



Summary of the new Housing Benefit Rules for EEA Migrants

On Tuesday April 1st 2014, new rules came in restricting EEA migrants' access to Housing Benefit (HB).

This briefing explains what these changes mean and how they will affect both new and existing claimants.

INTRODUCTION – THE IMPORTANCE OF JOBSEEKER & WORKER STATUSES AND THE DIFFERENCES BETWEEN THEM

There are currently two “statuses” an EEA national can possess, which will entitle them to claim Jobseekers Allowance (JSA) and HB. These are:

- 1) **WORKER STATUS** – To qualify, a person needs to be undertaking “genuine and effective” employment or must have done so in the past. Despite the name, a Worker can be unemployed (this is Retained Worker status). To claim JSA they would need to be unemployed and seeking work with a genuine chance of being employed. EEA migrants with Worker status (including Retained Worker status) are eligible for HB (subject to the usual means tests) until their status changes.

- 2) **JOBSEEKER STATUS** – To qualify, a person must actively be looking for work, with a genuine chance of finding employment. An EEA national must pass the Habitual Residence Test (HRT) before they can be granted Jobseeker status. Jobseeker status also covers those who were previously – or are currently – working in “marginal” or “ancillary” roles, people who have never worked, people who were previously self-employed and those who lost their employment voluntarily. Under the rules which came in on April 1st 2014, EEA migrants with Jobseeker status are not eligible for HB, unless they have Transitional Protection (see below).

RULES FOR THOSE WITH TRANSITIONAL PROTECTION (See Scenarios iii & iv below)

EEA Nationals who had a live claim for JSA and HB on or before 31st March 2014 will continue to be eligible for both benefits, regardless of whether they have Jobseeker or Worker status (i.e. they will have Transitional Protection*¹). This protection will last until there is a break in either their claim for JSA or HB

The most likely ways for this break to happen are:

¹ We describe it as “Transitional Protection” here as this a commonly used term to describe a “grace period” from a benefit change. However, DWP do not use that terminology in this case

1) Claimant gets a job (and so their claim for JSA ends):

At this point, subject to the usual means-tests and the job being genuine and effective, they will assume Worker status. As a result, they will be able to claim HB to supplement their wages and help meet their rent costs, if they so require.

If the job comes to an involuntary end (common examples include redundancy or the ending of a fixed term contract), they will have assume Retained Worker status and be able to continue claiming JSA and HB. However, they will only be eligible to do so for six months, after which time they will lose their Retained Worker status and, therefore, their entitlement to JSA and HB.

If a claimant is able to find employment during this six month period, then subject to the usual means test and the job being genuine and effective, they will revert to Worker status. There is no limit to the number of times that a person can switch between Retained Worker and Worker status.

By contrast, if a person loses their job voluntarily (common examples include being sacked or walking out on a role), they will lose their Worker status and become a Jobseeker. Jobseeker status will only entitle someone to claim JSA and **not** HB.

Crucially, Jobseeker status will only allow people to claim JSA for a total of three months. This period will not be renewed, even if a person finds a job. For example, if someone claims JSA for one month as a jobseeker, but then finds a job, if they were to return to Jobseekers status at a later date, they would only be entitled to a further two months of JSA. Once this period of three months has been used up, claimants will no longer be eligible for Jobseekers status, regardless of their previous employment history.

2) Person moves to another local authority (so there is a break in HB claim):

A HB claim following a move to another local authority area will count as a new claim even if the person was claiming HB at their old address. As a result, they will only be able to claim HB for 6 months if they possess Worker status (including Retained Worker status).

If they possess Jobseeker status they will not be entitled to HB. They maybe entitled to time-limited JSA.

Different rules apply if a person moves within the same local authority as this counts as a change of circumstances, rather than a new claim, provided that there is HB claim remains unbroken.

Once a break in a person's claim has occurred, their entitlement becomes the same as those without transitional protection (see below).

3) Claimant Fails the Genuine Prospect of Work Test (so JSA fails)

To have Transitional Protection a person will have had to have been claiming JSA and HB continuously since March 2014 (which is over six months). DWP have announced that claimants who had Transitional Protection will start receiving the Genuine Prospect of Work (GPOW) test from April 2015. If they fail this, then there JSA will end, triggering a ceasing of HB as well. There are more details on the GPOW at the bottom of the next section.

RULES FOR THOSE WITHOUT TRANSITIONAL PROTECTION

(See Scenario i and ii below)

EEA Nationals who are not already getting JSA and HB on the 31st March 2014 will be covered by the new rules and will not have transitional protection. This will mean severe restrictions to their entitlement to HB.

If they do not have a history of working in the UK:

People falling into this category will not be entitled to HB. They are already not entitled to JSA for the first three months of their stay in the UK. They may be entitled to JSA after three months if they pass the Habitual Residence Test (HRT). However, their claim for JSA will only last for three months in total, unless there is compelling evidence (usually in the form of a written job offer, or an offer of training or relocation) that they are likely to soon find employment in a genuine and effective role. This assessment will be undertaken using something called the Genuine Prospect of Work (GPoW) test.

If they are working:

It may be possible for people who are working to receive HB to supplement their wages and pay their rent. However, if they are earning under £153 per week, they will need to undergo a further assessment to establish if the work they are doing is considered genuine and effective. If the work is deemed to be genuine and effective, applicants will be granted Worker status and, therefore, be entitled to HB.

Once this employment ceases, they may be entitled to Retained Worker status allowing them to claim HB for a maximum of six months, depending on whether their job ended voluntarily or involuntarily. They may also be entitled to JSA for six months.

By contrast, if their current employment is not deemed to be genuine and effective, they will be awarded Jobseeker status and will **not** be entitled to HB.

GENIUNE PROSPECT OF WORK (GPOW) TEST

The time-limits on how long someone will maintain their claim for HB and/or JSA after they lose their employment is more flexible in cases where there is compelling evidence that somebody is likely to find a job shortly.

This evidence can include a firm offer of a job which is considered genuine and effective, or evidence that the claimant has taken steps to improve their job prospects, such as undertaking training or relocating, and that they are expected to be offered a job very soon.

DOMESTIC VIOLENCE

Where the claimant is a victim of domestic violence, DWP staff can grant claimants up to 13 weeks of additional Jobseeker or Retained Worker Status before they are subjected to the GPoW test.

WHAT CONSTITUTES GENIUNE AND EFFECTIVE RATHER THAN MARGINAL AND ANCILLIARY WORK?

The terms genuine and effective and marginal and ancillary are not defined in law. Hence a

JobCentre Plus Decision Maker (DM) should decide each case on its own merit. The DM should take account of all work done in the UK and consider, amongst other things:

- 1) the period of employment ;
- 2) the number of hours worked;
- 3) the level of earnings; and
- 4) whether the work was regular or erratic.

The government has clarified that work receiving a regular income of £153 per week (equivalent to the rate of National Insurance) for three months or more would usually be considered genuine and effective. However, employment does not have to meet this criteria. Each case should be judged on its individual merits.

Self-employment also needs to be genuine and effective to allow a claimant to obtain in-work H.B. If a person's self-employment status comes to an end, this would also usually mean an end to their entitlement to HB.

PEOPLE WITH A “PERMANENT RIGHT OF RESIDENCE”

A person has a permanent right of residence if they have ‘resided in the UK for a continuous period of five years’. Once they have this permanent right of residence, they do not need to satisfy any other conditions. They will have the same rights to HB as a UK national

What counts as ‘resided legally’ in the UK?

A person has ‘resided legally’ in any period during which they had a right of residence as a:

- Worker (including if you retain your worker status)
- Self-employed person
- Self-sufficient person
- Student
- Family member

If they have a continuous period of five years residence on the basis of being in one or more of the above groups, they have a right of permanent residence.

The rules on ‘worker status’ were different for A8s and A2s during their countries’ Transitional Arrangements periods. This may impact on peoples’ ability to meet this five year legal threshold.

Once acquired, people lose their permanent right of residence if they are absent from the UK for two consecutive years or longer.

WHAT THIS MEANS IN PRACTISE

The next section contains flowcharts illustrating common circumstances, which might arise for homeless people from EEA countries.

MORE DETAILS

The DWP documents pertaining to the changes can be found here:

<https://www.gov.uk/government/news/new-rules-to-stop-migrants-claiming-housing-benefit>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324534/m-15-14.pdf

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EEA CITIZEN IS NOT CLAIMING JSA AND HB ON 31st MARCH 2014

(TRANSITIONAL PROTECTION DOES NOT APPLY)

Scenario i: Person enters the UK to look for work but fail to get a job for 3 months or more:

Since 01 January 2014, people from EEA countries entering the UK to seek work have been unable to claim income-based Jobseekers Allowance (JSA (IB)) until they have been resident in the common travel area for three months. This also applies to returning UK nationals who have spent a considerable period of time living abroad.

Once an EEA national has been resident in the common travel area for three months, they will be able to make a claim for JSA (IB). If they pass the Habitual Residence Test, they will be awarded Jobseeker status and can begin claiming JSA (IB). During this time they will need to be actively searching for work.

PERSON WITH “JOBSEEKER” STATUS DOES NOT FIND A JOB:

After 31st of March 2014, Jobseeker status will no longer entitle new applicants to claim Housing Benefit (HB) unless they find work and achieve Worker status.

Applicant will still be able to claim three months JSA (less if he/she has previously claimed JSA as a Jobseeker) but will **not** be able to claim HB.

PERSON WITH JOBSEEKER STATUS FINDS A JOB

See Chart ii

If the person has been unable to find work after three months, they will lose their status as a Jobseeker and will no longer be able to claim JSA (IB), unless they have compelling evidence to suggest that they still possess a good chance of finding employment. The person's ability to find work will be assessed using the Genuine Prospect of Work (GPoW) test.

Scenario ii: Person enters the UK with an offer of employment, or finds work as the result of a job search, but requires help with their housing costs:

Person from EEA country gets a job, but they still need help with their rent. They wish to claim HB.

If a person is earning a salary which is eligible for National Insurance (NI) contributions (around £150 per week), they will be granted Worker status and, therefore, have access to HB.

If they are earning under the threshold for NI contributions, they will be subject to a further assessment to establish whether the work they have undertaken is genuine and effective. If it is deemed that work does not fulfil these criteria, they will **not be able** to claim HB.

If a person with Worker status loses their job involuntarily and is registered as a jobseeker at a Jobcentre Plus and actively seeking work with a genuine chance of finding employment, **they will retain** Worker status and, therefore, **their entitlement to JSA and HB**.

Worker status can also be retained where a person is temporarily unable to work as a consequence of accident or illness.

However, the person will only be able to retain their Worker status for a period of six months.

If the person is unable to find work after six months (*and is unable to provide compelling evidence as to the probability of them finding work?*) they will lose their status as a Worker, and their entitlement to both JSA and HB.

If someone with Worker status loses their job voluntarily, they will **lose** their Worker status and become a Jobseeker.

As a Jobseeker, they will only be entitled to claim JSA and will **not be eligible** for HB.

If the person is unemployed for three months* and is unable to provide compelling evidence as to the probability of them finding work, then they will also lose their status as a Jobseeker, and their entitlement to JSA

*This three months may be less if the person has previously claimed JSA as a Jobseeker

EEA CITIZEN IS CLAIMING JSA AND HB ON 31ST MARCH 2014

(TRANSITIONAL PROTECTION APPLIES UNTIL PERSON HAS A CHANGE IN HOUSING BENEFIT OR EMPLOYMENT STATUS)

Scenario iii: Person is claiming JSA and HB as a Jobseeker or Worker on 31st March 2014. But then moves to a new property with a change of address:

People who are entitled to HB and JSA (IB) on 31st of March 2014 will be protected from the reforms until they have a break in their claim for either HB or JSA (IB).

CHANGE OF ADDRESS IN THE SAME LOCAL AUTHORITY:

If a person moves to a new property in the same local authority and does not get a job, their HB and JSA will continue indefinitely.

PERSON IS LOOKING FOR EMPLOYMENT

See Scenario iv

CHANGE OF ADDRESS IN A DIFFERENT LOCAL AUTHORITY:

If a person moves to a new property in a different local authority, this will require them to make a new claim for HB.

If they were getting HB at their old address with Jobseeker status. They will now **lose their entitlement** to HB. They will now basically be in the same situation as somebody in Scenario 1 who has passed the HRT. They will have lost their transitional protection

If they were getting HB at their old address with Worker status, they will now only be entitled to out-of-work HB for a further 6 months. They will now basically be in the same situation as somebody in Scenario ii. They will have lost their transitional protection

These rules will also be the case for people moving from one form of specified accommodation to another. So if someone with Jobseeker status moves from a hostel in one local authority to a hostel in another, they will lose their entitlement to HB once a new claim is made. Somebody with Worker status will only be entitled to HB for 6 months

EEA CITIZEN IS CLAIMING JSA AND HB ON 31ST MARCH 2014

(TRANSITIONAL PROTECTION APPLIES UNTIL PERSON HAS A CHANGE IN HOUSING BENEFIT OR EMPLOYMENT STATUS)

Scenario iv: Person is claiming JSA and HB as a Jobseeker or Worker on 31st March 2014 and is looking for work

People who are entitled to HB and JSA (IB) on 31st of March 2014 will be protected from the reforms until they have a break in their claim for either HB or JSA (IB).
(Moving address within same LA that does not count as a break in HB claim - see Scenario iii)

PERSON GETS A JOB:

If a person finds employment they will no longer be eligible for JSA, but may still claim HB if they need help to pay their rent.

If a person is earning the minimum amount required to begin making NI contributions, **they will either be** granted or continue to be granted Worker Status and will have access to HB.

If they are earning under £153 per week, they will be subject to a further assessment to establish whether the work undertaken is "genuine" and "effective". If it is deemed that the work does not fulfil these criteria, they **will not be able** to claim HB.

They will now have either Worker or Jobseeker status without transitional protection and basically fall into the same situation as somebody in Scenario ii.

PERSON DOES NOT GET A JOB:

If a person does not find work or move home, their HB and JSA will continue until they are subject to the GPOW. If they fails this their JSA and HB will both come to an end.

NB: It is likely that individuals with Transitional Protection will face the GPOW in 2015

PERSON WITH WORKER STATUS LOSES THEIR JOB INVOLUNTARILY

If a person loses their job **involuntarily** and is registered as a jobseeker at a Jobcentre Plus and actively seeking work, **they will retain** Worker status and, therefore, **their entitlement to JSA (IB) and HB**.

Worker status can also be retained where a person is temporarily unable to work as a consequence of accident or illness.

However, the person will only be able to retain their "Worker" status for a period of **six months**.

If a person is unable to find work after six months (*and is unable to provide compelling evidence as to the probability of them finding work*) they will lose their status as a "Worker".

PERSON WITH WORKER STATUS LOSES THEIR JOB VOLUNTARILY

If a person loses their job **voluntarily**, they will **lose** their Worker status and become a Jobseeker.

As a Jobseeker, they will only be entitled to claim JSA (IB) and will **not be eligible** for HB.

If the person is unemployed for three months* and is unable to provide compelling evidence as to the probability of them finding work, then they will also lose their status as a Jobseeker.

*This three months may be less if the person has previously claimed JSA as a Jobseeker

OLD RULES ON RETAINING WORKER STATUS FOR A8 AND A2 MIGRANTS DURING THE TIME OF THE TRANSITIONAL ARRANGEMENTS

Person was a migrant from an "A8" country employed by an 'authorised employer' sometime between May 2004-2011.

OR

Person was a migrant from an "A2" country with an 'accession worker authorisation document' sometime between January 2007-14

If the Work lasted less than a year and/or person became voluntarily unemployed they would not retain Worker status

Under the Transitional Arrangements he/she would not be able to claim HB or JSA

They would need to be self-employed or self-sufficient for any time after they lost their Worker status for the time to count towards the five years needed for permanent right of residence.

If the work lasted more than a year and the person became involuntarily unemployed the person could retain Worker status indefinitely.

To retain Worker status a person must be:

- Involuntary unemployed
- Registered as a jobseeker with Job Centre Plus
- Provide evidence they are seeking employment with a genuine chance of being employed

5 years of Worker status (or Self-Employed or Self-Sufficient status) could lead to permanent right of residence.

Hence person could claim H.B indefinitely

OLD RULES RETAINING WORKER STATUS FOR EEA MIGRANTS NOT AFFECTED BY THE TRANSITIONAL ARRANGEMENTS

