The Rt Hon AMBER RUDD MP  
Secretary of State for Work & Pensions

Rt Hon Frank Field MP  
Chair of the Work and Pensions Select Committee  
House of Commons  
London  
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5th February 2019

Dear Frank,

Thank you for your letter dated 7th January. In order to be as helpful as possible, I have broken down my response to the points you raised in your letter into two parts. Firstly, I have provided more detail on the arrangements DWP has in place to support EEA citizens who are required to confirm their status when making a claim for Universal Credit (UC). Secondly, I have provided information on the introduction of the Universal Credit (EEA Jobseekers) Amendment Regulations 2015.

On the first matter, EEA citizens are required to demonstrate their status in the UK in order to establish their eligibility to claim UC.

The Treaty of the Functioning of the European Union provides for free movement throughout the EEA for EEA citizens. However, access to benefits in a host state also considers whether EEA citizens are exercising the right to reside as a “qualified person” as set out in the Citizens Directive (2004/38) implemented in the UK by the Immigration (European Economic Area) Regulations 2016. A qualified person can have the right to reside as somebody who is either:

- a ‘worker or a self-employed person’ – EEA citizens who are currently in genuine and effective work;
- a ‘retained worker’ – EEA citizens who have been in genuine and effective work but have recently lost employment in the UK involuntarily
- a ‘self-sufficient person’ – EEA citizens who have arrived in the UK with sufficient funds to support themselves and their families and have comprehensive sickness insurance that will cover healthcare costs in the event of illness (self-sufficient persons are usually unable to claim UC),
- a ‘student’ – EEA citizens who have arrived in the UK with sufficient funds to support themselves during a period of study and have comprehensive sickness insurance that will cover healthcare costs in the event of illness (students are usually unable to claim UC).

Other rights to reside which provide access to UC also include:
• permanent residents – e.g. persons who have resided in the UK as a qualified person or a family member of a qualified person for a continuous period of 5 years.
• derived rights – e.g. family members of a EEA citizen who is currently exercising a qualified right to reside.
• derivative rights – e.g. EEA citizens who are primary carers of a child in education having previously exercised a qualifying right to reside (derivative rights do not count towards permanent residence).

There has been no change to the rules for access to benefits for EEA citizens who are exercising the above rights to reside. They have always been eligible to access DWP income-related benefits including UC.

DWP has published guidance for Decision Makers to help EEA citizens who are claiming benefits to establish their right to reside on a case by case basis. Further information on this can be found in the links below:

Advice for Decision Makers – Universal Credit Chapter C1 – International Issues -

Decision Makers Guide - Part 3 - Habitual residence & right to reside - IS/JSA/SPC/ESA

The guidance does not place a limit on the forms of proof that would be acceptable in order for EEA citizens to prove their right to reside. DWP Decision Makers apply evidence and law to determine claimants’ right to reside on the balance of probability in accordance with standard case-law principles.

The guidance provides helpful assistance to suggest examples of evidence which can help Decision Makers establish claimants’ right to reside. This might include payslips, hours worked, periods of employment, employment contracts, proof of earnings, and tax and NI records. This list is not exhaustive. Case-law does not identify one constant approach to applying these and other factors. Each case must be decided on its own merits.

The process by which we establish a claimant’s eligibility for benefits is known as the Habitual Residence Test (HRT). The HRT is conducted through a face to face interview and DWP has provided comprehensive training and guidance for staff to ensure that they can effectively apply the HRT. DWP staff delivering Universal Credit will provide advice and guidance to claimants regarding what evidence is required as part of the HRT. Additionally, this information is also available to claimants via their online account.
In the second part of this response I have provided further detail on the introduction of the Universal Credit (EEA Jobseekers) Amendment Regulations 2015. These regulations are in line with Regulation (EC) No 883/2004 which covers the coordination of social security benefit systems. These regulations provide a framework which categorises types of benefits, sets out whether EU Member States are required to export these benefits and sets out the conditions for eligibility. Benefits such as UC and Housing Benefit are categorised as social assistance benefits and are therefore not covered by Regulation (EC) No 883/2004. Member States are not required to provide social assistance benefits to EEA citizens who are not exercising a qualifying right to reside or permanent residence.

In response to your question regarding analysis, as part of the development of the policy, the Department carried out an Equality Impact Assessment and costed the policy in the 2015 Budget. The Department has also continually invested in monitoring and reviewing access to benefit policies for EEA citizens in ensuring effective delivery of the policies and to understand those who may be impacted.

The policy regarding access to income-related benefits remains that claimants are required to be 'in Great Britain' i.e. a claimant exercising a legal right to reside which allows them to claim public funds and who has established factual habitual residence in Great Britain. EEA citizens who are exercising qualified rights to reside have always been eligible to access DWP income-related benefits. The Citizens Directive provides rights for EEA citizens to exercise freedom of movement across the EEA without placing unnecessary burdens on the finances of the host member state. The claimant groups potentially affected by the 2015 UC regulations are working-age EEA citizens who are claiming income-related benefits but may not be eligible to claim UC due to their status under the Citizens Directive.

Overall, the measure was estimated to restrict entitlement to UC saving an average of around £10m per year between 2016/17 and 2019/20. However, estimating the number of people likely to be affected until 2022 is highly sensitive to significant uncertainties on the number of EEA nationals moving to the UK and their interaction with the labour market prior to, and during, a claim, as outlined in the 2015 Budget.

DWP’s Equality Impact Assessment considered the impacts of the policy, in particular on protected groups. The Department’s conclusion was that the policy was a proportionate means of achieving the aims of supporting those who make a contribution to the UK whilst maintaining integrity of the UK benefit system.

The Department regularly publishes monitoring and review of policy impacts on local services. For example, as part of reviewing the measure which restricts access to Housing Benefit for EEA jobseekers, Local Authorities (LAs) were interviewed to understand the impact of delivering the changes. Within the findings, the majority of LAs stated that implementing the changes had been very easy, fairly easy or neither easy nor difficult. This review was followed by two publications in 2016 and 2017 which provided analysis on access to benefit restrictions through analysing the numbers who may have been impacted from the measures. This has continued into
Universal Credit, with the claimant survey helping to understand any difficulties claimants may be facing when making a UC claim.

With regard to the mechanism for allocating staff resource for administering the HRT process, resource allocations are based on a number of assumptions including caseload increases and policy changes, and these are supported by an overarching resource model that regularly reviews activity timings to ensure the correct number of Work Coaches and Decision Makers are deployed.

Finally, the Government has reached an agreement with the EU guaranteeing the rights of EU citizens living in the UK and has already made public its plans for protecting the rights of EU citizens. This will be done through the EU settlement scheme, published on 21 June 2018 and available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement

The status granted to EU citizens and their family members under the EU Settlement Scheme – settled status (indefinite leave to remain) or pre-settled status (limited leave to remain), granted under the Immigration Rules – will enable them to continue their lives in the UK much as before, with the same entitlements as now to work, study and access public services and benefits, according to the same rules as now. EU citizens who are seeking to settle in the UK after December 2020 will be able to apply to confirm their status and have their status protected under immigration law.

best wishes,

[Signature]

The Rt Hon Amber Rudd MP
SECRETARY OF STATE FOR WORK AND PENSIONS