



Benefit Entitlement (Restriction) Bill 2014-15

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The *Benefit Entitlement (Restriction) Bill* [Bill 47 of Session 2014-15] is a Private Members' Bill presented by Christopher Chope. The Bill makes provision "to restrict the entitlement of non-UK Citizens from the European Union and the European Economic Area to taxpayer-funded benefits." The Bill provides that the restrictions on entitlement are "notwithstanding the provisions of the European Communities Act 1972."

A similar – though not identical – Bill was introduced by Mr Chope in the 2013-14 Session which was supported by the same group of MPs. It was one of around 40 bills tabled together in June 2013 by a group of Conservative Members which together, it was reported, were intended to form an "Alternative Queen's Speech." The [Second Reading debate](#) was on 17 January 2014. The then DWP Minister, Mike Penning, said that the Government could not support the Bill as it would breach EU law. The Bill was defeated by 30 votes to 5 at Second Reading.

Labour, the Conservatives and, most recently, the Deputy Prime Minister, have all signalled their support for further measures to limit access to benefits for EU migrants, on top of those already introduced by the Government in the past twelve months.

The following Library briefings give further information relevant to the wider debate about access to benefits for EU migrants:

SN06847, [People from abroad: what benefits can they claim?](#)

SN06889, [Measures to limit migrants' access to benefits](#)

SN06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#)

SN06955, [Statistics on migrants and benefits](#)

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1 The current Bill

The [Benefit Entitlement \(Restriction\) Bill 2014-15](#)¹ was presented by Christopher Chope and had its First Reading on 7 July.

The long title states that the purpose of the Bill is “to make provision to restrict the entitlement of non-UK citizens from the European Union and the European Economic Area to taxpayer-funded benefits.”

The Bill was supported by Philip Hollobone, Mr Peter Bone, David Nuttall, Philip Davies, Douglas Carswell, Julian Lewis, Adam Afriyie and Mr Stewart Jackson.

Its provisions include:

- No National Insurance number is to be issued unless the applicant provides a “declaration of nationality.”
- No application for a “taxpayer-funded benefit” shall be made unless the applicant provides a “declaration of nationality.”
- “Notwithstanding the provisions of the European Communities Act 1972,” no non-UK EU or EEA citizen is to be eligible for housing benefit or council tax benefit² in England and Wales unless they are a spouse or dependant of a UK national.
- “Notwithstanding the provisions of the European Communities Act 1972,” no UK taxpayer-funded benefit is to be payable to an EU/EEA citizen at a rate in excess of the equivalent benefit in their home country.
- “Notwithstanding the provisions of the European Communities Act 1972,” no UK taxpayer-funded benefit is to be payable to an EU/EEA citizen unless entitlement arises from payment of “insurance-based contributions” by the claimant. Contributions must have been paid for at least two years, and the period for which benefits are paid must not exceed six months in any two years
- A new duty on the Government to collect and publish information on the number of non-UK EU/EEA citizens in receipt of taxpayer-funded benefits and their cost.

At the time of writing, no *Explanatory Notes* had been published to accompany the Bill.

2 The Benefit Entitlement (Restriction) Bill 2013-14

The [Benefit Entitlement \(Restriction\) Bill 2013-14](#)³ was a Private Member’s Bill which had its First Reading on 24 June 2013. The Bill was presented by Christopher Chope, and was supported by the same group of MPs as the current Bill. It was not one of the top 20 balloted bills in the last session. It is one of around 40 bills tabled *en bloc* in June 2013 by a group of Conservative MPs which, it was reported, taken together were intended to form an “Alternative Queen’s Speech.” According to *The Telegraph*, Peter Bone, one of the leading Members of this group, described the raft of Bills as a-

¹ [Bill 62 of Session 2014-15](#)

² Council Tax Benefit was in fact abolished with effect from April 2013

³ [Bill 62 of Session 2013-14](#)

...serious attempt to deliver policies that the British public really want. There are ideas here that could form the basis of a future Conservative manifesto.

Further background can be found in a *Telegraph* article of 20 June 2013, "[Conservative MPs launch attempt to bring back death penalty, privatise the BBC and ban burka.](#)"

The full list of Bills can be found in an article at the conservativehome website.⁴

The long title was the same as the current Bill's - "to make provision to restrict the entitlement of non-UK citizens from the European Union and the European Economic Area to taxpayer-funded benefits." The Bill was similar – but not identical – to the current Bill. The current Bill contains more explicit provisions regarding National Insurance contribution requirements, and the collection and publication of information on benefit receipt by non-UK EU/EEA citizens. No *Explanatory Notes* were produced for the Bill.

The Second Reading debate on the 2013-14 Bill was on 17 January 2014.⁵

Introducing the Bill, Mr Chope referred to the provisions restricting entitlement to benefits "Notwithstanding the provisions of the European Communities Act 1972." He continued:

In other words, the Bill would ensure that we were able to decide these things for ourselves, as a sovereign legislature, and override European Union law. My hon. Friend's point was, in a sense, echoed by the Secretary of State for Work and Pensions in an article in *The Sunday Times* to which I referred earlier. It states that he

"added that reforming benefits was part of a wider move towards no longer automatically accepting rulings from the European Commission and courts."

He welcomed the comments by Lord Judge, the former lord chief justice, that 'we shouldn't always assume straight away that anything that comes legally out of Europe we have to impose' and said he was optimistic that there was the 'beginning of a twitch with the Supreme Court'.

My Bill is designed to go a bit further than a twitch; it is designed to ensure that we change our law. If we suffer infraction proceedings in the European Court of Justice, one thing is certain: they are unlikely to reach a conclusion until you and I are in our dotage, Madam Deputy Speaker. The ECJ involves a very long-winded process, and because it is so long-winded, the French Government, for example, will deliberately defy EU law in the knowledge that any sanctions arising from their defiance will not be apparent until many, many years later.⁶

Later in his speech, Mr Chope said:

I will not address in great detail the way in which European Union law has evolved, but I hope that my hon. Friend the Minister will answer some of the questions I asked in the debate on 5 June 2013 that were never answered. I asked:

"Does the Minister agree with the basic proposition that if someone from another European country decides to move to the United Kingdom, they should not expect to receive taxpayer-funded assistance for their housing, health care, education or living expenses?"—[*Official Report*, 5 June 2013; Vol. 563, c. 256WH.]

⁴ Mark Wallace, *The Alternative Queen's Speech – the full list of 40 rebel Bills*, 21 June 2013

⁵ [HC Deb 17 January 2014 cc1138-1158](#)

⁶ [Ibid cc1141-1142](#)

If the answer is that the Minister does not agree, let us have it on the record. It is no good ducking these questions. If a non-British EU national cannot afford to live in the United Kingdom without recourse to taxpayer-funded services, should not that person return to his own EU country rather than relying on UK taxpayer handouts? If the Government do not agree with that they should say so and then we can have a proper debate...

[...]

In essence, what happened was that we joined the European Economic Community, the fundamentals of which include freedom of movement, but over a period of time freedom of movement has been extended by treaty, directive, regulation and case law into areas that nobody could ever have contemplated. None of those extensions was discussed with the British people and hardly any of them were discussed with our Parliament.⁷

Mr Chope concluded his speech:

Even if the Bill does not become law in this Session of Parliament, I hope that it will form a core part of the Conservative party manifesto at the next general election, because I am sure that its contents really accord with the wishes of the British people, as exemplified in any number of opinion polls.⁸

For the Opposition, Stephen Timms said that the Bill was, “of course, directly incompatible with our membership of the European Union.”⁹ He also pointed out that “one puzzling aspect” of the Bill was that people from outside Europe would continue to be able to claim benefits, while EU citizens – including those who had lived in the UK for many years – would not. Mr Timms also raised the issue of how the UK – and the National Health Service – would cope if other EU Member States adopted similar measures and as a result large numbers of retired UK citizens living abroad decided to return home. He added:

There are, of course, perfectly justified reasons for concern about how the benefits system works in respect of European countries. We certainly agree that the Government should act now to deal with the exploitation of migrant workers from the EU and provide apprenticeships and training for unemployed young people targeted specifically at sectors recruiting from abroad. It is also perfectly appropriate to make sensible changes to the rules for jobseeker’s allowance, so that it is clear that people should not simply claim benefits on arrival, but contribute first. We also support reforms at EU level so that family benefits, such as child tax credit and child benefit, are not sent abroad.¹⁰

Mr Timms concluded:

The benefits system needs to be fair, and to be seen to be fair. Over many decades, people have come from European countries to Britain and made a huge contribution to our economy and our society. There are quite a number of EU citizens working here in the Palace of Westminster, and it would be absolutely wrong suddenly to place them at a drastic disadvantage, relative to other workers, whether UK citizens or citizens of

⁷ Ibid cc1145-1146

⁸ Ibid c1147

⁹ Ibid c1152

¹⁰ Ibid c1154

non-European countries, such as China and India, who would not be affected by the Bill. For all those reasons, we firmly oppose the Bill.¹¹

For the Government, the then DWP Minister Mike Penning explained:

As the shadow Minister and several colleagues alluded to, I am trapped, not so much, interestingly, by our membership of the EU, but by the interpretation of that membership by the courts over the years, which has extended the powers of unelected bodies over this country and this House. I am also slightly restricted in that, if I, as a Minister of the Crown, have legal advice that the Bill would be a breach for which I could be infracted, I am required, as the shadow Minister will know, being a former Minister, not to get the Government into that position. The ministerial code prevents me from doing that.

The Government will, therefore, be opposing the Bill today.¹²

He went on to outline what the Government was doing to limit access to benefits for EEA migrants, including the requirement that people coming to the UK to look for work wait 12 weeks before they can claim Jobseeker's Allowance. The Minister ended his speech-

We are working closely, too, on making changes to the legal framework at the EU level, particularly in respect of family benefits for children who are not resident in this country. We think—and I think hon. Members would agree with me—that child benefit and child tax credit should not be paid to non-EU member families that are not resident in this country; we need to work on changing that.

The key issue is whether the scope of the Bill is such that the Government could support it. I am afraid that it is not. We sympathise with much of the intention—and so would my constituents—but as we run into the next election and the referendum, the Prime Minister will be participating in attempts to renegotiate our position to give this Parliament the sort of control over benefits and other issues that we would expect. Sadly, on behalf of the Government, I cannot support the Bill today.¹³

Mr Chope responded:

That is both a surprise and a disappointment, although I am grateful to the Minister for saying that he agrees with a lot of the ideas behind the Bill. He says, in effect, that his hands are tied, he cannot do anything about it and we need to renegotiate these issues. My concern is that there does not seem to be any evidence that we will be able to command a majority in the European Union to renegotiate along the lines that we seek. When I asked the Prime Minister whether this issue would be one on which we would be renegotiating, my question was passed to the Foreign Office and it replied by setting out priorities for renegotiation that did not include anything to do with the subject matter of the Bill. I hope that my hon. Friend the Minister has therefore been announcing new Government policy today in saying that this subject will be right at the forefront of our renegotiation of our terms of engagement with the European Union. If that is so, I have not been putting forward this Bill and arguing in vain.¹⁴

The motion that the Bill be read a second time was defeated by 30 votes to 5.

¹¹ Ibid

¹² Ibid c1155

¹³ Ibid c1156

¹⁴ Ibid cc1156-1157

3 Measures already introduced to limit migrants' access to benefits

Following an article by the Prime Minister's in the *Financial Times* on 27 November 2013 in which he said he shared concerns about the impact of lifting transitional restrictions on the rights of Romanian and Bulgarian nationals to work in the UK from 1 January 2014, the Government has introduced a raft of measures "to tighten up our EEA migration rules to ensure our welfare system is not taken advantage of."¹⁵ They include:

- From December 2013, a "stronger, more robust" Habitual Residence Test for those claiming means-tested benefits.
- From 1 January 2014, people coming to the UK must have been living in the UK for three months before they can claim income-based Jobseeker's Allowance.
- EEA jobseekers or former workers would have to show that they had a "genuine prospect of finding work" to continue to get JSA after six months (and if applicable, Housing Benefit, Child Benefit and Child Tax Credit). From 10 November, for those with a right to reside as a jobseeker the test will be applied after three months on JSA.
- From 1 March 2014, a new minimum earnings threshold to help determine whether an EEA national is or was in "genuine and effective" work, and so has a "right to reside" as a worker or self-employed person (and with it, entitlement to benefits).
- From 1 April 2014 new EEA jobseekers have been prevented from accessing Housing Benefits even if they are in receipt of JSA.
- From 1 July 2014, new jobseekers arriving in the UK would need to have lived here for three months in order to claim Child Benefit and Child Tax Credit.

Further information on the changes, and on their impact, is given in Library briefing SN06889, [Measures to limit migrants' access to benefits](#) (21 November 2014). The note also looks at the prospects for further measures restricting access to benefits for EEA migrants.

4 The Dano case

On 11 November the Court of Justice of the European Union (CJEU) delivered its judgment in the *Dano* case.¹⁶ The Court found that the Jobcenter in Leipzig, Germany, had not acted contrary to EU law when refusing to grant certain welfare benefits to a Romanian national, Elisabeta Dano, and her son Florin. Ms Dano had attended school in Romania for only three years, and had not obtained any leaving certificate. She had only a basic understanding of German. She had no training in any profession, and had never worked in Romania. She did not enter Germany in order to work, had not done any work since arriving, and was not looking for work.

The Court ruled that for the purposes of accessing certain social benefits, EU migrants could only claim equal treatment with nationals of the host Member State if their residence

¹⁵ David Cameron, "Free movement within Europe needs to be less free", *Financial Times*, 27 November 2013

¹⁶ [Case C-333/13](#); see also the Court's press release, "[Economically inactive EU citizens who go to another Member State solely in order to obtain social assistance may be excluded from certain social benefits](#)"

complied with the conditions in the Free Movement Directive (2004/38/EC). Economically inactive persons, the Directive states, have a right of residence if they have “sufficient resources for themselves and their family not to become a burden on the social assistance system of the host Member State.”¹⁷

The Court found that Ms Dano and her son did not have sufficient resources of their own and couldn't therefore claim a right of residence in Germany. Consequently, they could not invoke the principle of non-discrimination to gain access to benefits. The Court's judgement states:

A Member State must therefore have the possibility ...of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence.¹⁸

The judgment has been widely welcomed as a clear statement that Member States can take action to tackle “benefits tourism.” The Prime Minister has described the decision as “simple common sense.”¹⁹ The full significance of the judgment is not yet clear, but some commentators have suggested that it indicates that the Court is taking greater notice of wider political debates about free movement. It has also been suggested that while the judgment gives Member States powers to deal with more obvious cases of “benefits tourism” – where migrants have no connection with the labour market, are not looking for work, and have moved from one country to another solely in order to claim benefits – it does not necessarily give Member States the further scope to limit access to benefits in other situations, e.g. where migrants are in work or looking for work.

Further analysis of the *Dano* case can be found in the following commentaries:

Steve Peers, [Benefit Tourism by EU citizens: the CJEU just says No](#), EU Law Analysis blog, 11 November 2014

Daniel Thym, [EU Free Movement as a Legal Construction – not as Social Imagination](#), eutopia law blog, 13 November 2014

Iyiola Solanke, [The End of Free Movement of persons? The CJEU Decision in Dano](#), eutopia law blog, 13 November 2014

Michael Emerson, [The Dano case – Or time for the UK to digest realities about the balance of competences between the EU and national levels](#), CEPS Commentary, 14 November 2014

Desmond Rutledge, [Dano and the exclusion of inactive EU citizens from certain non-contributory social benefits](#), blog at www.freemovement.org.uk, 19 November 2014

¹⁷ Article 7(1)(b)

¹⁸ C-333/13, para 78

¹⁹ “EU 'benefit tourism' court ruling is common sense, says Cameron,” BBC News, 11 November 2014

5 Parties' positions

5.1 Labour

The Shadow Secretary of State for Work and Pensions, Rachel Reeves, announced a “credible three point plan” for further limits on access to benefits for EU migrants in an article for *MailOnline* on 18 November:²⁰

- “extend the period that EU jobseekers need to live and support themselves in the UK before claiming out-of-work benefits from three months to two years.”
- Action on in-work benefits including tax credits, to tackle the problem whereby some employers in Britain “undercut wages and working conditions by recruiting temporary workers from elsewhere in Europe on very low pay and with no job security, knowing that the benefit system will top up their income.” It is not clear whether the proposals would limit access to in-work benefits for all migrants, or only those on short-term contracts. Ms Reeves said that while some had said it would not be possible to negotiate changes to benefits for people in work, she was “determined to look at how we can deliver reform in this area too.”
- “work with European countries to end the absurdity of child benefit and child tax credits being claimed for children living in other countries.”

5.2 Liberal Democrats

The Deputy Prime Minister, Nick Clegg, announced proposals for further restrictions on EU migrants access to benefits in an opinion piece in the *Financial Times* on 26 November.²¹ He said that Britain should-

- “work with other states to stop EU migrants from claiming child benefit for children who are not living here. As a first step, we should pay the same rate as the country in which those children reside.”
- “make sure that only migrants who have worked and contributed can receive [Universal Credit]. New jobseekers should not be eligible.”
- “look at increasing the earnings threshold for in-work benefits such as tax credits. EU migrants could, for example, be required to work the equivalent of full-time hours on the minimum wage in order to qualify.”

5.3 Conservatives

The Conservative Party has not yet announced detailed proposals regarding further restrictions to EU migrants' access to benefits. It is expected that any such proposals will be announced in the Prime Minister's forthcoming speech on immigration. Media reports suggest that Ministers have been looking at ways of limiting access to both out of work and

²⁰ “[Labour to ban jobless EU migrants from claiming benefits for TWO YEARS under plan to curb welfare tourism](#),” *MailOnline*, 18 November 2014; see also “[Labour will curb tax credits for EU migrants, says Rachel Reeves](#),” *Guardian*, 19 November 2014

²¹ Nick Clegg, “How to tackle immigration without risking prosperity,” *Financial Times*, 26 November 2014; see also “[Clegg backs migrant benefit curbs](#),” *Financial Times*, 26 November 2014

in-work benefits.²² The Prime Minister has also made it clear that he wants to reach agreement with other EU Member States to allow the UK to withhold child benefits for children living in other EEA countries.²³

With regard to Universal Credit, the Secretary of State for Work and Pensions, Iain Duncan Smith, said to the House on 25 November:

On migrants, we have already made it clear that universal credit is a different type of benefit, so people who come here and are out of work will not be able to claim it as a benefit. The issue of how migrant workers can claim in-work support will be negotiated. We are clear that, under universal credit, family benefits will not be paid to people who are not accompanied by their family, so we will secure such claims, thus cutting costs. On fraud, the automatic processes that check what people are earning and whether they are in work mean that we will cut down on all the fraud related to tax credits.²⁴

It would appear that the Government will seek to argue that, for the purposes of EU law, Universal Credit is a “social assistance” benefit, and as such EEA jobseekers can be denied it.²⁵ However, the Court of Justice of the European Union has held that benefits “of a financial nature intended to facilitate access to employment in the labour market of a Member State” cannot be regarded as “social assistance” and should be granted to a person who has a “genuine link” with the employment market of the host Member State.²⁶

6 Selected articles, reports and comment

HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union: Single Market: Free Movement of Persons](#), July 2014

Open Europe, [“New Open Europe briefing: EU migration - How David Cameron can get back on the front foot at home and in Europe without ending free movement,”](#) press release, 24 November 2014

Open Europe, [EU free movement: make it fair to keep it free](#), 24 November 2014

Steve Peers, [Amending EU free movement law: What are the legal limits?](#), EU Law Analysis blog, 24 November 2014

²² See for example [“Tories vow to slash £100m a week migrant tax credits: New pledge as Cameron says it's time to give EU one last go,”](#) *Daily Mail*, 16 October 2014; [“Unemployed foreigners will be barred from claiming benefits, Iain Duncan Smith announces,”](#) *Telegraph*, 22 October 2014; [“Tories plan to deny EU migrants out-of-work benefits under universal credit,”](#) *Guardian*, 6 November 2014; [“PM: I'll ban benefits for EU migrants,”](#) *Sunday Times*, 23 November 2014

²³ See section 5 of Library briefing SN06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#)

²⁴ HC Deb 25 November 2014 c789

²⁵ See section 6 of Library briefing SN06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#); and [“Tories plan to deny EU migrants out-of-work benefits under universal credit,”](#) *Guardian*, 6 November 2014

²⁶ Cases [C-22/08 - Vatsouras and Koupatantze](#); see also p7 of Library briefing SN06889, [Measures to limit migrants' access to benefits](#)