

**UNDOCUMENTED COMMONWEALTH CITIZENS RESIDENT IN THE UNITED KINGDOM – JOBSEEKER’S ALLOWANCE, EMPLOYMENT AND SUPPORT ALLOWANCE, INCOME SUPPORT AND STATE PENSION CREDIT**

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**INTRODUCTION**

- 1 On 25 April 2018 the Home Office published new measures for Commonwealth citizens in the United Kingdom who may not have documents demonstrating their right to be here (known as ‘Windrush’ cases). This information is for Commonwealth citizens who are long-term residents of the United Kingdom and do not have documents to demonstrate their status when making claims for benefit.

**BACKGROUND**

- 2 Claimants who apply for Jobseeker’s Allowance, Employment and Support Allowance, Income Support and State Pension Credit are required to have a legal right to reside and be factually habitually resident<sup>1</sup>. These eligibility conditions place the primary responsibility on the claimant to provide evidence of their nationality and immigration status (see DMG 073188 - 073201).

1 IS (Gen) Regs (NI) 87, reg 21AA; JSA Regs (NI) 96, reg 85A; ESA Regs (NI) 08, reg 70(2); SPC Regs (NI) 03, reg 2

- 3 It is acknowledged that some people including those who may have lived in the United Kingdom for most of their lives, are having difficulty in providing the necessary evidence to demonstrate their status and their right to work or access services in the United Kingdom. This memo provides guidance to decision makers in relation to undocumented Commonwealth citizens claiming Jobseeker's Allowance, Employment and Support Allowance, Income Support or State Pension Credit.

### **COMMONWEALTH CITIZEN UNABLE TO PROVIDE DOCUMENTARY EVIDENCE OF IMMIGRATION STATUS**

- 4 The Government is supporting the following groups/individuals to obtain documents to prove their right to live and work in the United Kingdom
1. Commonwealth citizens who were settled in the United Kingdom on 1 January 1973, or who were not in the United Kingdom at that date, but had been settled in the United Kingdom for at least 5 years before that date. This group will be British citizens who have the right to reside in the United Kingdom **and**
  2. Commonwealth citizens who had been living in the United Kingdom continuously for 5 years before 1983. These citizens are likely to have the right to reside in the United Kingdom **and**
  3. Commonwealth citizens who came to the United Kingdom after 1 January 1973. These citizens might not have the automatic right to reside in the United Kingdom, but they may have a form of British citizenship or have been given indefinite leave to remain or limited leave to remain **and**
  4. Commonwealth citizens who are British citizens by descent (i.e. one or both of their parents was a British citizen, or has been settled in the United Kingdom.
- 5 Claimants in these circumstances, who are applying for Jobseeker's Allowance, Employment and Support Allowance, Income Support and State Pension Credit may be affected because they
1. are not able to provide documentary evidence of their immigrations status **or**
  2. are awaiting documentary evidence of their status from the Home Office Taskforce **or**
  3. have not applied for documentary confirmation of their nationality and status.
- 6 It is recognised that claimants who present themselves as falling within paragraph 3 above may already have a right to reside and are eligible to access services within the United Kingdom. Steps are being taken to encourage

individuals to contact the Home Office Taskforce as soon as possible in order to obtain documentation that will demonstrate how long individuals have lived in the United Kingdom continuously, or to obtain support in making an application to remain in the United Kingdom.

- 7 During this period, Department for Communities are supporting these claimants to obtain evidence of nationality, status and habitual residence and are working closely with the Home Office to help individuals get the documents to confirm their right of residence.

### **WORKING CLOSELY WITH THE HOME OFFICE**

- 8 Where the claimant is unable to evidence their immigration status to allow access to an income-related benefit, and indicates they may meet one of the conditions in paragraph 4, details of the how to contact the Taskforce are below

Freephone number: 0800 678 1925 **or**

Email: [commonwealthtaskforce@homeoffice.gsi.gov.uk](mailto:commonwealthtaskforce@homeoffice.gsi.gov.uk)

### **SUPPORTING EVIDENCE**

- 9 Supporting evidence of nationality and residence could include
1. current passport **or** most recent passport (including expired passports) where there is a reason that a current passport is not available
  2. their National Insurance contributions record
  3. employment records
  4. evidence of education
  5. where they have lived during their time in the United Kingdom; for example bills and letters
  6. Birth certificate, which will show evidence of nationality/Commonwealth citizenship.

This is not an exhaustive list.

### **LEGAL AND HABITUAL RESIDENCE**

- 10 Anyone claiming a Department for Communities income-related benefit must be legally resident and habitually resident (see paragraph 2 above). Therefore people from the Windrush generation and other Commonwealth citizens who provide
1. reasonable evidence of their right to reside in the United Kingdom (which may include, but is not limited to, British citizenship) **and**

2. can show actual habitual residence

will satisfy this criteria and are eligible to claim.

- 11 Where the evidence of nationality and status provided to and held by Department for Communities and the Home Office indicates that the balance of probabilities is that the claimant is likely to have legal and habitual residence, the decision maker may determine that the claimant is eligible to claim Jobseeker's Allowance, Employment and Support Allowance, Income Support and State Pension Credit. The claim can go forward to be assessed for benefit entitlement.
- 12 Following the confirmation of nationality and status by the Home Office, DMG 073235 et seq applies i.e. the individual is a person who has a legal right to reside in the United Kingdom (and therefore the common travel area).

### **ANNOTATIONS**

Please annotate the number of this memo (DMG Memo Vol 2/74) against the following DMG paragraphs:

073188 (Topic Heading); 073234 (Main Heading)

### **CONTACTS**

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