

## Housing Benefit Circular

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

# HB A16/2013

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	Accession of Croatia to the European Union.

### Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against part C4 and C4 annexes A, B, C, D, E & F.

### Queries

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## **Accession of Croatia to the European Union**

### **Introduction**

1. To inform local authority staff that Croatia joined the European Union (EU) on 1 July 2013 and to provide guidance on action to take on Housing Benefit (HB) claims from Croatian nationals.

### **Background**

2. The Republic of Croatia joined the EU on 1 July 2013.
3. In line with the government's commitment to use transitional controls for new countries that join the EU, the Home Office (HO) amended immigration regulations and from 1 July 2013 Croatian nationals will not enjoy the same rights of access to the labour market as all other European Economic Area (EEA) nationals. This will last at least for an initial period of 5 years.
4. A summary of the main points of the special provisions which restrict Croatian nationals' access to the United Kingdom (UK) benefits for 5 years from 1 July 2013 are detailed below. The Habitual Residence Test (HRT) should be applied to check the right to reside status of Croatian nationals, details of when the factual HR element of the test should also be applied are provided below.

### **Employed Croatian nationals**

5. The vast majority of Croatian nationals will be required to obtain authorisation to work in the UK. This means that in order to be able to work as an employed person in the UK they must have applied for an authorisation document from the HO. These documents are covered in more detail within this circular.
6. The HRT should be applied to assess they have a right to reside as an authorised worker and that they have valid documentation from the HO to demonstrate this. They are then deemed to satisfy the factual HR element of the test. A Croatian national who is working in accordance with the HO authorisation may be entitled to HB while they are in work.
7. Once a Croatian national has worked legally in accordance with the authorisation provided by the HO, without interruption for a continuous period of 12 months they are entitled to benefits in the same way as any other EEA national. They must sit the HRT to have their employment history as an authorised worker checked and verified. They may then be entitled (depending on their circumstances) to HB, income-based Jobseeker's Allowance (JSA (IB)), Income

Support (IS), income related Employment and Support Allowance (ESA (IR)) or State Pension Credit.

8. The HO regulations mean that certain highly skilled Croatian nationals may be issued with a registration certificate, rather than a worker authorisation certificate. This certificate will make it clear that there are no restrictions on their right to reside in the UK. If a Croatian national holds such a certificate, they will enjoy the same rights as all other EEA national workers including the ability to retain worker status and the same entitlement to benefit as other EEA national workers.

#### **Croatian national jobseeker**

9. Croatian nationals who arrive in the UK to seek work will not satisfy the HRT for income-related benefits, including HB, unless they have completed 12 months continuous authorised work in the UK and have valid work authorisation from the HO. They do not have an entitlement to income-related benefits such as HB or JSA.

#### **Croatian national student**

10. Croatian students will not satisfy the HRT and will therefore not have an entitlement to income-related benefits such as HB or JSA.

#### **Those exempt from workers authorisation**

11. Full details of the exceptions can be found within annex A. Those who already have a permanent right of residence in the UK continue to have access to the labour market and benefits.

#### **Self-employed Croatian nationals**

12. There are no additional restrictions on self-employed Croatian nationals, they should be treated in the same way as any other EEA national who is self-employed and must satisfy the HRT as a self-employed EEA national.

#### **Accession workers authorisation certificate**

13. The worker authorisation certificate will be provided to those who have been authorised to work in a specific occupation for a specific employer. If this work ends within the first 12 months, the Croatian national will no longer have a right

to reside unless they have another job that falls into the worker authorisation rules and a new certificate from the HO to demonstrate this. Unless they have completed 12 months continuous authorised work for one or more employers with certificates to demonstrate this they will not have the right to reside in the UK as an EEA jobseeker.

**Registration certificate**

14. The registration certificate will be provided by the HO to those who are highly skilled. They will enjoy the same rights as all other EEA national workers including the ability to retain worker status.

**Timing**

15. Changes apply from 1 July 2013 when Croatia joined the EU.

**Action**

16. From 1 July 2013, staff who receive claims or queries from Croatian claimants should process them in accordance with this circular.

## Annex A

**Croatian nationals who are not subject to worker authorisation**

1. A Croatian national is not subject to worker authorisation if:

- on 30 June 2013 they had leave to enter or remain in the UK under the Immigration Act 1971 and their immigration status has no condition restricting employment<sup>1</sup>, or if they are given leave of this type (including that their immigration status has no condition restricting employment); or
- they were legally working (see paragraphs 2 and 3 of this annex) in the UK on 30 June 2013 and had been legally working in the UK without interruption (see note below) throughout the period of 12 months ending on that date<sup>2</sup>; or
- they legally work (see paragraphs 2 and 3 of this annex) in the UK without interruption (see note) for a period of 12 months falling partly or wholly after 30 June 2013 at the end of that 12 month period<sup>3</sup>; or

**Note for paragraphs 2 and 3 of this annex:** a person shall be treated<sup>4</sup> as having worked without interruption for a period of 12 months provided they were legally working in the UK at the beginning and end of the 12 month period and, if their work was interrupted, and intervening period(s) do not exceed 30 days in total.

- they have dual nationality and are also a national of the UK or an EEA state (other than Croatia)<sup>5</sup>, except that where the person is also a Bulgarian or Romanian national subject to worker authorisation in accordance with the Accession regs 2006 (see Decision makers Guide (DMG) 071300 et seq), they will only be exempt from worker authorisation as a Croat, during any period when they are working in accordance with the Accession regs 2006 or during any period in which they are<sup>6</sup>:
  - the spouse, civil partner, unmarried or same sex partner (see paragraph 6 of this annex) of or
  - a child under 18 of a person who has been given leave to enter or remain in the UK under the Immigration Act 1971 where that leave allows that person to work

<sup>1</sup> Croatia (I & WA) Regs 2013, reg 2(2)

<sup>2</sup> reg 2(3)

<sup>3</sup> reg 2(4)

<sup>4</sup> reg 2(5)(c)

<sup>5</sup> reg 2(6) & (7)

<sup>6</sup> reg 2(8)

- during any period when they are<sup>7</sup> the spouse, civil partner, unmarried or same sex partner (see paragraph 6 of this annex) of a national of the UK or a person settled (as defined in specific legislation<sup>8</sup>) in the UK
- during any period when they are<sup>9</sup> a member of a diplomatic mission, or a family member of a member of a diplomatic mission, as defined in specific legislation<sup>10</sup> and other persons who are not British citizens specified in an order of the Secretary of State for the Home Department<sup>11</sup> exempting them from any or all of the provisions of the Immigration Act 1971
- they have a permanent right to reside in the UK under the Imm (EEA) Regs<sup>12</sup>

Except where paragraph 15 applies, during any period when they are a family member of an EEA national who has a right to reside in the UK<sup>13</sup>.

- Where the EEA national with a right to reside in the UK referred to in paragraph 14 is a Croatian national subject to worker authorisation or a Bulgarian or Romanian national subject to worker authorisation (referred to below as “Y”) then only the following family members are not subject to worker authorisation<sup>14</sup>:
  - Y’s spouse or civil partner; or
  - a unmarried or same sex partner of Y (see paragraph 6); or
  - a direct descendent of Y, Y’s spouse or civil partner who is:
    - under 21; or
    - dependent on Y, Y’s spouse or Y’s civil partner
- they are highly skilled as defined<sup>15</sup> and hold a registration certificate from the HO that includes a statement that they have unconditional access to the UK labour market
- during any period when they are a student in the UK and either:
  - they hold a registration certificate which states that they are a student who may work in the UK for not more than 20 hours per week (except where they are working, as part of a course of

<sup>7</sup> reg 2(9)

<sup>8</sup> Immigration Act 1971, s 33(2A)

<sup>9</sup> Croatia (I&WA) Regs 2013, reg 2(10) & 11

<sup>10</sup> Immigration Act 71, s 8(3)

<sup>11</sup> s 8(2)

<sup>12</sup> Croatia (I & WA) Regs 2013, reg 2(12)

<sup>13</sup> reg 2(13)

<sup>14</sup> reg 2(14)

<sup>15</sup> reg 2(15)

vocational training or during vacations) and provided they comply with those work conditions<sup>16</sup>; or

- they have leave to enter or remain under the Immigration Act 1971 as a student provided they are working in accordance with any conditions attached to that leave<sup>17</sup>;
- during the 4 months starting from the end of the course where they are a former student who holds a registration certificate (issued before they completed their course) saying that they may work during that period<sup>18</sup> they are a posted worker<sup>19</sup> as defined in specific EU legislation<sup>20</sup>, being a person posted to the UK by an employer based in another EEA state in pursuance of a contract to provide services in the UK.

## Meaning of legally working

### Periods before 1 July 2013

2. For the purposes of paragraph 1, a Croatian national working in the UK during a period falling before 1 July 2013, was working legally in the UK during that period if<sup>21</sup>:
  - they had leave to enter or remain in the UK under the Immigration Act 1971 for that period; and
  - that leave allowed them to work in the UK; and
  - they were working in accordance with any condition on that leave restricting their employment; or
    - they were exempt from the provisions of the Immigration Act 1971 in accordance with specific legislation; or
    - they were entitled to reside in the UK under the Immigration (EEA) Regs.

<sup>16</sup> reg 2(16)(a) & (17)

<sup>17</sup> reg 2(16) (b)

<sup>18</sup> reg 2(18)

<sup>19</sup> reg 2(19)

<sup>20</sup> reg 2(20) & Directive 96/71/EC, Art 1(3)

<sup>21</sup> Croatia (I & WA) Regs 2013, reg 2(5)(a)



### **Periods on or after 1 July 2013**

3. For the purposes of paragraph 1, a Croatian national is legally working in the UK on or after 1 July 2013 during any period in which they<sup>22</sup>:
- are exempt from worker authorisation because they fall within one of the categories in paragraph 1; or
  - hold an accession worker authorisation document (see paragraph 1 above) and are working in accordance with the conditions set out in that document

### **Meaning of “family member”**

4. For the purposes of paragraph 1 above a Croatian national’s family members are<sup>23</sup> (subject to the special rules about the family members of students described in DMG 071237):
- their spouse or civil partner; and
  - their direct descendents or the direct descendents of their spouse or civil partner who are:
    - under the age of 21; or
    - their dependants or dependants of their spouse or civil partner; and
  - their direct ascendant relatives or the direct ascendant relatives of their spouse or civil partner; and
  - extended family members as described in DMG 071238.
5. See paragraphs 13 to 15 to for more on family members.

### **Meaning of “unmarried or same sex partner”**

6. An “unmarried or same sex partner” means a person who is in a durable relationship with another person. If a Decision Maker (DM) has doubts about whether this is the case, a view should be sought from the HO in the first instance.

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<sup>22</sup> Croatia (I & WA) Regs 2013, reg 2(5)(b)

<sup>23</sup> Croatia (I & WA) Regs 2013, reg 1(2)(a) & Imm (EAA) Regs 06, reg 7

## Right to reside

7. For as long as they continue to satisfy one of the conditions for exemption in paragraph 1 above, Croatian nationals who are not subject to worker authorisation have the same rights to reside as are enjoyed by a non-accession EEA national such as a French or German national.

## Deciding if a Croatian national is not subject to worker authorisation

8. HB DMs must make their own judgement about a Croatian national's right to reside and the effect on entitlement to HB. Where the HO is satisfied that the applicant is a Croatian national who is not subject to worker authorisation, any registration certificate issued under the Immigration (EEA) Regs 06 will include a statement that the holder of the certificate has unconditional access to the UK labour market<sup>24</sup>. Unless there are grounds for doubt (for example where the certificate was issued a long time ago or where the claimant's circumstances indicate that they are subject to worker authorisation), HB staff can generally accept an HO registration certificate which includes that statement as evidence that the person is not subject to worker authorisation.

## Self-employment

9. Transitional provisions in the Treaty of Accession do not allow limitation of the principle of freedom of movement for self-employed persons within the EEA. This means that, from 1 July 2013, all Croatian nationals regardless of whether or not they are subject to worker authorisation have a right to reside as a "qualified person" when they are working as a self-employed person in the UK<sup>25</sup>.
10. Any Croatian national who is a self-employed person in the UK will retain that status and a right to reside if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident<sup>26</sup>.
11. With effect from 1 July 2013, a Croatian national who is self-employed in the UK or who retains that status in accordance with paragraph 10 is deemed not to be a person from abroad/person not in Great Britain (GB) for the purposes of HB.
12. HB staff are reminded that work as a self-employed person must be genuine and effective. In addition HB staff may need to establish whether at any particular

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<sup>24</sup> Croatia (I & WA) Regs 2013, reg 7(2)

<sup>25</sup> Imm (EEA) Regs, 06, Art 14 & Art 6(1)(c)

<sup>26</sup> Imm (EEA) Regs 06, Art 6(3)

moment in time a claimant is a self-employed person. An Upper Tribunal Judge has said <sup>27</sup>:

*“I do not accept that a claimant who is for the moment doing no work is necessarily no longer self-employed. There will commonly be periods in a person’s self-employment when no work is done. Weekends and holiday periods are obvious examples. There may also be periods when there is no work to do. The concept of self-employment encompasses periods of both feast and famine. During the latter, the person may be engaged in a variety of tasks that are properly seen as part of continuing self-employment; administrative work, such as maintaining the accounts; in marketing to generate more work; or developing the business in new directions. Self-employment is not confined to periods of actual work. It includes natural periods of rest and the vicissitudes of business life. This does not mean that self-employment survives regardless of how little work arrives. It does mean that the issue can only be decided in the context of the facts at any particular time. The amount of work is one factor. Whether the claimant is taking any other steps in the course of self-employment is also relevant. The claimant’s motives and intentions must also be taken into account, although they will not necessarily be decisive.”*

## Family members

13. In general the family members of an EEA national with a right to reside in the UK, also have a right to reside derived from and linked to the EA national’s right to reside<sup>28</sup>.
14. Where a Croatian national not subject to worker authorisation (“C”) has a right to reside in the UK then their family members (as defined in paragraph 4) are not subject to worker authorisation and have the same rights to reside as the family members of any other EEA national.
15. However where a Croatian national is subject to worker authorisation then only their spouse, civil partner, unmarried or same sex partner (hereafter “partner”) and their (or their partner’s) children or grandchildren aged under 21 or dependent escape the requirement for worker authorisation. This means that, for example, the Croatian national’s father, father in law, mother, mother in law, grandparents can only rely on any rights to reside they might have. So the Croatian father of a Croatian national subject to worker authorisation might have a right to reside in the UK as an authorised worker, a self-employed or a self-

<sup>27</sup> SSWP v JS [2010] UKUT 240 (AAC)

<sup>28</sup> Imm (EEA) Regs, reg 14(2)

sufficient person but he will not have an automatic right to reside as his son's family member.