

# Housing Benefit and Council Tax Benefit

## General Information Bulletin

Department for Work and Pensions, 6<sup>th</sup> Floor, Caxton House, Tothill Street, London SW1 9NA

<http://www.dwp.gov.uk/local-authority-staff/housing-benefit/>

**HB/CTB G2/2013**

**22 February 2013**

<b>Contact</b>	Queries about the <ul style="list-style-type: none"><li>• <b>technical content of this bulletin</b>, contact details are given at the end of each article</li><li>• distribution of this bulletin, contact <a href="mailto:housing.correspondenceandpqs@dwp.gsi.gov.uk">housing.correspondenceandpqs@dwp.gsi.gov.uk</a></li></ul>
<b>Who should read</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>Action</b>	For information

## Contents

	<b>paragraph</b>
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Savings Provisions) Order 2013.....	1
Helping you prepare for Personal Independence Payment.....	6
Personal Independence Payment controlled start postcodes.....	12
Calculation of overpayments – underlying entitlement.....	16
The Social Security (Habitual Residence) (Amendment) Regulations 2012.....	22
HB/CTB Cases awaiting decision by the Upper Tribunal.....	34
Statutory Instruments.....	36
What's new on the web.....	38

## Crown Copyright 2013

Recipients may freely reproduce this bulletin.

## **The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Savings Provisions) Order 2013**

1. The above order brings amendments to the Housing Benefit (HB) Regulations 2006 and the HB (Persons who have attained the qualifying age for state pension credit) Regulations 2006.
2. The order takes account of changes made by the Health and Social Care Act 2012, chiefly the abolition of Primary Care Trusts and the creation of the National Health Service (NHS) Commissioning Board and clinical commissioning groups.
3. In schedule 5, paragraph 27 of the HB Regulations 2006 (sums to be disregarded in the calculation of earnings other than income); reference is added to clinical commissioning groups and the NHS Commissioning Board. As such, payments from these groups are disregarded when paid to a claimant who is providing temporary respite care for a person not normally part of the household.
4. Similarly, in regulation 38 of the HB (Persons who have attained the qualifying age for state pension credit) Regulations 2006, any payments made to the claimant from these groups are not included as earnings for the purposes of calculating self-employed income.
5. The amendment to the HB regulations can be viewed here:

<http://www.legislation.gov.uk/ukxi/2013/235/contents/made>

### **Queries**

For further information on the content of this item please contact:

[housing.benefitenquiries@dwp.gsi.gov.uk](mailto:housing.benefitenquiries@dwp.gsi.gov.uk)

### **Helping you prepare for Personal Independence Payment**

6. As part of wider welfare reform, Disability Living Allowance (DLA) will be replaced by Personal Independence Payment (PIP) for people aged 16 to 64 on or after 8 April 2013. We'll introduce PIP gradually from April 2013, starting with new claims in a limited geographic area.
7. We are writing to all existing DLA claimants during February and March 2013 with more information about PIP in their [usual annual letters](#) that tell them what their new benefit rate will be. Claimants may want to know more about PIP as a result.
8. The Department for Work and Pensions (DWP) website contains up-to-date information for teams who work with DLA claimants: [www.dwp.gov.uk/pip-toolkit](http://www.dwp.gov.uk/pip-toolkit). The PIP Toolkit aims to help those teams understand information about

PIP and share it with claimants. You can download fact sheets about PIP and how it will be introduced, sample copies of claimant forms and letters, and accessible versions of the PIP quick guide.

9. The PIP Toolkit also contains suggested articles and editorial that you can easily adapt for use in your own staff communications, newsletters or guidance bulletins. We'll add more information specifically written for local authorities (LAs) when we've tested it with nominated officials and practitioners.
10. Please contact [pip.feedback@dwp.gsi.gov.uk](mailto:pip.feedback@dwp.gsi.gov.uk), using 'Toolkit' as the subject, if you need more tailored information about PIP. You can also contact a [DWP Partner Manager](#) to organise a face-to-face session about PIP.
11. Please direct claimants to [www.gov.uk/pip](http://www.gov.uk/pip) for claimant information about PIP and an [online PIP checker](#), which uses the claimant's date of birth and post code to work out how and when they might be affected.

## Queries

For further information on the content of this item please contact:

[pip.feedback@dwp.gsi.gov.uk](mailto:pip.feedback@dwp.gsi.gov.uk)

## Personal Independence Payment controlled start postcodes

12. We are now able to confirm the postcode boundaries of the controlled start for PIP new claims from 8 April 2013. The full list of affected codes is:

BL, CA, CH (except CH1, CH4, CH5, CH6, CH7 and CH8), CW, DH, DL (except DL6, DL7, DL8, DL9, DL10 and DL11), FY, L, LA (except LA27, LA28, LA62 and LA63), M, NE, PR, SR, TS (except TS9), WA and WN.

## What's changed?

13. There is a small change to the boundaries of the controlled start in the Chester postcode following further mapping work. CH1 and CH4 codes will not be included in the controlled start, and new claims will be introduced in those areas as part of national rollout on 10 June.

## Why has this changed?

14. These two postcode areas actually cover parts of both England and Wales so we have moved these to simplify the controlled start arrangements.

## What's the impact?

15. The change is estimated to affect less than 40 prospective new claimants from the CH1 and CH4 postcode areas who will still be able to claim DLA as now. From 10 June 2013, new claims to PIP will be rolled out nationally.

## Queries

For further information on the content of this item please contact:

[pip.feedback@dwp.gsi.gov.uk](mailto:pip.feedback@dwp.gsi.gov.uk)

## Calculation of overpayments – underlying entitlement

16. Following a review of a small number of overpayment decision notices, we have identified that some LAs are not always considering underlying entitlement when HB or Council Tax Benefit (CTB) has been overpaid (HB Regulation 104 (State Pension Credit (SPC) Regulation 85) and CTB Regulation 89 (SPC Regulation 74)). **Underlying entitlement is mandatory and must always be considered. It is part of the overpayment calculation.**
17. LAs must establish the customer's correct circumstances over the overpayment period and calculate entitlement based on those circumstances at the correct time. The underlying entitlement must be deducted from the gross overpayment amount. Please refer to paragraphs 3.50 to 3.80 of the HB/CTB Overpayments Guide for detailed guidance, including an underlying entitlement process map. <http://www.dwp.gov.uk/docs/hbopg-calc-op.pdf>
18. The most common occurrence of underlying entitlement not being considered is when a DWP passported benefit has been cancelled for a past period. For example, the customer has been found to be working or they had not declared they were living together with a partner. Even if the customer has committed fraud, underlying entitlement must be considered. A customer may have been entitled to HB or CTB on low income grounds even though there was no entitlement to a DWP passported benefit. The customer's correct circumstances must be established, including customer's earnings or partner's income and then their underlying entitlement to HB/CTB for the period in question must be calculated.
19. By calculating underlying entitlement:
  - LAs will have overpaid less; there will be less debt to recover, this equates to less work;
  - LAs can claim 100% subsidy for any underlying entitlement calculated, rather than the 40% subsidy, which is the amount normally reimbursed for overpayments;
  - The customer's overpayment amount will be lower, they will have less money to repay;
20. In prosecution cases, the amount of the overpayment may influence the penalty given by the Court, therefore it is essential that the overpayment is calculated correctly.
21. When the overpayment calculation is completed, an overpayment decision notice must be issued to the customer. It must include certain information

including the customer's right to apply for a revision of the decision and where appropriate, right of appeal. The customer does not need to have applied for a revision of the decision in order to appeal. This information is again mandatory and must be included in all overpayment decision notices. Please refer to paragraph 5.07 of the HB/CTB Overpayments Guide, which lists the information that must be included in an overpayment decision notice and paragraphs 6.30 to 6.34, which outlines the dispute process if a customer does not agree with the overpayment decision:  
<http://www.dwp.gov.uk/docs/hbopg-appeals.pdf>

## Queries

Any queries or requests for further information you be sent to  
[Louise.pearson@dwp.gsi.gov.uk](mailto:Louise.pearson@dwp.gsi.gov.uk)

Tel 01706 714315

## The Social Security (Habitual Residence) (Amendment) Regulations 2012

22. With effect from 08 November 2012, the Immigration (European Economic Area) (Imm(EEA)) regulations have been amended to take account of the Court of Justice of the European Union (CJEU) in the case of Zambrano<sup>1</sup>.

23. In Zambrano, the basis of the CJEU's judgement was that, if Mr. Zambrano were not granted a right to reside and a work permit, the result would be that his dependent children (who were Belgian citizens) would be deprived of the genuine enjoyment of the substance of their rights as European Union (EU) citizens under the Treaty because they would be forced to leave the EU to accompany their parents.

24. The result of the change to the Imm (EEA) Regulations is that from 08 November 2012, a person who is not an "exempt person" (see paragraph 29 below) has a derivative right to reside in the United Kingdom (UK) if

- They are the primary carer of a British citizen and
- That British citizen is residing in the UK and
- That British citizen would be unable to reside in
  - The UK or
  - Another EEA state or Switzerland
  - If the person was refused a right to reside.

25. With effect from 08 November 2012, the Benefit regulations have been amended<sup>2</sup> so that a person who has a right to reside solely on the basis of the

---

<sup>1</sup> Ruiz Zambrano v Office national de l'emploi (ONEm) Case C-34/09 ; 2 Imm (EEA) Regs, reg 15A (1) & (4A)

regulation change described in paragraph 22 above will not satisfy the right to reside condition of the habitual residence test. The regulations have also been amended so as to exclude a right to reside which exists in accordance with the Treaty where that right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Citizen. Someone with this right to reside may have documentation confirming their status issued by the Home Office or they may simply claim that they have the right.

26. Regulation 10 of HB Regulations 2006 and Regulation 7 of the CTB Regulations 2006 have been amended to maintain the position that existed prior to the coming into force of the amendments to the Imm (EEA) Regulations and to make the effect of the ruling clear. Such a person will therefore be a person from abroad with an applicable amount of £nil for the purposes of HB or CTB.

27. Such a person would be able to claim contributory benefits, but will also not satisfy the right to reside condition of the habitual residence test for the purposes of Income Support (IS), Jobseekers Allowance (Income Based) (JSA (IB)), Employment and Support Allowance (Income related ) (ESA (IR)) and State Pension Credit (SPC).

28. "Exempt person" means<sup>3</sup> a person

- who has a right to reside in the UK as a result of any provision in the Imm (EEA) Regulations other than a derivative right to reside<sup>4</sup> or
- who has a right of abode in the UK by virtue of specific legislation<sup>5</sup> (which includes British citizens) or
- to whom specific legislation<sup>6</sup> exempting persons from the requirement to have leave to enter or remain applies (for example certain aircrew or seamen who are under engagement requiring them to leave within 7 days and certain diplomats) or
- who has indefinite leave to enter or remain in the UK.

## Legal Challenges

29. If a legal challenge is received to a HB or CTB decision made under the amended benefit regulations, based on the Zambrano judgment - either by way of statutory appeal or judicial review - please contact:

[housing.benefitenquires@dwp.gsi.gov.uk](mailto:housing.benefitenquires@dwp.gsi.gov.uk)

---

<sup>2</sup> IS (Gen) Regs, reg 21AA (3) (bb) and (e); JSA Regs, reg 85A (3) (aa) and (c); ESA Regs, reg 70(3) (bb) and (e); SPC Regs, reg 2(3) (bb) and (e), HB Regs reg 10 (3A) (bb) and (e), CTB Regs reg 7(4) (BB) and (e).

<sup>3</sup> Imm (EEA) Regs, reg 15A (6)(c)

<sup>4</sup> reg 15A

<sup>5</sup> Immigration Act 1971, s 2

<sup>6</sup> s8

## **Policy background**

30. Most non-EEA nationals who have a right of residence in Great Britain (GB) have an immigration status that gives no recourse to public funds, which means they are not entitled to claim income related benefits by section 115 of the Immigration and Asylum Act 1999. Non-EEA nationals can claim contributory benefits if they have made sufficient national insurance contributions and meet the other entitlement conditions for the benefit.
31. Since the CJEU ruling, 692 people (in 619 separate families) have applied for a Zambrano right to reside, and contain a non-EEA national primary carer of a British child which could give them this right.
32. All Departments agreed that because the Zambrano judgment gives a right to work, people with a Zambrano right to reside should also be entitled to claim contribution based benefits if the non-EEA national has paid sufficient national insurance contributions and met the other entitlement criteria for those benefits. Departments also agreed that a Zambrano right to reside should not provide a right to means tested benefits, child benefit, child tax credit, housing assistance or social housing. This is considered a proportionate means of achieving the legitimate Government aim of encouraging migrants who can make a valuable contribution to our economy, whilst deliver fairness for the taxpayer by maintaining the current level of support the benefit system is able to provide to the general population.
33. In order to ensure there was no change in the current entitlement criteria for the relevant benefits, tax credits, housing assistance and social housing, it was necessary for the Department for Communities and Local Government (DCLG), Her Majesty's Revenue and Customs (HMRC) and DWP to change their regulations at the same time that the Home Office provides for the right to reside in their regulations.

## **Queries**

Any queries or requests for further information you be sent to:

[housing.benefitenquires@dwp.gsi.gov.uk](mailto:housing.benefitenquires@dwp.gsi.gov.uk)

## **HB/CTB Cases awaiting decision by the Upper Tribunal**

34. Decision Making and Appeals (DMA) Leeds is aware of the following HB/CTB cases that are awaiting decision by the Upper Tribunal:
  - CH/1349/2011: Income – disabled student bursary.
  - CH/859/2012: Deprivation of capital (Secretary of State not joined although there are six linked IS appeals).
  - CH/1931/2012: Income – failure to take up student loan (Secretary of State joined).

- CH/1988 & 3332/2012: Use of registered social landlords as comparators in relation to the availability of suitable alternative accommodation.
- CH/2963/2012: Right to reside – Latvian non-citizen.

35. Thank you to those authorities that have let us know about cases they are appealing. Please notify us of cases at the point that the application for leave to appeal is made to the Upper Tribunal office, or the appeal is lodged following grant of leave by a First Tier Tribunal Judge. Please let us know if a case reference (CH/.. or CSH/..) has been allocated.

### Queries

If you have any queries about cases before the Upper Tribunal Judges or courts, please contact us by

email at:

[fldmdma.customersupportservices@dwp.gsi.gov.uk](mailto:fldmdma.customersupportservices@dwp.gsi.gov.uk) or

fax on 0113 2324841

### Statutory Instruments

36. The following Statutory Instruments (SIs) has been laid

- 2013 No.178 (C.10), The Welfare Reform Act 2012 (Commencement No.7) Order 2013, coming into force from 1 February 2013
- 2013 No.105, The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2013, coming into force from 14 March 2013

37. Copies of SIs can now be downloaded from DWP's own website

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> and the website of the Office of Publication Sector Information <http://www.opsi.gov.uk/stat.htm>

### What's new on the web

38. The following items can be found on the website link shown

Document Type	Subject	Link
<b>HB/CTB A2/2013</b>	HB Uprating 2013/14	<a href="http://www.dwp.gov.uk/docs/a2-2013.pdf">http://www.dwp.gov.uk/docs/a2-2013.pdf</a>
<b>HB/CTB A3/2013</b>	Using Social Security data for Council tax purposes	<a href="http://www.dwp.gov.uk/docs/a3-2013.pdf">http://www.dwp.gov.uk/docs/a3-2013.pdf</a>



<b>HB/CTB S2/2013</b>	Additional funding to meet the costs of implementing welfare reform changes in 2012/13	<a href="http://www.dwp.gov.uk/docs/s2-2013.pdf">http://www.dwp.gov.uk/docs/s2-2013.pdf</a>
<b>HB Direct issue 134 February 2013</b>	Newsletter	<a href="http://www.dwp.gov.uk/docs/issue-134-feb-2013.pdf">http://www.dwp.gov.uk/docs/issue-134-feb-2013.pdf</a>
<b>HB/CTB U1/2012</b>	Identifying those living in supported exempt accommodation	<a href="http://www.dwp.gov.uk/docs/u1-2013.pdf">http://www.dwp.gov.uk/docs/u1-2013.pdf</a>
<b>HB/CTB G1/2013</b>	Access to DWP and HM Revenues and Customs data on the Customer Information System – Management Checks. The role of Performance Measurement (PM). Loss of Benefits (LOB) - new changes from 1 April 2013. Statutory instruments. What's new on the web.	<a href="http://www.dwp.gov.uk/docs/g1-2013.pdf">http://www.dwp.gov.uk/docs/g1-2013.pdf</a>

**HB/CTB circulars recently issued**

HB/CTB A2/2013

HB/CTB S3/2013

HB/CTB S2/2013