

## Housing Benefit Circular

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

# HB A6/2014

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	The Housing Benefit (Habitual Residence) Amendment Regulations 2014

### Guidance Manual

The information in this circular affects the content of the HB Guidance Manual. Please annotate this circular number against *Part C, Chapter 4.230*.

### Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars-2014>
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  - **technical content of this circular**, contact [housing.benefitenquiries@dwp.gsi.gov.uk](mailto:housing.benefitenquiries@dwp.gsi.gov.uk)
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## The Housing Benefit (Habitual Residence) Amendment Regulations 2014

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# The Housing Benefit (Habitual Residence) Amendment Regulations 2014

## Background

1. The government has recently implemented a number of measures to limit access to United Kingdom (UK) means-tested benefits for nationals of European Economic Area (EEA) countries whose right of residence in the UK is based on their status as a jobseeker.
2. Since 1 January 2014, EEA nationals entering the UK to seek work have been unable to claim income-based Jobseeker's Allowance (JSA(IB)) until they have been resident here for three months. This also applies to UK nationals and Irish citizens coming or returning to the UK from outside the Common Travel Area (CTA). Please note that the Channel Islands and Isle of Man are part of the UK for nationality purposes.
3. These reforms will now be extended so that even if an EEA jobseeker is entitled to JSA(IB), they will not be able to access Housing Benefit (HB). This will be effective from 1 April 2014.

## Current position and unaffected cases

4. Workers, the self-employed, and those who are not currently employed but who retain their worker status, are required under the European Union (EU) treaties to have the same access to social security as nationals of the host Member State. EEA nationals exercising their treaty rights to live and work in the UK have a right to reside and are exempt from the Habitual Residence Test (HRT) due to HB Regulation 10(3B)(a) to (c) and have full access to HB if they are workers, self-employed, or retain their worker or self-employed status.
5. An EEA national retains their worker status if they are involuntarily unemployed and are registered as a jobseeker with the relevant employment office and are actively seeking genuine and effective work. For HB purposes, they demonstrate that they retain their worker status by claiming JSA, National Insurance (NI) credits only (if their household income is too high for JSA(IB) and their contribution based JSA entitlement is exhausted or they have insufficient NI contributions), or Income Support (IS). The Court of Appeal ruled that although Jobcentre Plus is a relevant employment office, a claim for JSA isn't the only way an EEA national can register as a jobseeker. Therefore, a claimant can be receiving IS and retain their worker status so long as they have stated on their HRT form that they are seeking work. They will also need to provide evidence to confirm that their previous work was genuine and effective, see new guidance in circular HB A3/2014.
6. Worker status and self-employed status can be retained where a person is temporarily unable to work as a consequence of an accident or illness. Self-

employed status can only be retained during periods of temporary incapacity; if a person ceases trading for another reason then they do not retain self-employed status and are counted as jobseekers.

7. While the European Treaties provide that EEA nationals who are not working can reside in another Member State in order to search for work as jobseekers, there is greater scope for their access to benefits to be restricted. HB Regulation 10(3A) already provides that a person who has a right to reside by virtue of being an EEA jobseeker shall not be treated as habitually resident in the CTA.
8. Under the current legislation it is possible for an EEA jobseeker, who would ordinarily be excluded from HB via Regulation 10(3A), to qualify for HB if they are in receipt of JSA(IB). Regulation 10(3B)(k) provides that any person in receipt of one of the working age means tested benefits administered by the Department for Work and Pensions (DWP) (JSA(IB), income-related ESA (ESA(IR)) and IS) is not a person from abroad. If a claim for HB is received from someone getting JSA(IB), then regardless of their nationality they are automatically exempt from the HRT and can access HB.
9. The amendments in SI 2014/539 remove access to HB for EEA jobseekers who make a new claim for HB on or after 1 April 2014. EEA nationals who are self-employed, are workers or who are unemployed but retain their worker status have the same rights to HB as a UK national and their situation remains unchanged. The JSA decision maker will record on the Customer Information System (CIS) notepad if someone is a retained worker; a HB claim from such a person should be dealt with in the same way as it was before 1 April.
10. EEA jobseekers who are entitled to HB and JSA(IB) on 31 March 2014 will be protected until they have a break in their claim for HB or JSA. If their JSA ends because they have started work, then as long as you are satisfied that their employment is genuine and effective they will be able to access in-work HB as either a worker or a self-employed person. Claimants receiving in-work HB beyond 1 April will continue to be able to access HB, if they become entitled to JSA(IB) on or after that date, but only if they retain their worker status. If they are a jobseeker then their HB entitlement ends from the Monday following the cessation of work.

## **Common Travel Area nationals**

11. The CTA consists of the UK, the Channel Islands, Isle of Man and the Republic of Ireland. Nationals of the Channel Islands and Isle of Man are British citizens. As a national of the CTA they have a right to live in the UK, and if they have come here directly from the Irish Republic, Channel Islands or Isle of Man they are treated as being habitually resident in the UK.
12. UK nationals and Irish citizens who have come or returned to the UK after a period of absence outside the CTA are subject to the same three month waiting period for JSA(IB) as newly arrived migrants from EEA countries. However, as they have a right to reside in the UK they are eligible for HB if they can also demonstrate that they are habitually resident.

## Irish nationals

13. Irish citizens are also EEA nationals but don't have to show that they are in the UK under the Residence Directive as they can come to the UK under the CTA agreement. If a claimant provides evidence that they are an Irish national, whether or not they have any other nationality, then the 1 April 2014 restrictions will not apply to them. They can be awarded HB, either based on entitlement to a DWP income-related benefit or if they prove to the authority that they otherwise satisfy the means test.

## 1 April 2014 – who is no longer entitled?

14. HB Regulations 10(3) and (3A) already provide that a person with a right to reside in the UK that derives solely from their status as an EEA jobseeker is not treated as habitually resident. From 1 April 2014, the regulations will be amended so that being entitled to JSA(IB) will no longer grant access to HB for jobseekers from EEA countries. As discussed above, this will not apply to UK nationals, or CTA (inc. Channel Islands etc) citizens as they are CTA nationals whose right to be in the UK comes from national law and the CTA agreement.
15. Arrangements will be made for Jobcentre Plus to notify you where an award of JSA(IB) has been made to someone as an EEA jobseeker so that you are aware they should not be able to access HB. Details of the clerical notification procedure and the marker on CIS are discussed below, while an example of a notification e-mail is included at Annex C.
16. The exclusion from HB applies to all EEA jobseekers whose new claim is made or treated as made on or after 1 April 2014, regardless of whether they entered the UK before or after 1 April. It also applies to EEA nationals who have been receiving in-work HB, who become unemployed on or after 1 April and who do not retain worker status. Transitional protection is limited to those EEA jobseekers entitled to HB and JSA(IB) on 31 March 2014 (as outlined in paragraph 10).

## Procedures for notification of status by DWP

17. From 1 April 2014, the Electronic Transfer of Data (ETD) notification will be replaced by a secure email for **EEA jobseekers only**. This will be sent through a GSE/GCSX/GSX account. This will show the claimant's entitlement to JSA and that they have been classified as an EEA jobseeker following their HRT. A copy of the notification is attached at Annex C. EEA jobseeker HRT notification emails will be sent to the same address as each local authority (LA) uses for iWorks (IWK4) notifications. If this is likely to cause problems, or if an LA intends to change the address it uses for iWorks communications, please contact the [Local Authority Support Team](#).
18. Certain jobseekers will be excluded from this measure because they will be claiming reserved rights from a family member, in these cases the ETD will not be suppressed. You will receive your ETD notifications for all other claimant

groups as per current processes. There are no changes to the Automated Transfer to Local Authority Systems (ATLAS) notifications: LAs will continue to receive these per the current arrangements.

### **Checking a jobseeker's status via CIS**

19. Once a decision has been made on the JSA(IB) claim, the JSA agent will input the decision into the DWP system. The agent will also put the claimant's HRT status on the notepad. You will be able to view this information on the CIS.

### **New claim for HB made via DWP**

20. You will receive your Local Authority Input Documents (LAID) as normal. However, if the claimant is subject to an HRT, DWP staff will put a note on the system to that effect. It will appear in the notes section of the LAID when received by the LA. This will be the first indication that the claimant could be subject to the changes in the regulations.
21. For new claims, when the agent inputs the decision on the system they will suppress the ETD notification where the claimant is deemed to be an EEA jobseeker. In these cases, the ETD will be replaced by an email through the GSE/GCSX/GSX route which will provide details of the claimant's entitlement to JSA but explain that they are deemed an EEA jobseeker. There are no changes to the processes for ETD notifications for EEA retained workers or UK nationals. The LA will continue to receive these as per current processes.
22. The LA should not set the interest markers on CIS for the HB claim where the claimant is subject to an HRT until the outcome of the DWP HRT is known. Where the claimant is deemed to be an EEA jobseeker, DWP would not want to continue to share information with the LA for that person. However, if the claimant is deemed to be an EEA retained worker or a UK national the marker on CIS should be set to start receiving ATLAS notifications.

### **New claim for HB made directly to LA**

23. For new claims made directly to the LA, you will need to undertake some additional checks to see if the claimant has been subject to an HRT. You will need to check CIS to confirm the claimant's entitlement to JSA and the notepad screen for their HRT status.
24. Where an EEA jobseeker makes an HB claim and there is no entitlement to JSA, an LA should signpost the claimant to their Jobcentre to make a claim for JSA.
25. Once the claim has been processed the LA will receive a LAID (where appropriate) and a secure email to show that the claimant is entitled to JSA but has been classified as an EEA jobseeker. Where the claimant is deemed to be a UK national or an EEA retained worker you will receive an ETD notification showing the claimant's entitlement to JSA. You will need to check CIS to get the

claimant's HRT status. In both cases it is then for the LA to decide whether that claimant is eligible for HB. However, if the claimant's status is an EEA jobseeker, they should not be able to access HB.

### **Changes to ongoing HB awards**

26. Where there is a change in the claimant's circumstances this could mean that the claimant requires a new HRT. For these cases the LA would receive an ETD/ATLAS notification of the change that has been made and they would need to check CIS notepad to obtain the claimant's residency status details following their HRT. Where the claimant has been deemed an EEA jobseeker the LA would have to take appropriate action to decide whether the claimant still had access to the benefit.

### **Further advice and information**

27. We have provided some examples of various scenarios at Annex A, and some Questions and Answers at Annex B.

## Annex A

## Examples

**Example 1**

Mr. A, a French national, arrives in the UK on 1 March 2014. He claims JSA(IB) and an award is made with effect from 1 June 2014 after he has completed the 3 month residence requirement. He claims HB on 1 July. The LA checks the CIS notes, which record that Mr. A is an EEA jobseeker, so his HB claim is refused as he doesn't have a qualifying right to reside for HB purposes and fails the HRT.

**Outcome: claimant is not able to access HB**

**Example 2**

Mr. B, a Dutch national, has been in receipt of JSA(IB) and HB since 2 September 2013. As an existing HB recipient, the 1 April 2014 changes do not affect him and his HB continues in payment. On 1 June 2014 he signs off JSA as he has started work as a window cleaner. He continues to receive in-work HB due to his self-employed status. After six months he finds his business has to close as the area where he works is no longer accessible due to flooding and he is unable to find new custom. He claims, and is awarded JSA(IB). As he has lost his self-employed status, the right to reside element of the HRT must be applied to him again and as an EEA jobseeker claiming after 1 April 2014 he is not entitled to HB.

**Outcome: claimant is not able to access HB**

**Example 3**

Miss C, a Greek national, has been in full-time employment for several years and has not needed to claim HB, but on 1 June 2014 she is made redundant and claims JSA along with HB. She is awarded contribution-based JSA and as she has retained her worker status she is able to access HB.

**Outcome: claimant is able to access HB**

**Example 4**

Mr. D, a UK national, returns to the UK on 1 May 2014 to resume his habitual residence after 6 months spent working in Australia on a fixed-term contract. He claims JSA on 15 May, but as a newly arrived migrant he must satisfy the 3 month residency requirement and will not be awarded any JSA until 1 August 2014. On 1 June he claims HB and provides the LA with evidence that he has £5,000 in savings and is withdrawing £80 per week to meet his living expenses whilst he waits for JSA. As he has returned to live in the UK and is resuming his previous habitual residence, the LA decision maker decides that he is habitually resident in the UK so satisfies the HRT. He is awarded HB based on his low income.

**Outcome: claimant is able to access HB**



**Example 5**

Miss E, a Portuguese national, is a self-employed taxi driver. On 1 June 2014 she is injured in a road traffic collision. She informs the LA that she intends to resume her business in a few months once she has recovered but in the meantime she cannot work. As she is temporarily unable to work as a result of the accident, she retains her self-employed status for HB purposes and is eligible to claim. This is the case whether or not Miss E also qualifies for ESA (IR).

**Outcome: claimant is able to access HB**

**Example 6**

Miss F, a German national, has been receiving HB since 1 April 2013 as a self-employed person. On 1 May 2014 she claims JSA(IB) as her business closed due to lack of custom. As she has already met the three month residence requirement she is awarded JSA immediately as a jobseeker. Along with the LAID, Jobcentre Plus send the LA an email advising that the claimant is a jobseeker, since a self-employed person doesn't retain their status as self-employed during periods of unemployment. She is no longer entitled to HB and her HB award ends from the Monday following her cessation of self-employment.

**Outcome: claimant is not able to access HB**

**Example 7**

Mr. G, a Swedish national, arrived in the UK on 1 February 2014 and started full-time work. As he was living in an area with above average rental costs, he claimed HB, which was awarded on the basis that he was an EEA worker. On 15 June 2014, he became involuntarily unemployed and claimed JSA. As he had not been paying NI for a sufficient period, he did not qualify for JSA(C). However as he had been working continuously for over three months and his gross earnings exceeded the Minimum Earnings Threshold, the JSA decision maker decided that he retained worker status. JSA(IB) was awarded and the ETD notification was sent to Mr. G's LA as normal.

**Outcome: claimant is able to access HB**

**Annex B****Questions & Answers****Q1. What do these changes mean for non-EEA nationals?**

A. The object of these regulations is to remove entitlement to HB for EEA nationals who are residing in the UK as jobseekers and make a new claim for HB with effect from 1 April 2014. It also applies to existing recipients of HB who have a change in their circumstances which requires the right to reside test to be applied to their HB again and they are classified as jobseekers. The position of non EEA nationals making a claim for HB is unaltered and LAs should continue to apply existing guidance.

**Q2. How should couples be treated where one person is an EEA jobseeker and the other is a CTA national?**

A. This reform only removes EEA jobseekers' access to HB and does not affect their EU treaty rights to reside in the UK whilst they search for work. If a claim for JSA(IB) is received from a CTA national who has an EEA partner, the couple rate will be awarded just as it would be if the partner were a CTA national. The rule whereby non-EEA partners with no recourse to public funds are disaggregated from DWP income-related benefits arises under immigration law and does not apply to a partner who is an EEA jobseeker. In the case of HB, the CTA national should be advised to make the claim (similar to the situation of a couple where one person is an ineligible student) and entitlement would be assessed as normal.

**Q3. How should changes of address be dealt with?**

A. Transitional protection continues as long as a claimant entitled to HB and JSA(IB) on 31 March 2014 continues to receive both benefits. Where a claimant moves address within a LA area, then as this is a change of circumstances to an existing award the claimant remains eligible for HB so long as there is no interruption to the JSA award. Where a claimant moves from one LA to another, their HB award ends and a separate claim is required from the new authority. Transitional protection expires and the claimant will not be entitled to HB from the new LA, unless there is a change to their status.

**Q4. How do the restrictions on EEA jobseekers' access to HB link with the new Minimum Earnings Threshold (MET) / genuine and effective work guidance?**

A. The new, more exacting test for genuine and effective work introduced on 1 March 2014 and discussed in Circular HB A3/2014 is likely to influence HB decisions in two areas. The first is when someone who is involuntarily unemployed does not retain worker status, as they did not meet the requirement to be a worker; the second is where someone who moves from JSA into work or self-employment is not engaged in genuine and effective work.

A person who approaches DWP to claim JSA after a period in employment will be treated as a jobseeker and not a retained worker where the employment they were previously engaged in did not meet the MET and fails the enhanced scrutiny of whether it was genuine and effective. So long as that claimant has been in the UK for three months, they will be immediately eligible to claim JSA(IB), but as an EEA jobseeker will not be eligible for HB.

A jobseeker entitled to HB and JSA(IB) as of 31 March 2014 will receive transitional protection, which comes to an end if their JSA or HB award ends. Where a claimant moves from JSA(IB) into work, either as an employee or on a self-employed basis, the LA should apply the new MET / genuine and effective test. If the claimant's earnings are less than the MET and the work is not genuine and effective, the claimant is not a worker or self-employed person and so their HB entitlement will end.

**Q5. How is retained worker status determined?**

A. Article 7(3) of Directive 2004/38/EC provides that status as a worker is to be retained where a claimant is "in duly recorded involuntary unemployment .....and has registered as a jobseeker with the relevant employment office". Annex B to Chapter C4 of the HB Guidance Manual contains background information on retention of worker status. The Court of Appeal has ruled that since the UK has no fixed procedure for determining whether someone is "registered as a jobseeker" a claim for IS, as well as a claim for JSA, can meet the criteria as long as in the course of making the claim for IS the claimant has stated that they are seeking work. Since 1 March 2014 in addition to being involuntarily unemployed and claiming JSA, NI credits only or IS, an EEA national must also provide evidence to show that their earnings in their previous employment satisfied the MET and where they didn't, that the work was genuine and effective.

**Q6. What does this change mean for family members of EEA jobseekers?**

A. Family members of jobseekers who are looking for work have a right to reside as a jobseeker if they also claim JSA(IB), and will be caught by the exclusion from HB just as any other EEA jobseeker would be.

The eligibility for JSA and HB of those jobseekers who are family members of EEA workers and self-employed persons will not be affected. Such individuals have clearly defined status under the Residence Directive and full eligibility for HB and other benefits.

**Q7. How does an LA proceed if the claimant disputes their DWP designation as a jobseeker?**

A. Whilst JSA(IB) and HB are two different benefits with independent decision making processes, the same legislation and tests are being applied to the same facts when determining the question of whether a claimant is a jobseeker or a person with retained worker status, so consistent decisions should be made. LAs should request that Jobcentre Plus provide the reasons for their decision that someone is not a retained worker if necessary. If Jobcentre Plus confirms their decision, follow normal dispute procedures.

**Q8. What happens where the HB claim does not coincide with a JSA claim?**


A. Directive 2004/38/EC provides that retention of worker status requires registration with the relevant employment office, which in the UK is Jobcentre Plus, so in any case where the question of whether a claimant is a retained worker or a jobseeker arises a DWP benefit should have been claimed and you will be able to check the DWP records on whether an EEA national is a jobseeker or a retained worker.

Even if there is no HB claim made alongside the claim to JSA, the JSA agent will still record on CIS the decision on whether an EEA national is a jobseeker or has retained worker status. This information will also be needed for DWP purposes, so the CIS notepad should be updated to ensure that the HRT decision remains visible.

In the unlikely event that the decision is not visible, a LA can contact the nearest Jobcentre Plus to obtain it per business as usual. The DWP agent will check that the LA officer is on the Apollo register before sharing any information regarding the case.

Annex C

Notification template

 Department for Work & Pensions	Office Address:
	Our phone number is: Code                      Number If you have a textphone, you can call on Code                      Number

To:

**About Income based Jobseeker's Allowance**

Name:

National Insurance Number:

Address:

The above named claimant has been classed as an EEA Jobseeker following the Habitual Residency Test.

Yours sincerely

For Manager

**If you need to contact us please use the number at the top of this letter.**