

THE AIRE CENTRE

Advice on Individual Rights in Europe

Observations on the Welfare Reform Bill (Northern Ireland) and Regulations pursuant to that Bill

1. The AIRE Centre is a specialist legal charity, whose mission is to promote awareness of European Law rights and to assist marginalised individuals and those in vulnerable circumstances to assert those rights.
2. The AIRE Centre makes the following observations on the Welfare Reform Bill (Northern Ireland) and future draft regulations.

Schedule 1, Paragraph 7

3. Sections 19 to 21 of the Welfare Reform Bill ('the WRB') exempt certain categories of person from some or all of the work related requirements set out in sections 15 to 18 of that Bill. Schedule 1, Paragraph 7 of the WRB purports to grant the power to draft Regulations that provide that a claimant, who would otherwise fall within the scope of sections 19 to 21, is to be treated as not falling within them if (s)he is asserting a right to reside in the UK under EU Treaties.
4. Schedule 1, paragraph 7 of the WRB, if enacted, will run contrary to basic principles of EU law because it purports to grant a wide power to discriminate against Union citizens on grounds of nationality.
5. Such discrimination is prohibited by Article 18 of the Treaty on the Functioning of the European Union states that '*within the scope of the application of the [EU] Treaties and without prejudice to any special provisions contained in them, any discrimination on grounds of nationality shall be prohibited*'. On this basis, the AIRE Centre submits that Schedule 1, para 7 of the WRB should be deleted.

Comparison with the Welfare Reform Act 2012

6. Sections 15-21 and schedule 1, para 7 of the WRB are identical in wording to their counterparts in the Welfare Reform Act 2012, which applies in England and Wales. In Westminster, draft Universal Credit Regulations have been produced. Regulation 83 of these draft regulations provides that EEA nationals asserting the right to reside in the UK as a jobseeker are to be treated as falling outside sections 19 to 21 of the Welfare Reform Act 2012. This provision discriminates on grounds of nationality *and* disability.
7. Regulation 7 of the Draft Universal Credit Regulations 2012 makes it a condition of qualifying for Universal Credit that a claimant is habitually resident in the UK. For the reasons given in paragraph 8, below, The AIRE Centre submits that this requirement is unlawful as a matter of EU law, and urges the Northern Irish administration not to include such a requirement in its own Regulations.

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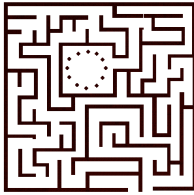
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8. Universal Credit will replace income-based Jobseeker's Allowance and Employment and Support Allowance (income-related). Both of these benefits are listed as special non-contributory benefits under Annex X of Regulation 883/04. Thus they are covered by Article 4 of Regulation 883/04, which prohibits discrimination on grounds of Nationality. The Supreme Court, in *Patmalniece* [2011] UKSC 11, found that the habitual residence test is indirectly discriminatory, and is justified on grounds independent of nationality. However, the European Commission has subsequently issued infringement proceedings against the UK on the basis that the habitual residence test, applied to special non-contributory benefits, amounts to unlawful discrimination under EU law. Whilst the Westminster administration may wish to continue to impose a legal test that violates European Union law, we urge the authorities in Northern Ireland to refrain from doing so.

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