

Housing Benefit Circular

Department for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

HB A8/2015

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	For information
SUBJECT	European Economic Area right to reside – permanent residence status

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual. Please annotate this circular number against Part C4.

Queries

extra copies of this circular/copies of previous circulars can be found at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>

- about the
 - **technical content of this circular**, contact:
Email: lmisd.pqsandcorrespondence@dpw.gsi.gov.uk
 - **distribution of this circular**, contact
housing.correspondenceandpqs@dpw.gsi.gov.uk

Crown Copyright 2015

Recipients may freely reproduce this circular.

Contents

paragraph

European Economic Area right to reside – permanent residence status

Introduction	1
Background.....	3
Continuity of residence – absences during 5 year qualifying period	6
Permanent residence with less than 5 years residence	8
Periods of residence prior to 30 April 2006	15
Derivative right of residence	17
Long-term jobseeker	18
Switching between alternate rights to reside.....	20
Imprisonment	23
Sanctions and disallowance of Jobseeker’s Allowance	26
Separation from an EEA national partner	28

European Economic Area right to reside – permanent residence status

Introduction

1. This Circular provides guidance on permanent residence status for European Economic Area (EEA) nationals. An EEA national who has permanent residence status does not need to satisfy any other right to reside conditions, that is, they do not need to also provide evidence that they have worker or jobseeker status or another right to reside status for benefit purposes.
2. **Reminder:** Housing Benefit (HB) Regulations were amended with effect from 8 November 2012, so that a non-EEA national with a 'Zambrano' right to reside is treated as a person from abroad with an applicable amount of £nil for the purposes of HB. Further information about this is in paragraphs 22 to 33 of HB Bulletin [G2/2013](#).

Background

3. Since 30 April 2006, EEA nationals and their family members, who have resided legally in the United Kingdom (UK) for a continuous period of 5 years in accordance with laws relating to European Union (EU) free movement rights that were in force during the 5 year period, will acquire a right of permanent residence in the UK in accordance with Article 16 of the EU Residence Directive 2004/38. This provision has been transposed into Regulation 15 of the Immigration (European Economic Area) Regulations 2006 (the "2006 Regulations").
4. This means they must have resided in the UK as a worker/self-employed person (or someone who retained that status), or as a student or self-sufficient person who had comprehensive sickness insurance. Simply living in the UK for 5 years does not count.
5. An EEA national who has acquired the right of permanent residence on or after 30 April 2006 will only lose that right if they are absent from the UK for more than 2 consecutive years.

Continuity of residence - absences during 5 year qualifying period

6. In general, temporary absences from the UK will not break the continuity of residence if they
 - are no more than a total of 6 months a year, or
 - comprise of one absence of up to a maximum of 12 consecutive months for important reasons, such as pregnancy and childbirth, serious illness, study or vocational training, or a posting to another country abroad, or
 - are for compulsory military service.
7. Although these absences do not break the continuity of the residence requirement, they do not count towards the accrual of the 5 years continuous

residence. This is because these absences will generally be periods when the claimant is not exercising a right to reside as defined in the “2006 Regulations”.

Permanent residence with less than 5 years residence

8. The general rule on the right of permanent residence requires that EEA nationals and their family members have resided legally in the UK for a continuous period of 5 years. The circumstances in which workers or self-employed persons who have ‘ceased activity’, and their family members, can acquire a right to reside in the UK permanently with less than 5 years residence are explained in the following paragraphs.
9. A worker or self-employed person who has ‘ceased activity’ is a person who satisfies the conditions in paragraphs 10 to 13 below, and can acquire the right to reside in the UK permanently with less than 5 years residence.
10. A worker or self-employed person who
 - (a) ceases activity as a worker or self-employed person, **and**
 - (b) has reached the age at which they are entitled to a state pension on the date their work ceases or in the case of a worker, ceases working to take early retirement, **and**
 - (c) was working in the UK, as a worker or self-employed person, for at least 12 months prior to ceasing work, **and**
 - (d) resided in the UK continuously for more than 3 years prior to ceasing work.
11. A worker or self-employed person who
 - (a) ceases activity in the UK as a worker or self-employed person as a result of a permanent incapacity to work **and**
 - (b) either
 - i) that person resided in the UK continuously for more than 2 years prior to ceasing work or
 - ii) the incapacity is the result of an accident at work or an occupational disease that entitles that person to a pension payable in full or in part by an institution in the UK.
12. A worker or self-employed person who
 - (a) is active in an EEA state, but retains their place of residence in the UK, to which they return (as a rule) at least once a week, **and**
 - (b) prior to becoming active in that EEA state, had been continuously resident and continuously active as a worker or self-employed person in the UK for at least 3 years.
13. A person who satisfies the condition in paragraph 11(a) but not 11(b) shall, for the purposes of paragraphs 9 and 10, be treated as being active and resident in

the UK during any period that they were working or self-employed in the EEA state.

14. The family member of a worker or self-employed person where
 - (a) the worker or self-employed person has died, **and**
 - (b) the family member resided with the worker or self-employed person immediately before their death, **and**
 - (c) the worker or self-employed person has resided continuously in the UK for at least 2 years immediately before their death, or the death was a result of an accident at work or occupational disease.

Periods of residence prior to 30 April 2006

15. In accordance with the judgments in the European Court of Justice in cases of *Lassal* and *Dias*, periods of residence prior to 30 April 2006 (the date of transposition of Directive 2004/38) which were in accordance with earlier EU instruments relating to residence must be taken into account for the purposes of acquisition of permanent residence under Directive 2004/38. However, where a period of residence in accordance with the earlier EU instruments is followed by a period of more than 2 years during which the person's residence is not in accordance with earlier EU instruments, then the earlier period of residence will not count.
16. But note that a break in continuity during which residence is not in accordance with the “2006 Regulations” will mean that the 5 year period has to be served afresh.

Derivative right of residence

17. Residence in the UK, which is a result of a derivative right of residence under Regulation 15A of the “2006 Regulations”, does not count towards the period for calculation of the 5 year period for permanent residence.

Long-term jobseeker

18. Under the migrants benefit reform measures introduced during 2014 (see paragraph 2 of Circular [HB A3/2014](#)), EEA jobseekers that have registered with Jobcentre Plus and are claiming income-based Jobseeker’s Allowance (JSA (IB)) will have a right to reside for an initial period of 6 months. If the claimant is able to provide compelling evidence that they are continuing to seek employment and have a genuine chance of being engaged, a short extension period of JSA (IB) may be allowed.
19. Where a claimant is relying on a right to reside as a jobseeker for the entire 5 year period for calculating permanent residence, it should be accepted that the provisions in the “2006 Regulations” would be satisfied in those circumstances. This is because an EEA national acquires the right to reside in the UK permanently, where they have resided in the UK in accordance with the “2006 Regulations” for a continuous period of 5 years. Where a claimant has been awarded JSA (IB) on the basis of having a right to reside as a jobseeker, it

should be accepted that their continuous period of 5 years of jobseeking and receipt of JSA (IB) would be sufficient for the acquisition of permanent residence.

Switching between alternate rights to reside

20. Where an EEA national switches from one right to reside status to another, discretion may be used to allow gaps of up to 30 days between statuses. This means that a gap of less than 30 days between the claimant's statuses would not break the 5-year continuous period required for permanent residence status.
21. A cumulative break of up to 30 days in any 12 month period is allowable when a claimant switches between rights to reside, for example from student to worker status, worker to self-employed status, self-employed to jobseeker status, or between the end of one job and the start of the next. In such circumstances, the claimant will be required to provide evidence of
- (a) acquiring another right to reside as a jobseeker, worker, self-employed person, student, or self-sufficient person (or as a dependent) within 30 days of their previous right to reside ending, **and**
 - (b) a right to reside as a jobseeker, worker, self-employed person, student, or self-sufficient person (or as a dependent) for the remainder of the 5 year period of continuous residence.

Example 1

Paulo is an Italian national. He arrived in the UK as a single person on 1 June 2010. He claimed JSA as a jobseeker on 3 June 2010 and signed off to start full-time work as a retail assistant on 3 July 2010. On 28 February 2012 his employer closed down the shop and terminated Paulo's contract. Paulo claimed JSA on 25 March 2012 but was successful in finding work and signed off on 10 August 2012. He started a full-time course as a student on 3 September 2012 and took out a comprehensive sickness insurance policy. The course ended on 6 August 2015 and Paulo made a claim to JSA the next day. The decision maker decided that Paulo had acquired a permanent right to reside as he had demonstrated 5 years continuous residence as a qualified person, and the break between his right to reside as a retained worker and a student (between 10 August 2012 and 3 September 2012) maintained continuity as the break was less than 30 days.

Example 2

Anna is a Dutch national. She arrived in the UK as a single person and started full-time work as a barista on 30 June 2010. She continued to work until 2 February 2014 and then decided to leave. She claimed JSA on 3 February 2014 and received this benefit until 31 October 2014. She started a full-time job as a receptionist on 1 November 2014.

Anna left this job on 31 July 2015 and claimed JSA. The decision maker decided that Anna had acquired a permanent right to reside as she had demonstrated 5 years continuous residence as a qualified person. Anna was treated as a jobseeker for the period 3 February 2014 to 31 October 2014 as Anna had demonstrated she was actively seeking employment and had a genuine chance of engagement throughout that period.

22. A break between statuses, as described at paragraphs 20 and 21, would not be allowable when the break is within a single right to reside status, such as a jobseeker. This is because the claimant, in those circumstances, has failed to comply with the requirements to demonstrate that single right to reside status for a continuous period (but see paragraph 27 below with regard to benefit disallowances).

Imprisonment

23. An EEA national's (or their family member's) continuity of residence will be interrupted during periods of imprisonment.

24. The ruling in the case of *MG* (C-400/12) in the European Court of Justice states that the imposition of a custodial sentence by a national court is an indication that the person concerned has not respected the values expressed by the society of the host Member State in its criminal law. Accordingly, the taking into consideration of periods of imprisonment, for the purposes of the acquisition of the right of permanent residence, would clearly be contrary to the aim pursued by the Directive in establishing that right of residence.

25. In a ruling in another European Court of Justice case (*Onuekwere* C-378/12), it was found that the continuity of residence of 5 years is interrupted by periods of imprisonment in the host Member State. As a consequence, periods which precede and follow the periods of imprisonment may not be added up to reach the minimum period of 5 years required for the acquisition of a permanent residence permit. Therefore upon release from prison, a person must satisfy a new 5 year period, in order to acquire permanent residence status. The period of imprisonment does not count towards a permanent right to reside because it is a period when the claimant was not exercising a right to reside, or exercising free movement rights.

Sanctions and disallowances of JSA

26. In the case of a benefit sanction, payment of JSA is removed for a time, but underlying entitlement to the benefit may continue. So the period of the sanction

would not break continuity for the calculation towards the 5 year period for permanent residence.

27. In the case of a benefit disallowance, the JSA claim ends. If the disallowance is for a fixed period, the claimant will have to reclaim JSA once the disallowance has ended. A period of disallowance would therefore break continuity for the calculation towards the 5 year period for permanent residence.

Separation from an EEA national partner

28. Family members, including spouses and civil partners, have an automatic right of residence in the UK for as long as they remain the family member of an EEA national who

- is entitled to reside in the UK for an initial period of three months, or
- is a qualified person, or
- has a right of permanent residence.

29. Where there has been a breakdown in the relationship and the spouse or civil partner no longer live in the same household as the EEA national, the spouse or civil partner is still considered to be a family member for as long as

(a) the relationship between the spouse or civil partner and the EEA national has not been dissolved, **and**

(b) the EEA national continues to be a qualified person, or have a permanent right to reside.

30. If after a period of separation, they get divorced or legally terminate their civil partnership, the spouse or civil partner will only have a right to reside in the UK if they satisfy the conditions relating to a family member who has retained the right of residence in accordance with Regulation 10 of the “2006 Regulations”.

31. The breakdown in relationship situation can also include a child under age 21 who is estranged from their EEA national parent(s). Such a child remains a family member until the age of 21 even if they are no longer living in the same household as their EEA national parent(s).