

Welfare Entitlements of EEA Migrants

A brief introduction

Let's end homelessness together

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FEEDBACK, CORRECTIONS AND SUGGESTIONS

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Introduction

This guidance aims to help agencies to make informed decisions about their approach to supporting EEA migrants who have been in the UK for less than 5 years with employment and benefits. It covers entitlement to welfare benefits through Jobcentre Plus, Housing Benefit, contributory-related benefits across the European Union, and housing assistance through Local Authorities.

Any unemployed EEA national who has been in the UK for longer than 3 months can make a benefits claim, but note that only genuine job seekers will be able to maintain the conditionality requirements of Jobcentre Plus. Also, EEA migrant job seekers making a new claim are now usually limited to 3 months' Job Seekers Allowance and may not be entitled to Housing Benefit. EEA nationals who can demonstrate that they have been in the country for 5 years (in accordance with EEA Treaty rules) are not subject to the same restrictions as newer arrivals.

The European Economic Area consists of the European Union countries¹ plus Iceland, Liechtenstein and Norway. Switzerland is neither an EU nor an EEA member, but is part of the single market, so that Swiss nationals have the same rights to live and work in the UK as other nationals of EEA member states. This briefing refers to "EEA member states" and "EEA nationals" to mean the member states and nationals of any EEA country, and of Switzerland, but not UK nationals.

Family members of EEA nationals have the same rights as EEA nationals to claim benefits and other assistance, regardless of whether they are themselves EEA nationals.

Agencies supporting homeless people should assess their situation and decide the most appropriate support offer on a case by case basis. For further information please see:

www.homeless.org.uk/our-work/resources or www.housing-rights.info/index.php

This document does not provide detailed benefits, employment or legal advice and should not be used as a basis for decision-making in individual cases. It is intended to provide an introduction to the entitlements available for EEA nationals. You should seek specialist advice and training in order to support individuals around benefit claims.

This guidance was last updated in March 2015. Please check government and Homeless Link websites for the latest updates: www.homeless.org.uk and www.gov.uk

Welfare benefits entitlement

Overview

Currently, all nationals of EEA member states are treated in the same way, except for nationals of Croatia. Croatia acceded to the European Union on 1 July 2013 and transitional arrangements apply until 30 June 2018 (and may be extended for another two years). For more on Croatian nationals, see:

www.gov.uk/croatian-national.

EEA nationals and their family members will be eligible for income related benefits if:

- They have a right to reside under EU law; and
- They are either exempt from the habitual residence test or they are habitually resident; and
- They meet the conditionality test, that is they can demonstrate that they are available for and actively seeking work.

For claims for benefits made on or after 1 January 2014, no one is considered habitually resident unless he or she has lawfully resided in the Common Travel Area (the UK, Republic of Ireland, Channel Islands or the Isle of Man) for three months.

The Habitual Residence Test (HRT) is made up of the first two parts of the list above: right to reside and actual habitual residency. It is the key deciding point for **eligibility for benefits**. The decision is made in a central department on the basis of information submitted by the local Jobcentre Plus via an electronic form, containing an extensive list of data.

Conditionality is a local decision, based on an individual's compliance with the normal entitlement conditions for the benefit in question. For income-based Jobseeker's Allowance (JSA), an individual must demonstrate being available for and actively seeking work. This is becoming increasingly focused – work that the individual can do must be available in the local area i.e. if the person's background is in construction they must be actively seeking construction work in that area, and if such opportunities do not exist they would have to widen their search. The claimant has to evidence how they are actively seeking work, in accordance with their Jobseeker's Agreement or Claimant Commitment (a document agreed with their Jobcentre adviser).

For claims made on or after 1 January 2014, migrants claiming JSA who have not worked in the UK must demonstrate that they have 'compelling evidence that they have a genuine prospect of work' in order to continue receiving JSA after six months. For claims made on or after 10 November 2014, the period is three months. Even if they meet this test, the extension is likely to be short term e.g. until a new job begins.

For claims made on or after 1 April 2014, an EEA national whose only right to reside is as a jobseeker is no longer able to claim housing benefit. EEA workers and self-employed persons are not affected.

For claims made on or after 1 July 2014, new jobseekers arriving in the UK need to have lived here for three months in order to claim child benefit or child tax credit.

If eligible for income-related benefits, then recipients may also be eligible for a range of Jobcentre Plus support to get into employment, on the same terms that apply to other claimants of the same benefit.

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An individual **must** pass both parts of the HRT before the conditionality test is applied. Only once a claim has been made can an individual appeal against a decision made on the basis of conditionality. An independent decision is made on the basis of information submitted by the Jobcentre and the customer.

JSA (IB) is only paid to EEA nationals for a maximum period of six months – or three months if the claim is made on or after 10 November 2014. This six or three month period can include the initial three month period of residence (when JSA was not paid) required to establish an EEA migrant's right to JSA. So, any new EEA migrant arriving in the UK as a jobseeker on or after 1 January 2014:

- Cannot claim JSA for the first three months of residence;
- Can then claim JSA but:
 - If the claim is made on or before 31 March 2014, JSA will be paid indefinitely, as will HB;
 - If the claim is made on or after 1 April 2014 JSA will only be paid for three months and HB will not be paid;
 - If the claim is made on or after 10 November 2014, JSA will only be paid for three months and so will only be paid if the claimant had a different right of residence, for example as a student or a worker, for at least three months before claiming; HB will not be paid.

The Habitual Residence Test (HRT)

The HRT has been revised with an extensive set of questions that cover issues such as a person's employment situation before they entered the UK and their English language skills. The full test has not been shared and the impact on claimants is not yet clear, but the intention appears to be to make the HRT stricter and decisions more consistent.

The HRT is an overarching term for a test that is made in two parts (an individual **must** pass part A to even have part B assessed):

- A. Right to reside
- B. Actual habitual residency

A. Right to reside

There are four mechanisms by which an EEA national or their family members may have a right to reside:

- The initial right of residence for three months, available to all EEA nationals and their family members, but those whose only right to reside is the initial right of residence are ineligible for welfare benefits;
- The extended right of residence, available to “qualified persons” and their family members;
- The permanent right of residence; or
- A derivative right of residence.

The **extended right of residence** is available to EEA nationals who are ‘qualified persons’, defined as:

- a jobseeker (must be actively seeking work and remain likely to get work, in that they are applying for jobs that exist);
- a worker (someone who is in employment in the UK; the work must be ‘genuine and effective’ work, as opposed to work that is ‘marginal and ancillary’); sometimes workers who have ceased to work will still be treated as workers if they have “retained worker status”;

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- a self-employed person;
- a self-sufficient person (meaning having sufficient resources not to become a burden on the social assistance system of the host member state, generally a self-sufficient person would not be claiming benefits but may claim benefits and not lose the status of being self-sufficient in unusual circumstances, such as resources stopping for a short period); or
- a student (who will have provided assurances at the start of the studies that he or she has sufficient resources not to become a burden on the social assistance system).

Generally, claims for benefits will be made by jobseekers, workers, self-employed persons and their family members.

A person has “retained worker status” if he or she was a worker and:

- is temporarily unable to work as a result of an illness or accident; or
- is registered as a jobseeker having been involuntarily made unemployed and either:
 - he or she was employed for a year or more before becoming unemployed; or
 - he or she has been unemployed for no more than six months; or
 - he or she can provide evidence that he or she is seeking employment and has a genuine chance of being engaged;
- he or she is involuntarily unemployed and has embarked on vocational training; or
- he or she has voluntarily ceased work and has embarked on vocational training that is related to his or her previous employment.

For claims made on or after 1 March 2014, an EEA national will only be treated automatically as a “worker” or as a “self-employed person” if he or she can satisfy the minimum earnings threshold of £153 per week (until April 2015 when it may increase). Earnings less than that threshold are to be assessed against a broader range of criteria to decide whether the EEA national is in “genuine and effective work” and therefore should still be treated as a worker or self-employed person.

“Family members” of a qualified person also have an extended right of residence. “Family members” are defined as:

- Spouses or civil partners;
- Direct descendants of the qualified person, or of his or her spouse or civil partner, who are either aged under 21 or who are dependent on the qualified person, or his or her spouse or civil partner (children, grand-children, or great-grandchildren);
- Dependent direct relatives in the ascending line of the qualified person, or of his or her spouse or civil partner (parents, grandparents, great-grandparents);
- Extended family members who have been issued with an EEA family permit, registration certificate or residence card: extended family members are relatives who are dependent upon the EEA national, or a member of the EEA national’s household, or requires the personal care of the EEA national, his spouse or civil partner due to serious health grounds, a person treated as a dependent relative or a person who can prove that he or she is in a durable relationship with the EEA national.

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A person does not need to be living with the EEA national, who is the qualified person, in order to be the qualified person's family member. Spouses and civil partners remain family members unless the marriage or partnership is dissolved. Descendants, or direct relatives in the ascending line, need not live with the qualified person in order to be dependent on them. A "family member" of a qualified person can therefore make a claim for benefits in his or her own right and need not rely on the qualified person to make the claim.

Permanent Residence – the following individuals would be considered to be permanently resident in the UK:

- an EEA national and family members who have resided in the UK in accordance with EU law for a continuous period of five years (temporary absences of up to six months a year are not counted; residence as a result of a derivative right of residence does not count);
- a worker or self-employed person who has reached retirement age or taken early retirement and either has a spouse or civil partner who was a UK national and lost that nationality or worked in the UK for the preceding year and was resident in the UK continuously for more than three years, and his or her family members;
- a worker or self-employed person who stopped working in the UK because of a permanent incapacity and either has a spouse or civil partner who was a UK national and lost that nationality or resided in the UK continuously for more than two years and the incapacity was because of an accident in work or occupational disease, and his or her family members; or
- a family member of a worker or self-employed person, where the worker or self-employed person has died, the family member resided with him or her immediately before the death and the worker or self-employed person had resided continuously in the UK for at least the two years immediately before the death, or the death was the result of an accident at work or an occupational disease.

There are five derivative rights of residence under EU law. However, anyone entitled to the fifth derivative right of residence is not entitled to claim non-contributory benefits or homelessness assistance. The derivative rights of residence apply where a person does not have any other EEA right of residence (and so will generally apply to people who are not themselves nationals of an EEA member state but have a connection with someone who is). A person has a derivative right of residence if he or she is:

- the child of an EEA national who was, but is no longer a worker in the UK while the child was living in the UK and the child is currently in education; or
- the primary carer of a child of an EEA national as above, and the child would be unable to continue his or her education if the primary carer were required to leave; or
- the primary carer of a self-sufficient child who is an EEA national, and the child would be unable to remain in the UK if the primary carer were required to leave; or
- a dependent child of a primary carer in the second or third bullet points above, where the dependent child does not have leave to enter or remain in the UK and would be prevented from residing in the UK if the primary carer were required to leave; or
- the primary carer of a British citizen residing in the UK, where the British citizen would be unable to reside in the UK or another EEA member state if the primary carer were required to leave.

This last derivative right of residence is colloquially known as the "Zambrano" right of residence, after the name of EU case that acknowledged that right. "Zambrano" carers can work and claim contributory benefits, but not contributory benefits. They will not be nationals of an EEA member state.

B. Actual Habitual Residency

The next part of the test is to determine whether someone is exempt from the habitual residence or, if not exempt, to apply the habitual residence test.

EEA nationals and their family members who are exempt from the habitual residence are:

- EEA nationals who are workers, including those with retained worker status, and their family members;
- EEA nationals who are self-employed, and their family members;
- EEA nationals with a permanent right of residence as a retired or permanently incapacitated person or self-employed person, and their family members;
- Croatian nationals subject to worker authorisation and working in accordance with the conditions of the authorisation documents, and their family members (see www.gov.uk/croatian-national).

If the EEA national, or family member, is not exempt, the next step is to apply the actual habitual residence test. There are two aspects to habitual residence:

- A settled purpose of establishing residence in the Common Travel Area; and
- Actual residence in the Common Travel Area, together with an appreciable period of residence.

For new claims for income-based JSA made on or after 1 January 2014, the applicant must have been living for the past three months in the Common Travel Area.

The test is a broad test, depending on each person's own circumstances.

Questions are likely to be asked that determine such factors as:

- whether the UK is their main centre of interest (job, home, friends);
- the length and continuity of stay;
- if absent, the length and purpose of these periods;
- the nature of employment in another country;
- whether the claimant has sold or given up property abroad;
- the nature of the accommodation arrangements in the UK;
- the whereabouts of family members and the claimant's plans for them;
- where the claimant's belongings are;
- the intent of the claimant (plans made for the future).

It is important to note that every individual's circumstances are different and that people will need evidence to support the information they provide. This includes identification (the HRT will not be processed unless an individual can prove who they are), evidence of arrival in the UK, legal work undertaken and other ties and commitments.

There is no set or minimum period of residence which automatically gives a person habitual residence. There are references in some texts to periods of between one to three months. However, whether or not someone is habitually resident will depend on his or her personal circumstances. Returning British nationals could be habitually resident on the first day of their residence in the UK, and the same approach could be applied to EEA

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nationals and their family members. The stronger someone's settled intention to make their home in the UK is, the shorter the period of actual residence needs to be before that person is habitually resident.

However, for claims for jobseekers allowance made on or after 1 January 2014, someone will not be considered to be habitually resident until he or she has resided for at least three months in the Common Travel Area.

Types of welfare benefits

Jobseekers can only claim Jobseeker's Allowance – income-based (JSA (IB)).

For claims made on or after 1 January 2014, jobseekers will not be able to claim benefit for the first three months of their residence in the Common Travel Area. So if a person claims JSA (IB) one month after arriving in the UK, he or she will not receive benefit until another two months have expired. After that, he or she may claim benefit for six months (but only three months after 10th November 2014). They can only receive benefit for a longer period than three/six months if the test of providing "compelling evidence that they have a genuine prospect of work" is passed.

For claims made on or after 10 November 2014, the first three months of residence in the Common Travel Area will not count. After that, an EEA migrant is only entitled to benefit for **three months** (which includes the first three months of residence when JSA could not be paid), and then can only receive benefit for a longer period if the test of providing "compelling evidence that they have a genuine prospect of work" is passed. In short, JSA will only be paid to a new claimant, on or after 10 November 2014, if the claimant has resided in the Common Travel Area for three months – and so acquired habitual residence – under a right of residence that was not that of a Jobseeker.

The six month – or three month – period for which JSA can be paid to EEA migrants who are jobseekers is a total period. So if there is a break in the claim – because the jobseeker finds work and becomes a worker – but the employment is then lost voluntarily and the claimant is again a jobseeker, JSA will only be paid for the remainder of the six or three month period, starting from the first claim. It is only if the claimant leaves for the UK for a year or longer and then returns and subsequently claims JSA that the period will start again.

Where someone is claiming JSA (IB) having previously been in employment, he or she may have retained worker status. He or she cannot claim until three months' residence in the Common Travel Area has been completed (including the period of employment). Once three months has expired, he or she will be entitled to JSA (IB) for as long as he or she has retained worker status – often six months but it may be longer. After that, he or she is a jobseeker and the restrictions above apply.

Employment and Support Allowance (ESA) is an inactive benefit and cannot be claimed by an individual unless they are a worker who is temporarily unable to work. People who are employed for at least one year in the UK but become subject to temporary illness or incapacity can retain worker status and claim ESA, usually for a six month period. The same applies to people who are self-employed.

Some EEA migrants can claim Housing Benefit but eligibility is limited – see details below.

Minimum earnings threshold

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Since 1st March 2014 EEA workers have had to meet a minimum income threshold in order to claim JSA (IB) as a worker (rather than as a jobseeker), Housing Benefit, Child Benefit or Child Tax Credit. The threshold as of April 2014 is £153 per week, for three months. Work that pays less than this threshold might not pass the 'genuine and effective' test, in which case the claimant will still be classed as a jobseeker. The figure is likely to be updated in April 2015. See below for further details on these statuses.

The situation for central and eastern European nationals

Transitional arrangements ended on the 1st May 2011 for what were known as A8 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) and on 31st December 2013 for what were known as A2 countries (Romania and Bulgaria). People from these countries may be entitled to JSA (IB) in the same way as other EEA nationals if they are job seekers, even if they have not worked in the UK before, and if they have been in the country for longer than 3 months.

The ending of the transitional arrangements also meant that A8 nationals no longer needed to register on the Worker Registration Scheme, which closed on 30th April 2011. However, when eligibility is being tested, employment that was not registered under the Worker Registration Scheme prior to 1st May 2011 does not count. Only employment registered under the Worker Registration Scheme (for the first twelve months of employment) or since 1st May 2011 counts towards an individual's period of employment in the UK.

From 1 January 2014, A2 nationals no longer need to receive 'worker authorisation'. However, as with A8 nationals, employment carried out up to 31 December 2013 must have been under the 'worker authorisation scheme' for the first twelve months of employment in order to count towards retained worker status.

The situation for Croatian nationals

Croatian nationals will be eligible for benefit if:

- they are working subject to worker authorisation and are complying with the conditions of their authorisation, for the first twelve months of their employment; or
- they have completed twelve months of employment subject to worker authorisation; or
- they are self-employed; or
- they were working lawfully in the UK on 30 June 2013; or
- they are highly skilled migrants; or
- they are also nationals of another EEA member state; or
- they are spouses, partners or minor children of EEA nationals with a right to reside in the UK or of a UK national.

These transitional provisions are due to end on 30 June 2018, although EU law allows the UK government to extend them for a further two years.

Croatian nationals who are jobseekers do not have a right to reside. Croatian nationals will only be eligible for JSA (IB) if they are able to claim retained worker status.

The requirements to obtain worker authorisation apply for the first twelve months of employment. After twelve months have been completed under the worker authorisation scheme, Croatian nationals who are working are treated the same as any other EEA national who is working.

Housing Benefit

Changes introduced on 1st April 2014 have restricted the entitlements of EEA migrants to Housing Benefit. The information that follows is drawn from a Homeless Link and Crisis joint briefing on the policy changes. Note that migrants who can prove they have been resident with treaty rights in the UK for longer than 5 years should not be subject to these rules.

From 1 April 2014, housing benefit is no longer available to EEA nationals who are job-seekers. EEA nationals who are workers, including those who have 'retained worker status', or who are self-employed continue to be entitled to housing benefit under the usual rules. EEA nationals who are jobseekers and who were receiving housing benefit on 31 March 2014 will continue to receive housing benefit under the 'transitional protection' rules unless they move to a new address or cease to claim JSA.

To qualify for 'worker status', 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 (because he or she has 'retained worker status'). A worker in employment, or a self-employed person, can be entitled to housing benefit if his or her earnings are sufficiently low.

EEA nationals who have a permanent right of residence are entitled to housing benefit under the usual rules.

Rules for those with transitional protection

EEA Nationals who are already getting JSA and HB on the 31st March 2014 will continue to do so under 'transitional protection'. This protection will last until there is a break in their JSA or HB claim. The most likely ways for this break to happen are:

1) Person gets a job (and so JSA claim ends)

At this point, subject to the usual means-tests and the job being genuine and effective, they will be able to claim HB to supplement their wages and help meet their rent costs. When the job comes to an involuntary end (common examples include redundancy or the ending of a fixed term contract) they will retain their Worker status and be able to claim JSA and HB (see 'retained worker status').

If a person loses their job voluntarily, they will lose their Worker status and become a Jobseeker. Significantly, Jobseeker status will only entitle them to JSA for six months – or, for claims on or after 10 November 2014, three months - **and will not entitle them to HB.**

2) Person moves to another local authority

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 if they possess Worker status, and not at all if they possess Jobseeker status.

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 as long as there is no break in their HB claim.

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

Rules for those without transitional protection

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 on HB entitlement:

1) 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 3 months of being in the UK. They may be entitled to JSA after 3 months if they pass the HRT. This JSA will only be for 6 months – or 3 months for claims made on or after 10 November 2014 - unless there is compelling evidence they are likely to soon get a job offering genuine and effective work.

2) If they are working

It may be possible for people who are working to receive HB top-up 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 'genuine' and 'effective'. Presuming it is deemed genuine and effective those in employment will be granted 'Worker' status and will be entitled to HB on a means-tested basis.

Once this employment ends, they may be entitled to HB if they can show that they have retained worker status. They may also be entitled to JSA for 6 months – or three months if the claim is made on or after 10 November 2014 and they previously resided in the Common Travel Area under a different right of residence from that of jobseeker.

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.

What constitutes 'genuine and effective' rather than 'marginal and ancillary' work?

The terms 'genuine and effective' and 'marginal and ancillary' are not defined in law. Hence a Jobcentre Plus decision maker should decide each case on its own merit. The decision maker 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
- 4) whether the work was regular or erratic.

The Government have clarified that work receiving a regular income of £153 per week for three months or more would usually be considered 'genuine and effective'. However, employment does not have to meet these criteria. Each case should be judged on its individual merit.

Self-employment also needs to be 'genuine and effective' to allow a claimant to obtain in-work HB. If a person's self-employment status comes to an end so does his/her entitlement to HB.

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More details

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

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

EEA citizen is not claiming JSA and HB on 31st March 2014
(transitional protection does not apply)

Scenario 1: Person enters the UK to look for work but fails to get a job for 3 months or more:

Since 1st 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 3 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 need to be actively searching for work.



PERSON WITH 'JOBSEEKER' STATUS DOES NOT FIND A JOB:

no entitlement to housing benefit

For claims made on or after 1st April 2014, Jobseeker status will no longer entitle new applicants to claim Housing Benefit (HB) unless they find work and achieve Worker status.

Applicants will still be able to claim JSA for up to six months – or three months if claimed on or after 10 November 2014 - but will not be able to claim HB.

PERSON WITH JOBSEEKER STATUS FINDS A JOB

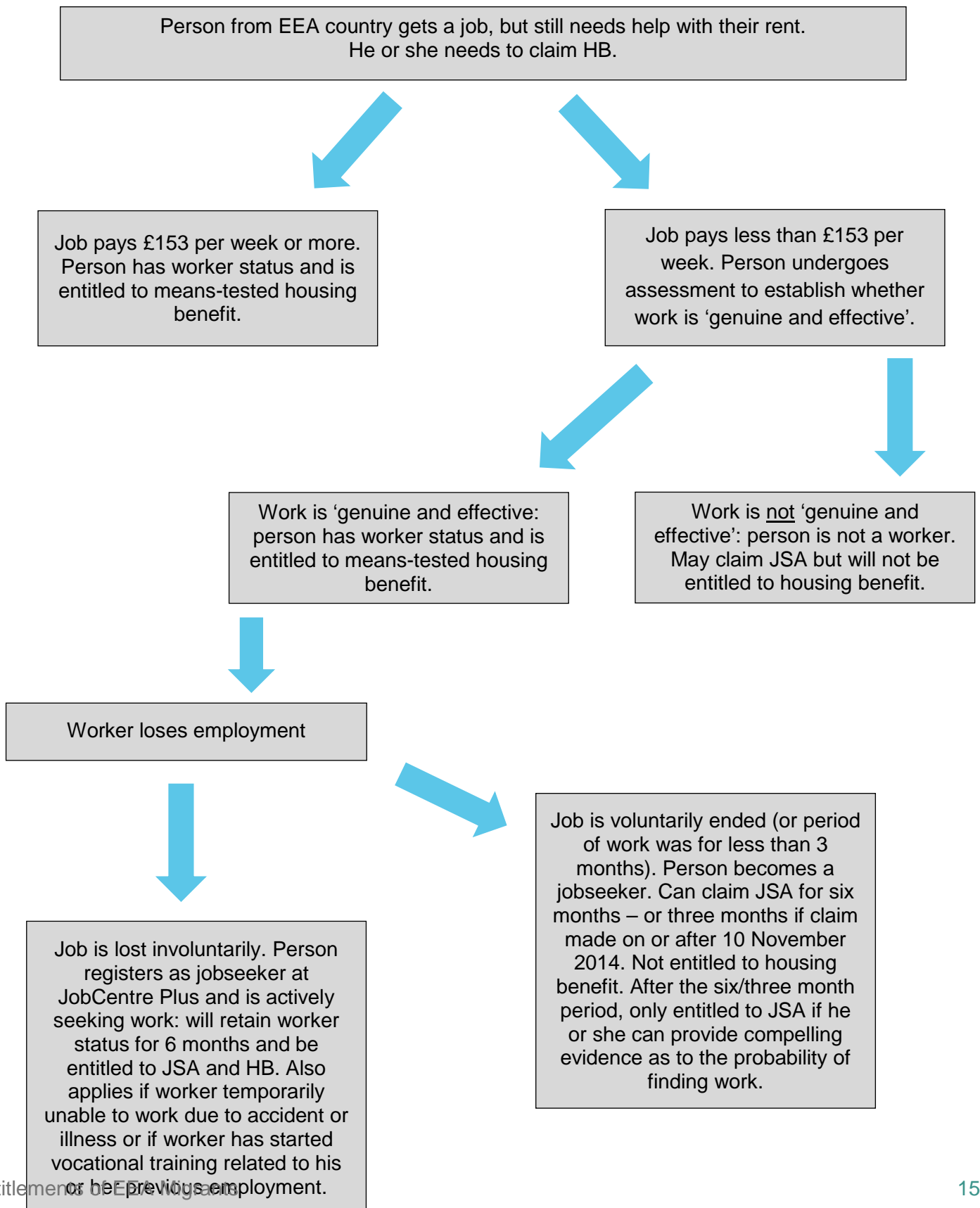
See Chart 2



If the person has been unable to find work after six months – or three months if claimed on or after 10 November 2014 - he or she will lose the status as a Jobseeker and will no longer be able to claim JSA (IB), unless he or she has compelling evidence to suggest that he or she still possesses a good chance of finding employment.

EEA citizen is not claiming JSA and HB on 31st March 2014
(transitional protection does not apply)

Scenario 2: Person enters the UK with an offer of employment, or finds work as the result of a job search, but requires help with housing costs:



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 3: 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, the HB and JSA will continue indefinitely.

CHANGE OF ADDRESS IN A DIFFERENT LOCAL AUTHORITY:

If a person moves to a new property in a different local authority, this will require him or her to make a new claim for HB. If he or she is a 'Jobseeker', entitlement to HB will be lost, see Scenario 1.

If he or she is a worker (see scenario 2), housing benefit should be paid for as long as he or she is a worker, or is relying on retained worker status.



PERSON IS LOOKING FOR EMPLOYMENT
See Scenario 4

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 4: 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 claims for either HB or JSA (IB).
(Moving address within same LA that does not count as a break in HB claim – see scenario 3)



PERSON GETS A JOB:

If a person finds employment he or she 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 over £153 per week, he or she will either be granted or continue to be granted 'Worker' status and will have access to HB.

If he or she is earning under £153 per week, there will be 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, he or she 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 2.

PERSON DOES NOT GET A JOB:

If a person does not find work or move home, the HB and JSA will continue indefinitely.

However, looking for employment is a central condition of receiving JSA.

PERSON WITH WORKER STATUS LOSES THEIR JOB INVOLUNTARILY

If a person loses his or her job involuntarily and is registered as a jobseeker at a Jobcentre Plus and actively seeking work, he or she will retain 'Worker' status and, therefore, 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.

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*) he or she may lose the status as a 'Worker' and becomes a jobseeker.



PERSON WITH WORKER STATUS LOSES THEIR JOB VOLUNTARILY

If a person leaves a job voluntarily, 'Worker' status will be lost and the person will become a 'Jobseeker', unless he or she has started vocational training related to his or her previous employment. This also applies if a person's paid employment lasts less than 3 months, even if he or she left involuntarily.
No entitlement to HB.

As a 'Jobseeker', he or she will only be entitled to claim JSA (IB). If the person is unemployed for six months – or three months for claims from 10 November 2014 - and is unable to provide compelling evidence as to the probability of finding work, then he or she will also lose the status as a 'Jobseeker' and entitlement to JSA.

This will potentially mean that he or she is in the UK in breach of treaty rights.

Local authority housing assistance

Whether or not a person is eligible to be considered for statutory housing assistance (the first of a series of tests for assistance) from their local authority depends on the immigration status.

It can also depend on whether the person is 'habitually resident' in the UK.

For an EEA national, or his or her family member, to be eligible for homelessness assistance, he or she must have:

- a right to reside which is not solely derived from the initial right of residence, the extended right of residence enjoyed by a jobseeker or a family member of a job seeker, or a "Zambrano" derivative right of residence (see x); and
- either be exempt from the habitual residence test or satisfy the habitual residence test.

Categories of EEA nationals, or their family members who are exempt from the habitual residence test are:

- EEA nationals who are workers, including those with retained worker status, and their family members;
- EEA nationals who are self-employed, and their family members;
- EEA nationals with a permanent right of residence as retired or permanently incapacitated persons or self-employed persons, and their family members;
- Croatian nationals subject to worker authorisation and working in accordance with the conditions of the authorisation documents, and their family members (see x).

EEA nationals, or their family, who must satisfy the habitual residence test are:

- EEA nationals or their family members who have a permanent right of residence as a result of having resided in the UK in accordance with EU law for a continuous period of five years; or
- People who are entitled to four of the five derivative rights of residence (but not the "Zambrano" right), (see x);
- Anyone with an EEA right of residence that does not fall within the list of exemptions from the habitual residence test.

As part of considering the habitual residence test, the council will investigate the person's reasons for coming to the UK and his or her ties to this country. Annex 10 in The Homelessness Code of Guidance for Local Authorities (CLG, 2006, www.communities.gov.uk/publications/housing/homelessnesscode) goes into detail about the HRT. However, the Code was written in 2006 and case-law has developed since then.

Contributory-related benefits

Overview

Some individuals may have entitlements to portable benefits based on contributions paid in their country of origin, if they have been working before arrival in the UK. European Union Regulations² govern the coordination of social security, to make sure that, where someone has earned an entitlement, he or she does not lose it because of moving between member states. If a person from an EEA country has worked and paid contributions in the home country (or any other EU country) then these contributions may count towards determining entitlement to UK contribution-based benefits such as JSA and ESA.

The country that pays the contribution-based benefits depends on where the person last worked. If they last worked in the UK, and paid contributions on that income, then the UK would be the "competent state" and would decide on a claim for Jobseeker's Allowance or Employment and Support Allowance using relevant foreign insurance to meet contribution conditions if necessary. Assessing an individual's entitlement to benefits in these circumstances is complex as the UK will need to obtain foreign insurance records.

If individuals have never worked in the UK (or have worked but have not paid any contributions) then the last place they worked and paid contributions is assessed as their "competent state" and this country should pay them any contribution based benefits that they may be entitled to. However, the benefits must have been claimed by the person in the first place. In the case of unemployment benefits, that must have been claimed in the member state of work. It cannot be claimed in the UK.

EU nationals can import this benefit to the UK for 3 months with a possible extension of an additional 3 months if granted by the member state exporting the benefit. Whilst importing benefit to the UK, EU nationals are subject to the same conditions required of UK Jobseekers and these conditions will be established at the first meeting with an employment adviser in Jobcentre Plus.

The process for importing benefits

Prior to arriving in the UK, an EU national looking to import unemployment related benefits must go to the employment service or benefits office of the member state where they are entitled to unemployment associated benefits. If eligible an EU national should be issued with a U2 Form or E303 Form (for those coming from Norway, Iceland, Liechtenstein or Switzerland) that they can present to Jobcentre Plus in order to have their benefit claim processed.

² Regulations EC 883/2004 and 987/2009 came into force on 1 May 2010. They were preceded by Regulations EC 1408/1971 and 574/1972, which still apply in some cases.

Homeless Link

The U2 Form is a standard form used by all the countries in the EU to give information about a customer's entitlement to exported unemployment benefit. It is issued when a customer who wishes to seek work in another EU country qualifies for exportable unemployment benefit. The EU country's employment office issues the U2 Form to the customer to produce at the UK Jobcentre; or the Jobseekers and Benefit Enhancement Section (JBES) of International Pension Centre (IPC) at Newcastle upon Tyne. In addition, the EU employment office issues a letter to the customer to produce at the UK Jobcentre.

The U2 Form informs the customer of the date by which they must register at the UK Jobcentre Plus in order to receive payment of continuous benefit. To make sure there is no break in their claim, the customer must register for employment in the UK within 7 days of the date shown.

See page 19 for frequently asked questions for EEA citizens new to the UK about using Jobcentre Plus.

Further information

Information about portability of benefits:

- The social security coordinating rules are publicised on: www.direct.gov.uk
- Also available through: www.dwp.gov.uk/international
- Advice is available within the Department for Work and Pensions from the International Pensions Centre and the Disability and Carers Service Exportability Team.
- Advice is available on Embassy websites in a number of EU member states.
- Information is available on the European Commission website: www.ec.europa.eu/social

Training and resources

- Training for staff: www.homeless.org.uk/products/training/training-theme-4-current-policy-and-entitlements
- Advice, training and support from the National Homelessness Advice Service (NHAS): www.nhas.org.uk
- Information for migrants and advisers about eligibility for housing, homelessness assistance, housing benefit and services for destitute migrants: <http://www.housing-rights.info/index.php>
- The AIRE Centre (Advice on Individual Rights in Europe) legal advice: www.airecentre.org

FAQs about Jobcentre Plus for EEA citizens new to the UK

Q1. What must I do when I arrive in the UK if I want to claim benefits imported from another EEA country?

1. You must report to the Jobcentre Plus office closest to your residence within **seven days** of arrival in the UK. To find the closest office, type in your full postcode at the following link on the internet and click next. The contact details of the closest Jobcentre Plus office will be displayed.
<http://los.direct.gov.uk/default.aspx?type=1&lang=en>
2. **OR** you must ring the Jobcentre Plus Helpline 0800 055 6688, give your full postcode and request the address of the closest Jobcentre Plus office.
 - This call is free but only if you ring from a British Telecom (BT) landline.
 - Calls from mobiles will be charged at the rate set by the service provider.
3. The call is answered by an automated service and gives 4 options:
 - For Option 1 - a New Claim to benefit - **press 1** on your phone keypad.
 - You are then asked if you wish to claim a benefit because you are sick. Ignore this and **press 2** on your phone keypad.
4. State your postcode clearly - then it will be repeated to you. If it is correct say “yes”. You will then be transferred to a call centre operative.
5. You must make it clear to the operative that you have a form U2 and that you want to claim unemployment benefit imported from an EEA member state. You should also ask for the address of your nearest Jobcentre Plus office.
6. When you have this information, proceed to the Jobcentre Plus office and submit the U2 form. This must be done within 7 days of arrival in the UK.
7. At the Jobcentre Plus office you will be given an appointment for an interview. Make sure that you attend this interview and bring with you your U2 form, passport and proof of address.

Q2. What happens at the work-focused interview?

1. The main focus of the interview will be to inspect your documents, to determine your job goals and to confirm that you meet all the conditions for claiming benefits in the UK. You must demonstrate that you are:
 - available for work and
 - actively seeking work.
2. You will be required to go to the Jobcentre every two weeks to sign a declaration of unemployment, unless your adviser tells you differently. If the adviser requires further clarification about your U2 form, ask them to contact the Adviceline.

3. You are strongly advised to keep a photocopy of form U2 until the end of your claim, as this may be needed at a future date.
4. When you are closing your UK claim, enter the last effective claim date on the ES40 card that you will have received at your new claim interview and hand it in at the Jobcentre Plus office. Ask the officer who accepts it to write your dates of registration on your copy of the form U2, stamp it and hand it back to you.

Q3. WHAT IF I MOVE HOUSE?

1. Inform an officer at Jobcentre Plus immediately, in person, at the office. They will notify the paying authority that you have moved.
2. For enquiries of a more complex nature speak to your Personal Adviser at the Jobcentre Plus.

Q4. What do I do if I still have not received my benefit after four weeks?

Contact the Public Employment Service in your country, and ask them to send a written request to investigate the claim, to the competent authority in the UK.

Q5. How do I get a national insurance number (NINO)

This is the link to the advice in the UK Government's website on how to apply for a National Insurance number: www.gov.uk/apply-national-insurance-number

Q6. What will I need to take to this interview?

- Proof of identification (e.g. passport/ID card and bank statement) and address (e.g. letter from landlord or tenancy agreement)
- Documents to show that you are actively seeking work even if you were unsuccessful; for example, registration forms from an employment agency; vacancy prints of jobs you have applied for; copies of job application forms that you have completed and sent to employers.



What we do

Homeless Link is the national membership charity for organisations working directly with people who become homeless in England. We work to make services better and campaign for policy change that will help end homelessness.

Let's end homelessness together

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