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BRIEFING

FREEDOM OF MOVEMENT AND WELFARE

Marley Morris

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Institute for Public Policy Research

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IPPR
4th Floor
14 Buckingham Street
London WC2N 6DF
T: +44 (0)20 7470 6100
E: info@ippr.org
www.ippr.org
Registered charity no. 800065

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SMART IDEAS
for CHANGE

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ABOUT THE AUTHORS

Marley Morris is a research fellow at IPPR.

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SUMMARY

The government has said that reforming welfare for EU migrants is an 'absolute requirement' in its EU renegotiations. The prime minister has said he wants to restrict child benefit and tax credits for EU migrants until they have lived and contributed in the UK for at least four years. This briefing explains why the government is highly unlikely to secure agreement from other EU leaders on that proposal, and outlines an alternative proposal for reform that is fairer and more plausible.[1]

Our proposal is that the prime minister should use the renegotiations to change EU legislation in order to:

- Ensure that EU migrant jobseekers only gain access to non-contributory unemployment benefits after having recently worked in the UK.
- Ensure that EU migrant jobseekers must work for three years in the UK to receive the same access to non-contributory benefits as UK nationals if they become unemployed.
- Extend the exportability of unemployment benefits so that EU migrants can claim unemployment benefit from the country where they became unemployed for a minimum of six months.

In practice, this would create a 'sliding scale' of access to benefits such as income-based jobseeker's allowance:

- **EU migrants seeking a job in the UK for the first time would have no access to income-based jobseeker's allowance, but would be able to export unemployment benefits from their former country of work for a minimum of six months.** Currently after three months of residence they have at least three months' access to income-based jobseeker's allowance, provided they pass the habitual residence test.
- **EU migrants who become involuntarily unemployed after working in the UK for less than three years would have three months' access to income-based jobseeker's allowance.** Currently they typically have six months' access, with the possibility of a short extension.
- **EU migrants who become involuntarily unemployed after working in the UK for three or more years would have the same access to income-based jobseeker's allowance as UK nationals, with no time restrictions.** Currently they typically have six months' access, with the possibility of a short extension.

1 See appendix 1 for a Q&A on our proposals, and appendix 2 for a summary of the implications of these proposals for income-based JSA, housing benefit and universal credit

1.
THREE TESTS OF THE UK GOVERNMENT'S PROPOSALS

As the December summit of the European Council approaches, the government is faced with a daunting predicament. EU leaders have expressed their frustration with the lack of clarity on the reforms the British government wants to secure. The British prime minister has promised to write a letter to European Council president Donald Tusk setting out his proposals in early November (Traynor 2015). But on free movement, the area of greatest public concern, there is a significant gap between the arrangement the British would prefer and a deal that EU leaders will agree to.

The prime minister has stated that reforming EU migrants' access to welfare is an 'absolute requirement' for the UK's renegotiations with the EU (Morris 2015), but its current plans are struggling to secure support from other EU leaders. This paper investigates how the government might be able to secure a feasible agreement with EU leaders that addresses public concerns in the fairest way possible.

Three tests: legality, public support and fairness

In order to ensure a successful renegotiation, the government's proposals for EU reform need to pass three tests.

- **Legal feasibility:** First, they need to be achievable without revisions of central tenets of the EU treaties. If they fail this test, then they will be rejected by other EU member states and fall at the first hurdle.
- **Accordance with public opinion:** Second, they should be targeted to secure public support and address concerns about freedom of movement. Without this, they are likely to be dismissed by the public.
- **Fair on EU migrants:** Third, the proposals need to have a principled rationale and be fair to EU migrants – otherwise they will struggle to secure support in the European Council (particularly among leaders from central and eastern European member states) and the European Parliament.

The UK government's proposals on child benefit and tax credits

The prime minister's current proposal on freedom of movement is to limit tax credits and child benefit for EU migrant workers until they have lived and contributed in the UK for four years (Conservative Party 2015).[2] This is the most specific of the EU reform proposals he has outlined in recent months.

However, the prime minister will find it hard to reach agreement with his EU partners on this proposal. The rights of EU workers are enshrined in the EU treaties, so the reform would require treaty change (Peers 2014).[3] This would require agreement from every EU country, including ratification in each of the national parliaments. Even if EU leaders made a binding agreement to include the proposals in future

2 In this paper, we refer to EU migrants for clarity's sake, although we recognise that the proposals apply to migrants from the European Economic Area (EEA).

3 Note in particular article 45(2) of the TFEU (Treaty on the Functioning of the EU), which states that 'freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'. See: http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=celex:12012E/TXT

treaty change, in order to reach a deal before the UK's referendum, this would still require unanimous support from the 27 other member states. As equal treatment of workers is central to the 'four freedoms' of the single market and this proposal appears directly discriminatory, it seems unlikely that the prime minister will secure agreement to make such a change.

At the same time, the proposals appear highly punitive to EU migrants. They restrict benefits for workers who have contributed into the system for any time period less than four years. This is a more stringent policy than the three-year ban indicated as the preferred option by the public (Ford and Heath 2014). Unsurprisingly, the reforms have caused considerable hostility to the plans across Europe, even among potential allies such as the Law and Justice party, which has just taken office in Poland (Swidlicki 2015). This proposal therefore fails the first and third of our tests for a successful renegotiation.

On the other hand, there have been indications that the government could tie the rules restricting child benefit and tax credits to residency rather than nationality (Sparrow 2015). This might avoid the discrimination charge, although it is likely to still be considered to be indirect discrimination by the Court of Justice of the European Union (CJEU), as it would affect EU migrants far more severely than UK nationals.

But in any case it would be a Pyrrhic victory, as the four-year ban would be likely to mean cuts to child benefit and tax credits for returning UK nationals and 18–22-year-olds too (albeit that this would be in line with the government's broader approach to reducing the welfare bill). On the one hand, to make such a change would not require agreement with other EU member states, because (assuming it is judged to be non-discriminatory) it is within the scope of the current rules – but, on the other, it is therefore liable to be seen as a sign of the prime minister's failure to secure significant concessions from his EU partners. This alternative would therefore struggle to pass our second test in terms of securing public support: even if the public were satisfied with the restrictions on tax credits for UK nationals, these changes would be difficult to present as being part of a successful renegotiation of EU rules.

The government therefore has little room for manoeuvre. This is all the more problematic since the extent to which EU migrants can access the British welfare system is, in truth, a minor issue within the broader context of the UK's membership of the EU. EU migrants tend to make less use of the welfare system than UK nationals (although it is true that they are slightly more likely to receive tax credits, as they tend to be in low-paid work) (McInnes 2014). And the evidence suggests that the scale of 'benefit tourism' – that is, EU migrants moving to the UK primarily to access the welfare system – is negligible (ICF GHK 2013). Given that other areas of policy have far more widespread impacts on UK citizens, it would be a major missed opportunity for the government if the renegotiations were to focus simply on which benefits EU migrants have access to in the UK.

The government therefore needs to put this issue to rest. Given the prime minister's public commitment to changing the rules on benefits for EU migrants, we aim to outline here a set of proposals that represent the fairest, most plausible way this can be realised through the UK's renegotiation with the rest of the EU.

2.
ALTERNATIVE PROPOSALS FOR BENEFIT REFORMS

A sensible way forward for the government would be to centre its renegotiation efforts on benefits for unemployed EU migrants and scale back its focus on child benefit and tax credits. While the Conservatives did pledge in their manifesto to restrict unemployment benefits for EU migrants, they have not yet set out a feasible agenda for reform in this area. Here we outline a strategy that seems plausible in light of recent rulings by the CJEU.

The EU rules on benefits for EU jobseekers

The current system of out-of-work benefits is complex. EU law allows EU migrants to access benefits if they have a 'right to reside' in a host member state. The main ways EU migrants have a right to reside are through being workers, being self-employed, being students, being financially self-sufficient, being a jobseeker (if they can show that they are looking for a job and have a 'genuine chance of being engaged'), having permanent residence, or being a family member of someone else who has a right to reside (Kennedy 2011).

The 2004 Free Movement of Citizens Directive places certain limits on the welfare entitlements of EU migrants, particularly those with a right to reside as a jobseeker. It indicates that 'social assistance' benefits may be restricted for an EU migrant's first three months in a host member state if they are not workers or self-employed or their family members. It also says that these benefits may be restricted for a longer period than three months for EU migrant jobseekers. There is no precise definition of what constitutes 'social assistance', but typically this refers to non-contributory benefits that provide minimum subsistence costs necessary for a life in keeping with human dignity. CJEU case law notes that benefits of a financial nature intended to 'facilitate access to the labour market' do not constitute social assistance. A member state can only restrict EU jobseekers' access to these benefits if they do not have a 'real link' with the employment market (Poptcheva 2014). There is no clear definition of benefits that 'facilitate access to the labour market', but case law suggests that the UK income-based jobseeker's allowance is a benefit of that type rather than social assistance, and therefore it cannot be restricted as long as a 'real link' with the labour market can be established (CJEU 2014).

The law is different for EU migrants who lose their job after working in their host state. These migrants make up 63 per cent of EU jobseekers in the UK, according to analysis of EU Labour Force Survey data from 2011 (ICF GHK 2013: 172). Under current EU law,[4] EU migrants who work in another EU member state and then involuntarily lose their job are able to retain their status as workers. This means they have a right to equal treatment and so have the same access to out-of-work benefits as nationals.

Specifically, the law states that EU migrants who work in their host state for more than a year and then become involuntarily unemployed retain their worker status. EU migrants who become involuntarily unemployed after working in their host state

4 Article 7(3) of Directive 2004/38 – see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF

for less than a year can also retain their worker status, but this can be capped at six months after becoming unemployed. (They also retain worker status if they are unable to work due to illness or accident or if they take up vocational training in certain circumstances.)

The UK's rules on benefits for EU jobseekers

How does all this translate into the UK's rules on benefits for EU jobseekers? Here we focus on two types of benefit: income-based jobseeker's allowance (JSA)[5] and housing benefit. According to the current legislation – much of it down to changes in 2014 – EU jobseekers are barred from income-based JSA for their first three months in the UK. After three months, they may access income-based JSA if they pass the habitual residence test (including the right to reside test), which assesses whether the claimant actually resides in the UK and intends to stay. After six months, they have to pass a further 'genuine prospect of work' test, which requires compelling evidence that they are continuing to look for work and have a genuine chance of being engaged (Kennedy 2015).

Recent UK legislation has also barred EU jobseekers from accessing housing benefit completely (unless they have worker status). It has been argued that some of these policies contravene EU law on freedom of movement (Krishna 2014). However, recent CJEU judgments and opinions suggest that the government is in a strong position to defend itself from such challenges (see for example CJEU 2015b).

UK legislation also places restrictions on access to benefits for EU migrants who have previously worked in the UK. Former workers who become involuntarily unemployed must show that they are 'seeking employment and have a genuine chance of being engaged' in order to retain their worker status. If they have worked in the UK for less than a year, then they only retain their worker status and claim income-based JSA and housing benefit for a maximum of six months; after that they lose access, although they may be able to continue to claim income-based JSA (but not housing benefit) if they pass the 'genuine prospect of work' test. If they have worked in the UK for longer than a year, then, after becoming involuntarily unemployed, in order to retain their worker status for more than six months and continue claiming both these benefits, they must pass the 'genuine prospect of work' test (Kennedy 2015).

The current UK rules appear to be in conflict with EU legislation. As discussed above, the 2004 Free Movement of Citizens Directive places no limit on the length of time that former workers retain worker status, so long as they have worked in the host state for more than a year. The current UK rules appear to partially disregard this part of the legislation, and so risk being overturned (Williams 2015).

The current system for out-of-work benefits for EU migrants in the UK, therefore, is highly complex, lacks public support, and in some aspects is apparently in direct conflict with current EU legislation. If the prime minister wants to focus on a crucial point of renegotiation on welfare and freedom of movement, this should be it.

Our proposals for reform to EU legislation

We propose three main reforms to EU legislation.[6] First, the prime minister should negotiate with his partners to clarify EU legislation on 'social assistance' and 'labour market' benefits for EU migrant jobseekers. As explained above, income-based JSA is interpreted by the CJEU as a benefit that 'facilitates access to the labour market' and so can only be restricted for EU jobseekers that fail to have a 'real link' with the

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5 This should be distinguished from *contribution-based* JSA, which is dependent on paying enough class-1 national insurance contributions and is governed by different rules.

6 See appendix 1 for a Q&A on our proposals, and appendix 2 for a summary of the implications of these proposals for income-based JSA, housing benefit and universal credit.

employment market. Therefore, in his renegotiation talks the prime minister should ask for a legislative provision to specify that **a 'real link' with the employment market requires having recently worked in the member state in question**. This would enable the UK to have more flexibility in restricting income-based JSA for EU migrants who are seeking a job in the UK for the first time.

Second, to ensure that EU migrants have contributed a reasonable amount before they have the same access to non-contributory benefits as UK nationals if they become unemployed, we propose that the prime minister recommends that **the qualifying period for retaining worker status should be increased from one year to three years**. The three years should not be required to be continuous.

Third, the prime minister could then make the case for **immediately (rather than after six months) removing the worker status of people who are made involuntarily unemployed after working in their host member state for less than three years**, so that they are treated as EU jobseekers (rather than EU workers) after they lose their job.[7]

This would mean that EU migrants who work in the UK for less than three years and who become involuntarily unemployed would lose their worker status (unless they were unable to work through illness or accident). They would therefore not have the same access to benefits as UK nationals.

In practice, the impacts of these changes may depend on the exact benefits in question. Below we outline how the government could use these changes to the EU rules to adapt UK legislation for three different types of benefits: income-based JSA, housing benefit and universal credit.

Adaptations to UK legislation

Income-based jobseeker's allowance

The rules currently state that after three months in the UK a first-time EU jobseeker can access income-based JSA, provided they pass the habitual residence test. Then, after three months of claims, they have to pass the 'genuine prospect of work' test in order to continue to claim.

The changes we suggest would mean that first-time EU migrant jobseekers would have no access to income-based JSA. But they would have access to unemployment benefits from the member state where they became unemployed (see below for more details on exportability).

EU migrants who become involuntarily unemployed after working in the UK for less than three years would lose their worker status immediately, rather than after six months. For their first three months of unemployment – that is, for a reasonable time period during which they could count as having a 'real link' to the labour market by virtue of their recent employment – they would have access to income-based JSA, provided they passed the habitual residence test. (They may have access to contribution-based JSA if they have paid sufficient national insurance contributions and social security contributions in their former member states.) After three months of unemployment, they would lose their 'real link' to the employment market as they would have no longer been recently in work in the UK. This would mean they would no longer have access to income-based JSA.

7 These rules would apply only to EU migrants who have a right to reside as a jobseeker. Someone who is jobseeking but who has a right to reside on another basis – for example, through permanent residence (based on five years of continuous legal residence) or through a family member with worker status – would not be affected.

On the other hand, EU migrants who become unemployed after working in the UK for more than three years would retain their worker status and so have full access to income-based JSA with no time restrictions.

Housing benefit

The rules currently state that EU migrant jobseekers have no access to housing benefit. On the other hand, former workers who lose their job involuntarily can claim housing benefit for at least six months. The proposed changes would mean that former workers who have worked in the UK for less than three years would lose their worker status immediately after becoming unemployed. This would mean that the UK would be under no obligation to provide access to housing benefit if an EU migrant worker loses their job.

However, to support EU migrant workers who work on temporary contracts and who would be at risk of homelessness if they lost their housing benefit immediately after becoming involuntarily unemployed, the government should grant access to housing benefit to former workers for the first three months of unemployment (provided they pass the habitual residence test).

For those EU migrants who become involuntarily unemployed after working in the UK for more than three years, access to housing benefit (as with other out-of-work benefits) would be protected.

Universal credit

Universal credit, the new means-tested benefit combining a number of existing benefits, is currently being rolled out. According to the government, EU jobseekers will have no access to universal credit. The government argues that this is legal on the basis that universal credit will count as a form of 'social assistance' benefit, which under EU law can be restricted for EU jobseekers. This could face legal challenges (Peers 2014).

A fairer approach would be to follow the model outlined above for income-based JSA and housing benefit. That is, first-time jobseekers would have no access to the basic allowance or the housing element of universal credit; former workers would have three months' access by virtue of their 'real link' with the employment market; and former workers who have worked in the UK for more than three years would have full access.[8]

Exportability of benefits

Finally, we recommend that the government renegotiates the rules on the exportability of benefits. The current rules state that EU jobseekers who move to another country can export unemployment benefits from the country where they became unemployed for a minimum of three months after they have arrived in their host country. Some member states also grant three-month extensions on the portability of unemployment benefits.

In order to make the claim, the claimant must have registered as a jobseeker in their former country (for at least four weeks) and their new host country (within seven days of arriving); have filled out the appropriate paperwork; and have passed all the relevant tests in their new host country, as if they were applying for unemployment benefit there. If they pass these requirements, they are able to claim unemployment benefits from their former country of work at the same rate as they were receiving previously.[9]

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8 They should, however, have full access to the 'child element' of universal credit as long as they have a right to reside as a jobseeker, in line with the current rules for child benefit and child tax credit.

9 Certain types of non-contributory benefits – known as special non-contributory benefits (SNCBs) – are generally not exportable. In the UK, income-based JSA is an SNCB and so is not exportable; on the other hand, contribution-based JSA is not an SNCB and is exportable.

The prime minister should negotiate to **extend the exportability of unemployment benefits for EU jobseekers so that they are able to export these benefits for a minimum of six months**. All member states would then have to offer exportability of unemployment benefits for at least six months, with the option of extending coverage for a further six months. This would provide an additional support system for EU jobseekers seeking work in another member state and create a balanced package with which the prime minister might convince other EU leaders of the fairness of his plans.

3.
THREE TESTS FOR OUR ALTERNATIVE PROPOSALS

How do these proposals fare on the three tests we outlined in chapter 1? Our three tests evaluate the proposals on the grounds of legal feasibility, public support and fairness for EU migrants.

Legal feasibility

First, while there is an inherent lack of clarity on the legal status of these reforms (given recent shifts by the CJEU and differing opinions among legal experts), there are grounds for thinking that these proposals could be implemented through secondary EU legislation – that is, without treaty change.

As the EU legal professor Steve Peers has indicated, the recent *Alimanovic* judgment (CJEU 2015a) suggests that changes to the rules on benefits for former workers could be made via amending secondary law (Peers 2015).[10] Some may question whether removing worker status *immediately* for former workers who become involuntarily unemployed after working for less than three years in their host state would conflict with the treaties (and in particular the principle of proportionality), but the prime minister should have scope to find a compromise on this point through his renegotiations.

Clarifying the definition of a 'real link' to the employment market may be at risk of being overturned by the CJEU, as it conflicts with previous case law (such as *Collins*), but given the tenor of recent court judgments this proposed modification may well be deemed to be a reasonable one. Extending exportability would not conflict with the EU treaties, as the principle of exportability is already incorporated into EU law.

This means that these reforms are much more likely to be achievable through changes to secondary legislation than the government's proposals. We have identified two options for amending secondary legislation.

- First, EU leaders could try to introduce legislation through the Ordinary Legislative Procedure (formerly known as codecision), which would require a qualified majority in the Council of Ministers and agreement from the European Parliament.
- Second, there have been some suggestions that the government might be able to pursue an alternative option to make amendments (Palmeri 2015). One option would be to use a provision in the Lisbon Treaty to introduce legislation through a special legislative procedure.[11] This would only require consultation – rather than agreement – with the European Parliament. Yet

10 If the UK were to implement the proposals we outline here on the basis of changes to EU secondary legislation, it is still possible that the CJEU will consider them illegal under the EU treaties. Previous judgments (for example, *Collins* and *Saint-Prix*) indicate that the court can define worker status, regardless of the provisions laid out in EU secondary legislation, and that the definition of 'worker' should not be too narrowly construed. However, the recent judgments of *Dano* and *Alimanovic* indicate that some benefits can be restricted for EU migrant jobseekers, and that the definition of retained worker status depends on the rules set out in the 2004 Free Movement of Citizens Directive.

11 TFEU, article 21(3).

this may be difficult for the government, as it would also require unanimous agreement in the Council.

In order to secure the changes he needs, the prime minister should therefore initially try to pursue the first legislative option. As part of this approach, he should present his plans to the European Parliament in order to persuade them of the merits of his reforms and gauge the likelihood of those members supporting the changes to secondary legislation.

Public support

IPPR's research on public attitudes to migration indicates that there is majority public support for welcoming migrants who 'work hard, contribute, play by the rules and 'fit in' to British society' (IPPR 2014). Reviewing the evidence on public opinion on migration, the thinktank British Future notes that the 'biggest public concerns about the pressures of immigration concern immigration and welfare' (Katwala et al 2014). Recent polling indicates that scepticism about freedom of movement is underpinned by concerns around contribution and the misuse of the benefit system (Ipsos MORI 2015). In fact, more than half of the public believe that the qualification period for full welfare benefits for EU migrants should be three years or more (Ford and Heath 2014).

At the same time, public attitudes to welfare differ according to the type of benefit in question: evidence from the latest British Social Attitudes survey shows, for instance, that 67 per cent of people place extra spending on pensions as one of their top two spending priorities, compared to only 13 per cent who say the same about benefits for the unemployed (Taylor and Taylor-Gooby 2014). Focussing on access to unemployment benefits for EU migrants would therefore be more in line with public attitudes than restricting child benefit and tax credits for workers, since this would deal directly with public concerns around contribution and 'paying in' to the system.

Fairness

Taken together, these proposals create a 'sliding scale' for EU migrants' access to benefits. First-time jobseekers have no access to non-contributory unemployment benefits, although they can export unemployment benefits from their former country of work. Former workers who have worked in the UK for less than three years have a temporary three-month period of access to housing benefit and out-of-work benefits such as income-based JSA to help them find a job. Finally, former workers who have worked in the UK for three years or more acquire worker status and so the same access to benefits as UK nationals while they look for a job.

The proposals are therefore underpinned by the principle that migrants should contribute to the public finances before claiming certain benefits. These reforms are more likely to be perceived as fair by other EU leaders than the prime minister's proposals, because they would be seen to help tackle elements of 'benefit tourism' and not simply as a means to discriminate against EU workers. For this reason they would be more likely to receive support in member states such as Germany, the Netherlands and Austria, which have voiced concerns that are similar to those of the UK (Blauberger and Schmidt 2015).

At the same time, only 2.5 per cent of those claiming working-age benefits from the Department for Work and Pensions (DWP) were EU nationals at the time they first registered for a UK national insurance number (McInnes 2014). These changes are therefore likely to affect relatively few people. Neither would they bring down immigration from other parts of the EU, because there is little evidence of benefit tourism on a significant scale. At the same time, they would address some of the underlying concerns around contribution that are shared by a majority of the British public.

There is no easy way out for the prime minister on freedom of movement, and the available options for a progressive settlement on welfare are limited. But given the government's decision that welfare reform is an 'absolute requirement' of the renegotiation, the proposals outlined here are the most plausible route he can take to put forward a set of reforms that meet public concerns about contribution, receive backing from other member states, and ensure a principled approach that is fair to EU migrants.

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APPENDIX 1
Q&A

The following appendix outlines some of the objections that could be made to our proposals, and our responses.

Are these proposals too harsh on EU migrants?
The government has already committed to reforming welfare for EU migrants as part of its renegotiation. The proposals here outline the fairest and most politically and legally plausible way this could be done. While some EU migrants will lose out because of these proposals, they are designed so that both first-time jobseekers and former workers have access to some benefits, either through exporting from their former country of work or through access to the UK's welfare system. Jobseekers would still have access to family benefits such as child benefit and child tax credit, disability benefits such as disability living allowance (DLA), and contributory benefits such as contribution-based JSA (although the government has already restricted access to child benefit and child tax credit for an EU migrant's first three months in the UK). EU migrants who lose their job due to illness or accident would still be eligible to claim income-based employment support allowance (ESA) by virtue of their retained worker status. In some instances – in particular for EU migrants who have worked in the UK for at least three years – the proposals offer a more generous settlement than at present, because they provide full access to non-contributory benefits such as income-based JSA without having to pass the 'genuine prospect of work' test after six months of unemployment, reflecting these migrants' contribution to the UK's public finances.

Could expanding the principle of exportability create perverse incentives for UK nationals to move abroad, given they could move abroad to, say, Greece and live at Greek prices while accessing UK unemployment benefits?
This is possible, but is unlikely to take place on a large scale – particularly given that, under the current system, very small numbers (around 1 in 1,000) of unemployed EU nationals are exporting their unemployment benefits (Pacolet and De Wispelaere 2014).

Isn't this just tinkering? Will it make any real difference to numbers? Shouldn't we be focussing on limiting access to in-work benefits instead, given this is a stronger pull factor for EU migrants?
These are not huge changes, but it is likely they would secure public approval. Importantly, they will not be easy to secure and will require difficult negotiations with other countries. At the same time, they seem plausible to achieve, unlike the government's current proposals on child benefit and tax credits. They will not make a substantial difference to the net migration figures, but in all likelihood neither will restricting child benefit and tax credits for EU migrants, since there is little evidence that these benefits are a 'pull factor' (Carrera et al 2015).

Isn't the government already restricting universal credit for EU migrant jobseekers?
It is true that in March 2015 the government announced it was barring universal credit for EU migrant jobseekers. However, this is likely to be subject to legal challenge and so may not be a viable option in the future (Peers 2015). On the other hand, our proposals are designed so that there would be legal scope to limit the jobseeker's component of universal credit.

Moreover, the government's announcement only pertains to EU migrants who have never previously worked in the UK. It does not affect migrants who retain their worker status after working in the UK. Our proposal is therefore broader in scope than the government's current rules.

Why increase the threshold to three years for EU migrants who lose their job? Isn't that arbitrary?

The current system is based on an arbitrary timeframe of one year (and then a qualifying period of five years for permanent residence). Given that at some point there does need to be a cut-off, a time period of three years appears to reflect public attitudes and is in line with the public opinion polling conducted by the British Social Attitudes survey (Ford and Heath 2014).

What if EU migrants have trouble accessing their own country's unemployment benefits from another member state? Is this proposal too administratively complex?

Exportability of benefits is currently a reality – this proposal just suggests that it should be expanded, which should not create too much further complexity. It is true that many do not make use of the system. But these proposals – and their discussion during the renegotiations – could serve as an opportunity for the EU to consider further options to expand the principle of exportability – perhaps to include benefits that are not currently within its scope and to relax some of the rules around processing benefit claims.

Will some countries object that extending the exportability of unemployment benefits increases their benefits bill?

Extending exportability is unlikely to result in a considerable burden on the benefits bill of high-emigration countries, given that currently very few (around 1 in 1,000) of unemployed EU nationals are exporting their unemployment benefits (Pacolet and De Wispelaere 2014).

Can EU migrants who work in the UK and then return to their origin country export their unemployment benefits from the UK? Wouldn't your proposals extend that right?

It would, but it is important to note that only contribution-based JSA – and not income-based JSA – can be exported from the UK to other EU countries. Therefore only migrants who have paid national insurance contributions in the UK would be able to export their benefits (for a limited time period) if they were to leave. To make the rules fairer, the European Commission has also indicated that it is looking into introducing a time period (for instance, three months) for which people have to have lived in their former country of work before being able to export their unemployment benefits (Thyssen 2015).

Can this really all be done without treaty change?

It is true that, because the proposals we have outlined here conflict with some previous case law and secondary legislation, and because they stretch the equal discrimination provisions in article 18 of the TFEU,[12] they are likely to continue to be contested in the courts. However, recent CJEU case law – and the fact that the 2004 Free Movement of Citizens Directive already provides for differential treatment for EU jobseekers – suggests that these changes are considerably more likely to be legally and politically achievable than the government's current proposals on tax credits and child benefit.

12 Which states that: 'Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

APPENDIX 2
SUMMARY OF IPPR PROPOSALS

Table A2.1
IPPR proposals on income-based jobseeker's allowance (JSA)

	First time jobseekers			Former workers		
	Immediately	After 3 months	After 6 months	Immediately	After 3 months	After 6 months
Current system	No JSA (with exportability of unemployment benefits)	JSA if pass HRT (with possibility of exportability)	Limited extension if pass GPOW	JSA if can show genuine chance of being engaged	JSA if can show genuine chance of being engaged	Limited extension if pass GPOW
Our proposal	No JSA (with exportability)	No JSA (with exportability)	No JSA (with possibility of exportability for another six months)	JSA if pass HRT	No JSA	No JSA
	Former workers after working for 1 year			Former workers after working for 3 years		
	Immediately	After 3 months	After 6 months	Immediately	After 3 months	After 6 months
Current system	JSA if can show genuine chance of being engaged	JSA if can show genuine chance of being engaged	Limited extension if pass GPOW	JSA if can show genuine chance of being engaged	JSA if can show genuine chance of being engaged	Limited extension if pass GPOW
Our proposal	JSA if pass HRT	No JSA	No JSA	JSA	JSA	JSA

Notes:
HRT = Habitual residence test (including 'right to reside' test)
GPOW = Genuine prospect of work test
Former workers = EU migrants who become involuntarily unemployed after working in the UK

Table A2.2
IPPR proposals on housing benefit (HB)

	First time jobseekers			Former workers		
	Immediately	After 3 months	After 6 months	Immediately	After 3 months	After 6 months
Current system	No HB	No HB	No HB	HB if can show genuine chance of being engaged	HB if can show genuine chance of being engaged	No HB
Our proposal	No HB	No HB	No HB	HB if pass HRT	No HB	No HB
	Former workers after working for 1 year			Former workers after working for 3 years		
	Immediately	After 3 months	After 6 months	Immediately	After 3 months	After 6 months
Current system	HB if can show genuine chance of being engaged	HB if can show genuine chance of being engaged	Limited extension if pass GPOW	HB if can show genuine chance of being engaged	HB if can show genuine chance of being engaged	Limited extension if pass GPOW
Our proposal	HB if pass HRT	No HB	No HB	HB	HB	HB

Notes:
HRT = Habitual residence test (including 'right to reside' test)
GPOW = Genuine prospect of work test
Former workers = EU migrants who become involuntarily unemployed after working in the UK

Table A2.3
IPPR proposals on universal credit (UC)

	First time jobseekers			Former workers		
	Immediately	**After 3 months**	**After 6 months**	**Immediately**	**After 3 months**	**After 6 months**
Current system	No UC	No UC	No UC	UC if can show genuine chance of being engaged	UC if can show genuine chance of being engaged	No UC
Our proposal	No basic allowance of UC	No basic allowance of UC	No basic allowance of UC	Basic allowance of UC if pass HRT	No basic allowance of UC	No basic allowance of UC
	Former workers after working for 1 year			**Former workers after working for 3 years**		
	Immediately	**After 3 months**	**After 6 months**	**Immediately**	**After 3 months**	**After 6 months**
Current system	UC if can show genuine chance of being engaged	UC if can show genuine chance of being engaged	*Limited extension if pass GPOW**	UC if can show genuine chance of being engaged	UC if can show genuine chance of being engaged	*Limited extension if pass GPOW**
Our proposal	Basic allowance of UC if pass HRT	No basic allowance of UC	No basic allowance of UC	UC	UC	UC

Notes:
* There is no clear guidance on what happens to universal credit claimants in these categories – however, this is the logical consequence of the current rules on retaining worker status and universal credit.
HRT = Habitual residence test (including 'right to reside' test)
GPOW = Genuine prospect of work test
Former workers = EU migrants who become involuntarily unemployed after working in the UK