3 (1)

SECRET

PRIME MINISTER

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

Here at long last is the outcome of the investigation into what we can do to stop "spaghetti scroungers".

The answer is that, as a result of the changes to SB decided last week, we can set a residence eligibility test for the main SB scheme. This should help, provided the European Court don't discover it and rule it out.

The only other resort for the "spaghetti scroungers" would be social aid. Since this would be cash limited, local managers would have an incentive to weed them out.

Policy Unit advice is attached. They recommend accepting the DHSS proposal.

Agree to include a presence test in the legislation reforming the SB scheme?

Yes. I think it should be at least a year's residence

C.D.R.

MG

27 March 1985

E. R.

SECRET 2

27 March 1985

MR POWELL

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

We need to end the blatant abuse whereby our Supplementary Benefit finances foreigners' holidays in the UK. The changes to SB agreed at MISC 111 last week offer a way out. As the DHSS explain in their letter, we can now set a residence test for eligibility to the main SB scheme. Foreigners wanting benefit would have to fall back on the cash-limited social aid scheme, and local managers running it would be suitably hostile to the "spaghetti scroungers".

The DHSS fear that eventually the European Court will find our new arrangements discriminatory. This may be too pessimistic, as the new scheme will be much closer to the local discretionary schemes run on the Continent. If the Court of Justice did find against the new scheme, then UK holidaymakers ought to be able to get benefits from local schemes in France or Italy.

I recommend that you agree with the DHSS proposals.

David Willetts

DAVID WILLETTS

SECRET

SECRET

JR (55)

4 bc PC

10 DOWNING STREET

From the Private Secretary

28 March 1985

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

Thank you for your letter of 25 March conveying your Secretary of State's recommendations about steps which would restrict the ability of EC nationals to claim supplementary benefit when there is no real justification for it. The Prime Minister is in general content with the proposals in your letter. She has commented that the period of residence to establish eligibility should be a long one. Her preference would be for one year. She does not see why this would be more likely to attract EC legal challenge since the test would apply equally to UK nationals returning from abroad.

I am copying this letter to Len Appleyard (Foreign and Commonwealth Office), David Normington (Department of Employment), Nigel Pantling (Home Office), Elizabeth Hodkinson (Department of Education and Science), Richard Stoate (Lord Chancellor's Office) and Richard Hatfield (Cabinet Office).

(C. D. POWELL)

S.H.F. Hickey, Esq.,
Department of Health and Social Security.

CCDW

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 6620/6690
Switchboard 01-213 3000

Parliamentary Under Secretary of State

NBPM
CDR
17/4

S H F Hickey Esq
Private Secretary to
The Rt Hon Norman Fowler MP
Secretary of State for Social Services
Department of Health and Social Security
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

17th April 1985

Dear Stephen,

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

Thank you for copying here your letter of 25 March to Charles Powell at No 10. I have also seen his response of 28 March outlining the Prime Minister's preference.

I should make it clear that the administrative arrangements proposed by my Minister, Alan Clark have now been cleared by appropriate Departments and instructions are to be issued to Unemployment Benefit Offices within the next few weeks. However these do not have legal backing and this Department will continue to press for a legislative solution. Our deterrent measures may help but they are clumsy. There is always the risk that further Press publicity could centre on their failures rather than successes and leave Ministers here somewhat exposed to the likely Press follow up of their 1984 stories.

Although strongly in favour of legislation we are not yet clear how a one year residence test would operate. I note that there will be flexibility of discretion through the social aid provisions of the reformed scheme but we feel some disquiet about the effect on certain categories of people returning to this country, for example ex-servicemen. It is doubtful if a long test has any advantage over a short one in stopping the sort of abuse publicised last year. Officials here need to know much more about the reformed scheme before the likely effects can be properly assessed.

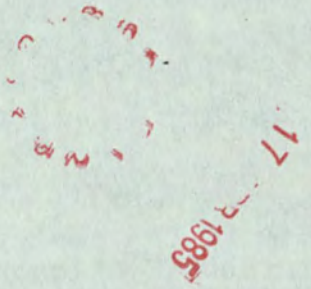
A copy of this letter goes to Len Appleyard (FCO), Nigel Pantling (HO), Elizabeth Hodkinson (DES), Richard Stoate (LCD), Richard Hatfield (Cabinet Office) and Charles Powell at No. 10.

Yours sincerely,

Les Philpott

L PHILPOTT
Private Secretary

EURO POL: Budget: Pt 29.



SECRET

CCDW

5

Foreign and Commonwealth Office

London SW1A 2AH

9 April 1985

nBPM

Dear Charles,

Payment of Supplementary Benefit to EC Nationals

The Foreign Secretary (with HEA) has seen Stephen Hickey's letter to you of 25 March and your reply.

He agrees that Mr Fowler's proposal for primary legislation to introduce a presence test for claimants of supplementary benefit is the most effective means to combat the current problem of abuse by EC nationals. Care will need to be taken to present this in such a way as to minimise the possibility of a successful challenge to the European Court on grounds of discrimination. He thinks that the Law Officers should be asked to advise on this aspect at an early stage.

Sir Geoffrey Howe welcomes the fact that the Department of Employment and Department of Health and Social Security are continuing to look at the possibility of introducing further administrative measures to deter claimants intending to abuse the system in the interim period before legislation could be introduced. It is most important that these abuses should be dealt with.

I am copying this letter to Stephen Hickey (DHSS), David Normington (Department of Employment), Nigel Pantling (Home Office), Elizabeth Hodkinson (DES), Richard Stoate (Lord Chancellor's Office) and Richard Hatfield (Cabinet Office) as well as to Henry Steel (Law Officers' Department) and Norman Adamson (Legal Secretary to the Lord Advocate.

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

SECRET

Euro for Fri 29

Budget

SECRET

1 CCDW.

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

C D Powell Esq
Private Secretary
10 Downing Street

25 March 1985

Dear Charles

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

I am now able to follow up our earlier correspondence about the Prime Minister's request for a note on a residence test for supplementary benefit in order to combat abuse of the scheme from EC nationals. I attach a detailed note from officials. see PA 28 att.

My Secretary of State has concluded that a lasting solution will require legislative changes. These could most sensibly be introduced as part of the wider legislation for reforming supplementary benefit which is planned for next session.

As you will know, under the proposals being considered by Ministers, the present supplementary benefit scheme, which is handled on a legal entitlement basis, will be replaced by one in two parts: income support to provide regular weekly benefit to claimants and social aid to handle real hardship on a discretionary basis. This framework would open up new possibilities for tackling the problem of abuse by EC nationals.

First, a presence test could be introduced into the main income support scheme. This would operate on the basis that all claimants would have had to be in the country for a set period - a matter of months - as a condition of receiving benefit: we would have to settle later what the most effective rule would be. This change would exclude recently arrived EC nationals but at the price also of excluding certain British subjects, such as someone returning from an extended visit to their children in New Zealand. Second, we would attempt to handle such problems through social aid. The flexibility of discretion in this area could be used, so far as possible, to separate out those who had an alternative option to state support, such as returning home.

None of this is risk-free. In all our arrangements - both income support and social aid - we would be under an obligation not to discriminate against EC nationals. The European Court has a long record of reaching judgements which in practice extend the rights of people from one EC country to get help in another. In particular, there is a strong possibility that a presence test itself would be ruled discriminatory. At the most, in that event, we would have bought time. And it would be necessary to operate social aid in a way that does not too specifically create "rules" for EC claimants to lessen the risk of successful legal challenge.

SECRET

E.R.

Although there are problems with any course of action, this approach seems to DHSS Ministers the best way of resolving the current difficulties. Before legislation can be introduced administrative measures would have to be used to discourage inappropriate claims. For example, the Home Office could curtail the stay of a persistent claimant once his six months' leave of entry had expired (on the grounds that he had not established his residence as a worker) or continue to operate the present system for claimants (pending any further legal challenge). Either can be combined with Mr Alan Clark's idea of initial warnings. We are separately considering ways of reducing students' access to supplementary benefit which could have some impact on the problem insofar as some EC claimants profess to be students. However my Ministers accept that such measures would not provide a total solution although they would make it easier for Department of Employment officials to deal with the worst abuses by EC claimants.

To conclude, my Ministers would propose to keep up the momentum so far as possible on immediate administrative measures to discourage abuse; and providing there are no insuperable legal difficulties, to work up the option of a presence test for inclusion in legislation reforming the supplementary benefit scheme.

A copy of this letter goes to Len Appleyard (FCO), David Normington (DE), Nigel Pantling (HO), Elizabeth Hodkinson (DES), Richard Stoate (LCD) and Richard Hatfield (Cabinet Office).

Yours sincerely,
Stephen

S H F HICKEY
Private Secretary

RESIDENCE TEST FOR SUPPLEMENTARY BENEFIT

As requested by the Prime Minister, this note discusses the possibility of taking powers to impose residence tests for the receipt of supplementary benefit, and also touches on other ways of achieving her stated objective of "restricting this help to British nationals".

Background

2. International agreements over the past 30 years (Annex A) have given the right to nationals of various other countries to claim supplementary benefit on the same terms as British nationals. These are, basically, that the claimant's resources fall short of his needs, and he is not in a position to help himself. British nationals have reciprocal rights in those countries.

3. Some 2,000 EC nationals are identified by DHSS local offices as claiming for 2 weeks or more each year (in 1984, this would have amounted to 0.03% of all claims handled). The extent of overseas claiming by British nationals is not known.

4. During 1984, the Daily Mail ran a campaign protesting about claims by students from EC countries who had no intention of finding work, but were simply holidaying at the British taxpayer's expense. The circumstances of these students were no different from those of many British people successfully claiming benefit, and they could not therefore be denied it.

5. The Prime Minister called for a report (Annex B). This set out administrative measures being taken by HO to curtail overseas claimants' stay and by DE to warn them in advance of this risk. Since then legal developments (Annex C) have caused the Home Office to doubt their powers of curtailment, thus depriving DE of the weapon they had intended to use. The possibility of retrieving this situation is discussed in para 21 below. But, in any case, the Prime Minister's request for a further note predated these difficulties.

Nationality discrimination

6. The Prime Minister's aim, "restricting /Supp B/ to British nationals", cannot be pursued directly without abrogating various international agreements (para 2 above). Discrimination on the ground of nationality, whether overt or covert, would be contrary to our legal obligations. A solution has to be found, therefore, which avoids this problem.

Residence test

7. A residence test, which applies to all irrespective of nationality, is an obvious possibility to explore, although as the precedents quoted in Annex A indicate, a lengthy test period would undoubtedly be unacceptable to the European Court of Justice. However, whether a short test period would be unacceptable is not clear from present case law.

8. Whatever the period, the effectiveness of a residence test will be limited in the case of someone who has Treaty rights as a "worker", if supplementary benefit is, in due course, declared a non-contributory "mixed-type" benefit (see Annex A para 5), because a period of residence in another Member State would have to be taken into account in satisfying the residence test.

What kind of residence test?

9. Whilst it could be argued that a test of normal residence would be appropriate for a benefit which expresses community solidarity, experience with other social security benefits suggests that such tests are burdensome to administer, creating endless problems of legal definition and resulting in complex and expensive appeals.

10. Administratively preferable, and sufficient to weed out the headline grabbing "spaghetti scroungers", would be a presence test relating to an immediate past period. It would be prudent to make this brief in view of the ECJ's apparently greater tolerance of short residence conditions. To

avoid confusion, the test to adopt should ideally be the same as an existing one. The child benefit requirement of 26 weeks' presence in the last 52 weeks is closest of the present tests to what is needed; if shorter tests are introduced for this and other benefits, as is being contemplated at present, it would make sense to do the same with Supp B. 8-12 weeks would be the minimum test period needed to make it pointless for a student to stay in the UK long enough to qualify himself for benefit before resuming his studies at home. It would be necessary to express this as, say, 8 weeks within the last 12, so as to avoid inadvertently disentitling UK nationals returning from short trips abroad.

11. The Supp B claim form would need to be adapted to ask about presence and also about membership of any exempt categories (see para 13 below). The claimant's statement on these points might simply be accepted. Some would lie; but there would be far smaller administrative costs than with the alternative: to instruct local offices to ask for supporting evidence where it appeared to them that a claimant might have given misleading information. Doing so would run a high risk of provoking, or seeming to be, ethnic discrimination and would, on those grounds, be likely to cause industrial relations and other trouble for DHSS. There would also be difficult judgements to be exercised on what constituted adequate evidence of presence. Overseas claimants who had kept them, could be asked to produce as evidence the forms given to them on entry. Although these show only the date of entry without identifying particulars, the scope for fraud could be limited by date-stamping forms presented in support of a claim. Claimants who had mislaid their forms would, however, have to be asked to demonstrate in some other way that they had been present as stated. This would open up scope for argument and appeals. There would be particular problems in relation to Irish citizens.

Easements and exemptions

12. People who failed the residence test and could not or did not want to leave the country would have to find some way of supporting themselves in this country for whatever period the test covered. (After that, they would qualify.) While this is the object of the exercise for "spaghetti scroungers", it would also affect others whose needs were more likely to command sympathy. Some exemptions and easements would be necessary in order to minimise such difficulties.

13. Certain classes of case are normally exempted from residence tests. For example, the Northern Ireland scheme's exemptions included armed forces personnel, seamen and refugees. It would make sense to follow suit, and exempt from the application of a residence test where possible groups which Ministers wish from the outset to treat in the same way as residents.

14. The one group which cannot be exempted in this way without letting in fellow Europeans is, of course, UK nationals returning from abroad. Among this group - or, conceivably, among foreigners who had suffered genuine misfortune - there would inevitably be hard cases which attracted publicity. The longer the period for which benefit was withheld, the greater the risk of criticism. The people concerned will, be definition, be without means of their own, and may have dependent children.

15. A mitigating factor which applies in Northern Ireland and which will apply in Great Britain unless specifically excluded, is the availability of "urgent needs payments" (UNPs), in defined circumstances, under the "fall-back" arrangements provided for in the Supplementary Benefit (Urgent Cases) Regulations. UNPs, which are at a lower rate than normal Supp B for the first two weeks and at the same rate thereafter, are available, inter alia, when serious damage or risk to health and safety would otherwise be incurred.

16. Without some provision for UNPs for those failing a residence test, there would be a large hole in the "safety net" and inevitable pressure to repair it. (Publicity surrounding a single case of an Asian woman abandoned in this country was the main reason, for example, for the extension of UNPs in 1984 to all people who, while subject to a direction for their removal, have had their removal deferred.)

17. Yet, as the rules stand, "spaghetti scroungers" with no money for food or shelter can fairly readily qualify for UNPs. At the price of further costs for DHSS local offices, the rules for UNPs could be made tougher for those failing a residence test. For example, eligibility for UNPs in those circumstances might be restricted to people who are not required to be available for work (eg because they are incapacitated, elderly or in sole charge of a child) and to those with

dependent children. Able-bodied people of working age without dependent children, including "spaghetti scroungers", would have to find their own salvation. This seems more defensible than restrictions which would affect all those failing a residence test, such as retaining the lower rate of UNPs payable in the first two weeks throughout the period of the claim.

Residence test: summary

18. A residence test would effectively exclude many short-stay claimants from overseas from normal Supp B, at the price of excluding also some UK nationals for a certain period. The recommended form, in order to minimise the chances of EC legal challenge, is a short recent presence test (para 10): this also has the advantage of limiting the period of exclusion from benefit to one which would block overseas students' claims without depriving other claimants for longer than necessary. The legislation could also restrict the availability of urgent needs payments to those who failed the test, perhaps by denying eligibility to young fit "non-residents" without dependent children (para 17).

19. The benefit saving cannot be quantified but would be likely to be insignificant. There would be disproportionate administrative costs, arising from applying to all the 6.2 million claims new procedures which were designed to affect at very most 0.05% of that number.

20. There is a danger that this will be overruled by the European Court of Justice or limited in its effect within a year or so of introduction (paras 7-8).

Other options

21. Officials have looked at possible "non-tariff barriers" within the law, considering first what might be done to restore the arrangements set out in Annex B in the light of the difficulties described in Annex C. The underlying primary legislation has not changed; its interpretation has done so, as a result of a judgement in a relatively junior court. It would, in principle, be possible for the Home Office to continue to operate curtailment procedures until challenged

and, if overruled, to appeal tohigher courts. Unless the 1984 change in the regulations were revised, UNPs would continue to be available to appellants and to those awaiting removal. But, with curtailment still a real possibility, DE could proceed with their original plans for discouraging claims at the outset.

22. Alternatively, there might be scope for building on the Home Office's fresh proposals in Annex C for telling EC claimants, once their 6 months' leave of entry has expired, that they no longer have leave to remain and should leave the country. There is no right of appeal in these circumstances but deportation action is not being taken; removal directions will not have been given and in the circumstances there may be no obligation to continue UNPs. However, the obvious response by an individual affected would be to seek an extension of stay, denial of which does carry a right of appeal. In those circumstances, UNPs would have to be reinstated. Nevertheless, the existence of such arrangements could be prayed in aid by DE in alerting claimants at the outset to the risks for them in claiming benefit.

23. Various options for direct action by DHSS have been examined but found in discussion in EQO to be expensive, unworkable and/or ineffective. The front-running option for DHSS action would be, by regulation, to limit the number of offices at which overseas residents were permitted to claim, say, to one in each of the major conurbations. Claimants might be required to present themselves in person and to undergo a grilling by a specialist member of staff. While not preventing really determined claimants this could deter casual misusers of the system.

24. It would, however, be open to legal challenge as discriminating against EC nationals and could also give rise to racial discrimination problems, industrial relations snags and heavy administrative costs. There could also be trouble with the legislative requirements that any claim for benefit must be submitted forthwith to an adjudication officer for determination. It would not be easy to maintain that someone who had gone to a designated office was just an enquirer, not a claimant.

Other options: summary

25. Legal and practical considerations heavily limit the scope for inhibiting claims from "spaghetti scroungers" by administrative action. The Home Office could revert to earlier practice on curtailment, subject to legal challenge (para 21). Alternatively it could tell overseas claimants to leave at 6 months (para 22). Either of these options would give DE scope to threaten claimants from the outset with loss of the right to remain in the country. But claimants could get the better of all these devices simply by persisting in their demands to stay, appealing when necessary and claiming UNPs.

26. DHSS could seek to channel overseas claimants through a limited number of offices (para 23). But this would give rise to as many (or more) difficulties as a presence test, without being nearly as effective.

Conclusion

27. Although there is little evidence on the extent of overseas claiming, such indications as we have suggest it is relatively small in scale. The benefit loss from the absence of measures to prevent it is therefore in all probability correspondingly small. This paper has discussed the possibility of introducing a residence test and of various other actions short of that. The most effective of the options discussed would be a short recent presence test, particularly if backed up by limitations on access to UNPs. Although it would be troublesome and expensive to administer and there would unavoidably be some hard cases, the same is true of any option with real teeth. This therefore looks the front runner. But it could well be overruled by the ECJ, or overtaken by a change in the status of Supp B in EC terms, within the next couple of years.

28. If a presence test is introduced, it might be desirable to inform other EC Governments of the reasons, through diplomatic channels.

Legal and international considerations

1. Introducing a residence test for Supp B in Great Britain would require primary legislation. There has already been a 5-year residence test in the Northern Ireland scheme for many years, in recognition of the particular political and geographical circumstances, but its legality under European law is increasingly being called into question. There are also residence or recent presence conditions for some other British benefits, though none are maintenance benefits.

2. In order to comply with our international obligations it would be necessary to frame the provision for a residence test for Supp B so that it gave equal treatment with our own nationals to nationals of EC countries and of other signatories of the 1953 Council of Europe Convention on Social and Medical Assistance. The European Social Charter of 1961 involves a similar commitment. In addition, comparable treatment would need to be given to refugees under the Geneva Convention of 23 July 1951 and to stateless persons under that of 28 September 1954.

3. In one recent case (McMahon v DES 1982 3WLR 1129) the High Court took the view that a 3-year "ordinarily resident" test imposed on applicants for student grants constituted unlawful discrimination under EC regulations. A similar point is currently before the European Court of Justice in relation to the 5-year residence test imposed under the Belgian public assistance scheme on non-Belgian nationals (the case of Hoeckx). Following inter-departmental discussions, DES decided to replace the 3-year ordinarily resident test, for EC nationals, by a "9 months in the last year" employment test. The hope is that this will be accepted as non-discriminatory. The EC Commission may take a less severe view of a short residence test. They ruled, in reply to an EPQ in 1977 on the Luxembourg birth grant, that a one-year residence test was not discriminatory. However, the Luxembourg one-year test was a relaxation of the previous condition. A worsening of the existing position might well be less favourably regarded by the Commission, especially when it affects a benefit of last resort.

4. It seems virtually certain, against this background, that introducing a residence test for Supp B would be frowned upon by the Commission and probable that, if we were taken to the European Court, the test would be ruled illegal. There are residence tests for Supp B analogues in several EC countries, usually based on normal residence, sometimes accompanied or replaced by a condition as to presence in the country over a stated recent period. But this would not necessarily shield us from proceedings taken either by the Commission or in an individual case and we could, within 12 months, find that our residence test had been overruled. The consequences of such a decision would have to be accepted.

5. A further risk is that drawing Supp B to the attention of the European Court could highlight the question whether the benefit is, in EC terms, "social security" rather than "social assistance". The outcome is by no means a foregone conclusion and, if Supp B were ruled to be "social security", benefit would, under present arrangements, be exportable in certain circumstances. If, as seems likely, the UK in future declares Supp B to be a "mixed" benefit which is non-exportable, this would simply present a different problem; periods of residence in other Member States would count as being in the UK.

190

Annex B

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

C D Powell Esq
Private Secretary
10 Downing Street

13 December 1984

Dear Charles,

FUTURE DEVELOPMENT OF THE COMMUNITY: PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

You asked in your letter of 24 September to Colin Budd for a note about the scope for restricting the payment of supplementary benefit to British nationals.

The legal and administrative background

An EC national has freedom of access to seek work under EC Regulation 1612/68 and is admitted to Britain in the first instance for six months. He will then be issued with a residence permit, either for the expected duration of his employment or for five years, as appropriate. Once in the UK, he has entitlement to social assistance (supplementary benefit) on the same terms as a UK national, both as an EC national and under the terms of the European Convention on Social and Medical Assistance 1953. So long as the EC national is lawfully in Great Britain, he cannot be excluded from supplementary benefit entitlement if he qualifies for it under the normal rules.

However, in accordance with the construction placed on EC legislation by Council Declaration 1451/68, if a person comes to another member state seeking work and becomes a burden on public assistance, he may be asked to leave. The procedure in Britain has been that if an EC national has claimed supplementary benefit for more than two weeks (reduced from eight weeks in 1981) the Home Office is notified and action is set in hand to curtail the person's stay. In 1983, 421 curtailment notices were issued as a result of DHSS action; and another 316 in the first seven months of this year. Unfortunately, this procedure is not always quick because there is a right of appeal. The number of cases may mean that it takes several months for an individual case to work its way through the system and during this period supplementary benefit is payable under the regulations governing people in urgent need.

E.R.

Improving procedures

In the late summer there was extensive press coverage of Italian students coming to this country and claiming supplementary benefit as unemployed people when in fact they were on holiday and had no intention of taking work. A large number of MPs expressed concern. DHSS and DE have since been working together to grapple with this problem and DE have drafted new instructions for unemployment benefit offices which will tighten up procedures considerably. Under the new procedures a claimant will be interviewed by a more senior officer (an HEO) who will press him on the question of his intentions to seek work; inform him of the possible consequences of persisting with a claim for supplementary benefit; and alert the DHSS local office. If a claim is then made, the social security office will be able to notify the Home Office immediately instead of waiting for two weeks and the Home Office can start curtailment action straightaway, since the necessary warning would already have been given at the unemployment benefit office. DHSS officials are in contact with the Home Office about the scope for further improving the effectiveness of current procedures.

There is also the case of a person who has completed an initial six months in the country and has been granted a residence permit but then becomes unemployed. Where such people appear to settle down to live on public funds this will be treated similarly to a new arrival. However, the genuine worker who loses his job is clearly entitled to some opportunity to find a new one. In these cases a person will be sent a warning letter but no action will be taken until enough time has elapsed to establish whether or not he is likely to return to employment.

Access to social assistance in the UK and other EC countries

The Prime Minister also noted that the UK is the only country which makes supplementary benefit available on a national scale. This is true in the sense that the UK scheme is administered centrally. We understand, however, that some other countries (such as Germany) also have national schemes but they are administered with less central control and much greater local discretion. This greater local discretion makes it possible to operate the system in such a way as to restrict access to benefit: in Italy, for instance, we understand that it can be very difficult not only for foreigners but also for Italian nationals to obtain benefit. In this country we have sought to limit discretion in the supplementary benefit scheme (particularly in the 1980 legislative changes) as a means of achieving tighter financial control and reducing unfairness in administration.

Residence tests

One possible means of restricting access to benefit might be to impose a residence test so that benefit would be refused to people for the first few weeks or months of arriving in this country. Neither national assistance nor supplementary benefit has ever had such a test and to introduce one would require primary legislation. It would almost certainly have to apply equally to British nationals (eg those returning after some time abroad) and people such as political refugees. Other benefits (Child Benefit, Attendance Allowance, Mobility Allowance and Invalid Care Allowance) have residence tests

E.R.

but these are applied equally to British nationals and others; and this is easier to do because they are not maintenance or "safety net" benefits. Some other countries have residence tests for their equivalent of supplementary benefit and these are beginning to be challenged: we understand, for example, that Belgium is having to change its rule that five years' residence is needed to claim social assistance for the elderly; and Northern Ireland has recently been advised that its supplementary benefit residence test is not conssitent with the Treaty of Rome and will have to be amended.

Further action

DHSS is aware that the present situation has unsatisfactory features and is continuing to explore the scope for some test to exclude claims which are not appropriate to the supplementary benefit scheme. The aftermath of the current review of supplementary benefit would provide an opportunity to make legislative changes if these seem desirable. It will not, however, be easy to find legislative and administrative measures for tightening up on benefit payment to those who are not British nationals without putting ourselves at risk of challenge in the European Court, or of causing an undesirable row with our EC partners.

I am copying this letter to Colin Budd (FCO), Judith Rutherford (DE) and to Richard Hatfield (Cabinet Office).

Yours sincerely,

S Hickey

S H F Hickey
Private Secretary

THE HOME OFFICE **CONFIDENTIAL**

In the face of growing numbers of EC nationals claiming Supplementary Benefit the Home Office agreed in 1979 to curtail the stay of EC claimants on the understanding that although it was not practicable to enforce their departure by deportation, DHSS would be able to cut off benefit once it was established that a claimant no longer had leave to remain. It was considered that once benefit ceased an EC national was likely either to leave the country or bring himself within the scope of the Treaty of Rome by taking a job.

However, the 1980 European Court judgement in the case of Pieck cast doubt on our ability to grant "leave to enter" (in the sense of permission) to EC nationals exercising free movement of labour rights under the Treaty of Rome. The full implication of this for curtailing the stay of EC claimants did not become clear until the Immigration Appeal Tribunal began to take the view, in 1983, that an EC national exercising Treaty rights could not be "granted" leave to enter at the port and consequently could not have that leave "curtailed" regardless of the fact that he had lived on public funds. This obliged the Home Office to revise its assumption that curtailing the stay of EC claimants under the Immigration Act 1971 was an appropriate way to proceed. The fact that DHSS now proposed to continue public funds payments to all foreign nationals until they actually leave the country reinforced the view that the procedure established in 1979 had outlived its usefulness. The Home Office also took account of the fact that the curtailment procedure, from DHSS notification to the hearing of an appeal, invariably took longer than the six month period for which the EC national had been admitted to the country and concluded that in the general run of cases, the same effect could be achieved simply by requiring a persistent claimant to leave the country six months after his date of entry on the grounds that he had failed to establish a right of residence under the Treaty of Rome. It would then be for DHSS to decide what action, if any, to take in the matter of subsequent benefit payments.

The new six month "end of stay" system is itself open to further review in 1985 since the Home Office remains of the view that Immigration Act procedures are not an appropriate way to put public funds out of the reach of EC nationals. Drawing Supplementary Benefit to which one is entitled under DHSS Regulations is not grounds for deportation under the Act which leaves us with no practicable means of enforcing the agreement recorded by Member States in Council Declaration 1451/68 (ie that work seekers could be asked to leave if they became a charge on public funds within three months of entering a Member State).

The Pieck judgement in effect makes it extremely difficult for the Home Office to maintain the commitment given by the then DHSS Minister, Lynda Chalker, (on 21 November 1980 Col 3) that EC nationals who came here with the deliberate intention of relying on the Supplementary Benefit scheme for support could be asked to leave. However, in view of Ministerial concern about abuse of the system by EC holiday-makers, the Home Office would be prepared to explore the possibility of enforcing the departure of EC nationals who could be shown to have come here with the sole intention of abusing the system, since such people could have no claim to remain under EC law. Unfortunately however, success would depend on the view taken by the Immigration Appeal Tribunal who would have to be satisfied that the conduct of the potential deportee was "not conducive to the public good" in the terms of the 1971 Act. This is likely to be difficult to establish and open to challenge, and in the Home Office's view, no substitute for limiting access to puclic funds at source."

11 FEBRUARY 1985 **CONFIDENTIAL**

EURO POL: Budget: Pt 29