data as we do not collect information on the ethnicity of people who are illegally working in the country and who may go on to access a contributory benefit or statutory payment dependent upon them having been in that employment. As the policy change is targeted at those who do not have an entitlement to work in the UK, irrespective of race or ethnicity, it will, inevitably, have the greatest potential impact on non-EEA nationals. However, the measure provides a proportionate means of achieving the legitimate aim of ensuring that those who have no entitlement to work in the UK have no legal entitlement to contributory based benefits or statutory payments and we are therefore of the view that any indirect impact upon non-EEA nationals is fully justified.

Gender

12. There is no reason to believe that the policy will have a negative or disproportionate impact due to a customer's gender. We are unable to provide robust data as we do not collect information on the gender of people who are illegally working in the country and who may go on to access a contributory benefit or statutory payment dependent upon them having been in that employment. The policy will be applied to both men and women.

Gender Reassignment

13. The Department does not hold information on its administrative systems on transgender persons. The Government does not envisage an adverse impact on these grounds.

Pregnancy and Maternity

14. In respect of maternity provision; the potential impact upon pregnant women who are not entitled to work in this country and therefore have no legal entitlement to either Statutory Maternity Pay or Maternity Allowance, will be reduced by the financial assistance provision administered by Local Authorities where the woman is considered destitute.

Sexual orientation

15. The Department does not hold information on its administrative systems on the sexual orientation of claimants. The Government does not envisage an adverse impact on these grounds.

Religion or belief

16. The Department does not hold information on its administrative systems on the religion or beliefs of claimants. The Government does not envisage an adverse impact on these grounds.

Marriage and Civil Partnership

17. The Department does not hold information on its administrative systems on the civil partnership status of claimants. The Government does not envisage an adverse impact on these grounds.

Monitoring and evaluation

18. The introduction of this policy will be monitored. However, the operational process has not yet been finalised and therefore the monitoring and evaluation system still needs to be determined.

Next steps

19. The policy will be introduced to coincide with the introduction of Universal Credits in October 2013.

20. Work will continue to determine the operational and monitoring and evaluation processes.

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