

Title: Entitlement to work as a condition for contributory benefits and statutory payments. Lead department or agency: Department for Work and Pensions. Other departments or agencies: BIS Jobcentre Plus	Impact Assessment (IA)
	IA No:
	Date: 16 February 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary Legislation
Contact for enquiries:	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

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 Great Britain when they have no right to do so could give title to the award of contributory benefits and statutory payments. Statutory payments are available as a measure of earnings replacement during periods of sickness, or for the birth or adoption of a child. While there is no overt 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. The entitlement criteria to the benefits concerned requires amending to address this problem.

What are the policy objectives and the intended effects?

The objective is to introduce 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 entitlement to work in the UK have no legal entitlement to contributory based benefits and statutory payments.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Consideration has been given to whether the NICs made during periods of illegal working should not count towards entitlement to the identified benefits. However HM Revenue & Customs are unable to identify and isolate such NICs from employers' end of year returns. This option has been discounted. Some of the benefits use the status of employed earner to determine entitlement. The definition of employed earner does not include any requirement about the legality of a person's residency or employment status. Although it would be technically possible to amend the definition of employed earner, this definition occurs in many pieces of legislation and amending it could have a knock on effect on reliance on the definition for other purposes. Therefore this option has been discounted. The preferred option is the introduction of entitlement to work as a condition of entitlement at an appropriate time in respect of each benefit/payment. This ensures that only those legally entitled to work in the UK have access to these work related benefits/payments. This

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be monitored and reviewed at regular intervals after implementation.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

See Annex 1

Summary: Analysis and Evidence:

Price Base Year 10/11	PV Base Year 11/12	Time Period Years 4	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:£19.3m
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	-		-	-	
High	-		-	-	
Best Estimate	£0.4m		-	£1.1m	
Description and scale of key monetised costs by 'main affected groups'					
<p>Cost of implementation of entitlement to work condition on Maternity Allowance (MA) approximately £540,000 per annum.</p> <p>Cost of implementation of entitlement to work condition on contributory Employment and Support Allowance approximately £240,000 per annum.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>The implementation costs to contributory Employment and Support Allowance (ESA (C)) may also be incorporated into the proposed restructure to this benefit. There should be no additional cost for contribution based Jobseekers Allowance (JSA(C)) as their guidance is currently being clarified to ensure that a customer has a right to work.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	-		-	-	
High	-		-	-	
Best Estimate	£6.3m		-	£20.4m	
Description and scale of key monetised benefits by 'main affected groups'					
<p>The following savings will be made from introduction October 2013:</p> <p>JSA (C) claimants – up to £2.0 million per annum, ESA (C) claimants – up to £3.0 million per annum, Maternity Allowance claimants – up to £1.3 million per annum, Statutory Maternity Pay Claimants – up to £8 million per annum, Statutory paternity Pay claimants – up to £200,000 per annum and Statutory sick pay claimants – up to £6 million per annum.</p>					
Other key non-monetised benefits by 'main affected groups'					
Key assumptions/sensitivities/risks				Discount rate	3.5%
<p>Due to the difficulty in obtaining information on illegal workers, we do not know the number of people who will be affected by this legislation. Research by the LSE and the IPPR¹ suggested that there may be around 620,000 adults who could be illegally present in the UK and do not have an entitlement to work. Although a large proportion of this number will have arrived on visitor visas, are unlikely to be working and will in time leave, if we assume that half of these were employed, and half of those employed in jobs were paying tax and national insurance contributions, this would produce an estimate of 155,000 (or 0.5% of the number of people working in the UK) who might be eligible to claim the contributory benefits or statutory payments despite having no entitlement to work in the UK². This loophole therefore needs to be closed.</p>					

¹ London School of Economics and the Institute for Public Policy Research

² The estimates are based on the economic conditions within 2009 and there is no basis on which to adjust for future economic conditions.

Impact on admin burden (AB) (£m): £0			Impact on policy cost savings		In
New AB:	AB savings:	Net:	Policy cost savings:		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			GB		
From what date will the policy be implemented?			October 2013		
Which organisation(s) will enforce the policy?			DWP		
What is the annual change in enforcement cost (£m)?			Nil		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 100%	Benefits: 100%	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt? N/A	N/A	N/A	N/A	N/A	N/A

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ³	YES	Separate publication
Economic impacts		
Competition	NO	
Small firms	NO	
Environmental impacts		
Greenhouse gas assessment	NO	
Wider environmental issues	NO	
Social impacts		
Health and well-being	NO	
Human rights	NO	
Justice system	NO	
Rural proofing	NO	
Sustainable development	NO	

³ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base

References

No.	Legislation or publication
1	Economic Impact on the London and UK economy of an earned regularisation of irregular migrants to the UK - http://www.london.gov.uk/mayor/economic_unit/docs/irregular-migrants-report.pdf
2	Irregular Migration in the UK - ippr - Institute for Public Policy Research
3	
4	

Evidence Base - Annual profile of monetised costs and benefits* - (£m) constant prices

	2010/11	2011/12	2012/13	2013/14	2014/15
Transition costs				£0.4m	
Annual recurring cost					£0.8m
Total annual costs		£0.0m	£0.0m	£0.4m	£0.8m
Transition benefits				£6.3m	
Annual recurring					£16.0m
Total annual benefits		£0.0m	£0.0m	£6.3m	£16.0m

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base

Policy Rationale

What is the current policy?

1. Under current legislation anyone subject to immigration control does not qualify for means-tested non-contributory benefits. However, National Insurance contributions paid by individuals working in the UK when they have no right to do so could give rise to an award of a contributory benefit or statutory payment. There are specific contributory conditions associated with the benefits/payments; however none of these conditions includes any test of immigration status or right to work. Therefore if current contributory conditions are met, these individuals could access contributory benefits and statutory payments.

What is the change in policy?

2. The change in policy is to introduce entitlement to work as a condition for contributory Employment and Support Allowance, contribution based Jobseeker's Allowance, Maternity Allowance and all Statutory Payments. The introduction of this condition will ensure that people who have no right to work in the UK cannot access contributory based benefits and payments.

Reason for change in policy?

3. To legislate for the introduction of entitlement to work in the UK as an additional condition of entitlement for contributory ESA, contribution based JSA, all statutory payments and Maternity Allowance.
4. There is no overt policy intention for contributory benefits and statutory payments to be available for illegal workers; the current position means that there is no provision which prevents an illegal

worker from legally qualifying for these benefits and payments. There is a strong risk of reputational damage. This amendment is consistent with the Government's commitment to Welfare and Immigration

Estimating Costs and Benefits

Estimated Costs

5. The costs for administering the condition of entitlement to Maternity Allowance have been calculated at £540,000 per annum. There should be no administrative costs to JSA (C), as their current guidance is being clarified to ensure that the right to work condition is being checked for this benefit.
6. Official costings have been calculated for the administration of the check on the new condition to ESA(C). However, the estimate does not take account of any additional overhead costs (such as supporting IT changes) that may be required.
7. In respect of Statutory Payments, there should be no costs to DWP as it is the employer who has to satisfy their liability to ensure that an employee applicant satisfies the various conditions of entitlement to the award of a statutory payment.

Estimated Benefits

8. The administrative burden is calculated as nil as we are not enforcing any additional checks on employers.
9. Due to the difficulty in obtaining information on illegal workers, we do not know the number of people who will be affected by this legislation. Research by the London School of Economics and the Institute for Public Policy Research suggested that there may be around 620,000 adults who could be illegally present in the UK and do not have an entitlement to work. Although a large proportion of this number will have arrived on visitor visas, are unlikely to be working and will in time leave, if we assume that half of these were employed, and half of those employed in jobs were paying tax and national insurance contributions, this would produce an estimate of 155,000 (or 0.5% of the number of people working in the UK) who might be eligible to claim the contributory benefits or statutory payments despite having no entitlement to work in the UK.
10. By applying this percentage to each of the benefits and payments we estimate savings from a full year of activity reflected in constant prices as follows:
 - Maternity Allowance (payable by DWP) - around 275 women would fail the right to work condition of entitlement (out of a 55,000 caseload at any one time) with potential savings of £1.3 million per annum
 - Statutory Maternity Pay (payable by employers in the first instance but reimbursed to employers by HMRC at roughly 93%) – around 1650 women could be potentially caught by the introduction of a right to work condition of entitlement (if employers were not fulfilling their RTW obligations) with potential savings of £8 million per annum overall
 - Contributions based Jobseeker's Allowance – around 3,000 individuals (out of 600 thousand applicants) would be caught by the introduction of a right to work condition of entitlement with potential savings of £2.0 million per annum
 - Contributory Employment and Support Allowance – around 1250 individuals (out of 250,000 applications) would be caught by the introduction of a right to work condition of entitlement with potential savings of £3.0 million per annum
 - Statutory Paternity Pay (payable by employers in the first instance but reimbursed by HMRC at roughly 92%) by 895 men on SPP saving £200k and
 - Statutory Sick Pay (Payable by employers, less than 5% is reimbursed by HMRC (approx £50 million per annum)) – around 1,500 individuals could potentially fail the right to work condition of entitlement with potential savings of £6 million per annum to business
 - Statutory Adoption Pay – is only available to parents who have been matched for adoption of a child by an adoption agency under the law of the United Kingdom. As UK adoption agencies would not sanction the adoption of a child by a person illegally resident in the UK it is very unlikely

that SAP would be paid to an illegal worker. However the right to work criteria will still be brought into SAP legislation to ensure consistency across all Statutory Payments.

11. The estimated fiscal costs are set out in the below table.

Table - Constant Prices (not discounted)

Fiscal Costs	Fiscal Benefits
£1.2m	£22.4m

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review:

The impact of the policy changes will be reviewed and monitored regularly. All analysis in the review will be subject to the ongoing availability of the underlying datasets for benefits administered by DWP as well as stakeholder feedback from employers for those payments administered by them.

Review objective:

The review objective will be to check that the changes are working as expected (i.e. that people without entitlement to work have no legal entitlement to contributory Employment and Support Allowance, contribution based Jobseeker's Allowance, Maternity Allowance and statutory payments.

Review approach and rationale:

A mixture of approaches will be used including:

- 1) Analysis of internal administrative datasets,
- 2) Liaise with external organisations through stakeholder engagement groups, in particular employers in respect of statutory payments
- 3) Where practical, bespoke analysis to cover questions not addressed by the other approaches,

The review will use an eclectic approach, reflecting the fact that a range of datasets and methodologies are required to assess all of the potential impacts of the policy.

Baseline:

There are no current baseline figures available as this data is not collected.

Success criteria:

Criteria will include indicators such as the volume of refusals under the new condition of entitlement, feedback from business and estimated benefit savings as a result of the introduction of this policy.

Monitoring information arrangements:

Where possible, Business operational units will be the main source of information for the benefits refused under this new condition of entitlement for the benefits administered by DWP. Information will be reviewed on a periodic basis based upon standard management information periods.

Reasons for not planning a PIR:

Not applicable

