

SOCIAL SECURITY

Timeline of changes to the habitual residence and right to reside requirements



In brief

2014 saw a substantial number of changes to the residence requirements for entitlement to certain benefits.

This briefing sets out the changes which have been implemented so far and those which are anticipated to be introduced later.

An earlier version of this briefing was published in August 2014. This update contains important new information. Please discard earlier version.

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Law Centre (NI)

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2014 saw a substantial number of changes to the residence requirements for entitlement to certain benefits. 1 January 2014 marked the end of restrictions on the rights of residence for Romanian and Bulgarian nationals and in response, the government introduced a series of amendments designed to more closely regulate access to the UK's social security system.

Amendments have been made to the rules governing income-based Jobseeker's Allowance (JSA), Housing Benefit, tax credits, and Child Benefit. There were also changes made to the Immigration (European Economic Area) Regulations 2006 (the regulations which implements EU law provisions on free movement and rights of residence) which will potentially impact on anyone claiming a social security benefit with a right of residence requirement.

Some of the changes affect EEA nationals who only have a right to reside as a jobseeker. Those who fall into this category will generally be persons who have arrived in the UK for the first time or after a lengthy period abroad. It will also include those who have never worked in the UK before or have worked in the past but have been out of the labour market for an extended period of time. Whether a person has a right of residence other than as a jobseeker can be a complicated issue and our advice line is available for anyone affected by these new rules. The changes have not yet been considered by the courts and it remains to be seen whether all of the new amendments are compatible with EU law.

The changes are set out below.

1 January 2014

- Restrictions on Romanian and Bulgarian nationals were lifted. Nationals of these countries now have the same rights as nationals from the other EU/EEA member states.
- For income-based JSA only, a requirement to have been living in the Common Travel Area for three months was introduced for any claims made after 1 January. This applies to anyone claiming JSA, including British and Irish nationals. This is in addition to the requirement to be habitually resident and to have a right to reside. This does not apply to workers/self employed or their family members.
- Amendments to the EEA Regulations changed the definition of jobseeker and imposed restrictions on how a long a person can be a jobseeker or retain worker status on the basis of being a jobseeker.
 - o A jobseeker is a person who has entered the UK to look for work or is now looking for work immediately after previously having a right to reside as a worker, self-employed person, self-sufficient person or a student. A jobseeker must also be able to show s/he has a genuine prospect of getting employment.
 - o A person may only be a jobseeker for 182 days. At the end of this period, a tougher test is applied and a person must provide compelling evidence that

s/he has a genuine prospect of getting work. The 182 day period starts from when the person becomes entitled to JSA.

- A person who was in employment and is now looking for work can retain the status of worker for up to six months if able to provide evidence of having a genuine chance of getting employment. Retaining worker status is important as it gives access to a wider range of benefits.
 - If the previous employment was for less than twelve months, worker status can only be retained for a maximum of six months.
 - If the previous employment was for more than twelve months, worker status will only be retained for longer than six months if the person can provide compelling evidence that s/he has a genuine prospect of getting work.

20 January 2014

- A new tougher habitual residence test was introduced for JSA. The test involves additional questions and an examination of what a person has done to try and secure work before coming to the UK and whether a lack of English language skills will be a barrier to work.

1 March 2014

- Introduction of the “minimum earnings threshold” in determining whether a person is a worker or self employed person for JSA or Housing Benefit purposes. In order to be a worker now for these benefits, a person has to have earned over a fixed threshold for the previous three months. The threshold was £149 per week in the 2013/14 tax year and is £153 per week in 2014/15 tax year. If a person does not meet this threshold, the issue of whether they are a worker will be determined on existing criteria of whether the work was genuine and effective and not marginal or ancillary.

1 April 2014

- Amendments to Housing Benefit mean that if a person is receiving JSA and her/his only right of residence is as a jobseeker, s/he will not be entitled to Housing Benefit. This change will not affect those who were receiving both JSA and Housing Benefit on 1 April 2014 until there is a break in their JSA entitlement or they have made to a new claim to Housing Benefit. Departmental guidance states that a change of address is treated as a change of circumstances and so is not a new claim to Housing Benefit.

1 July 2014

- Child Benefit and Child Tax Credit now have a similar requirement to JSA that a person is living in the United Kingdom (does not take into account time spent in the Common Travel Area) for three months before they can be entitled to either of the above benefits.
- The first “Genuine Prospect of Work” interviews began. This affects those who have been jobseekers or have retained worker status as a jobseeker for at least six months and will now have to provide compelling evidence of having a genuine prospect of getting work. Departmental guidance states a person will only be accepted as having a genuine prospect of work at this stage if s/he can provide proof of having been offered a job with a definite start date within three months or if s/he can show there has been a change in their circumstances which now gives her/him a genuine prospect of getting work. As of August 2014, approximately 70% of those subject to a genuine prospect of work interview had failed the assessment.

6 October 2014

- The tougher habitual residence test which was introduced for JSA on 20 January 2014 (see above) will also now apply to ESA, Pension Credit and Income Support. The test will be administered over the telephone for ESA and Pension Credit.
- The minimum earnings threshold introduced on 1 March 2014 (see above) will now also be used to determine if a person is a worker for the purposes of ESA, Pension Credit and Income Support.

10 November 2014

- The 182 day period that a person can be a jobseeker for was reduced to 91 days. A person will be entitled to income-based JSA for 91 days and then s/he will need to have a genuine prospect of work assessment in order to continue to be entitled. There is no change to how long a person can retain worker status and this period remains as six months.

9 February 2015

- People who had claimed JSA prior to 1 January 2014 will now also be subject to a genuine prospect of work assessment. The Social Security Agency will start contacting those persons to inform them that they will be subject to a genuine prospect of work assessment in three months’ time.

Examples of the new rules in practice

1. *Josef is a Lithuanian national and arrived in Belfast on 8 August 2014 to look for work. He has no other family in the UK and has never been to the UK before. He will have to*

live in the UK for three months before he can be entitled to JSA. On 8 November 2014, Josef becomes entitled to JSA. He looks for work and meets the conditions of JSA but by 7 February 2015 if he hasn't found employment he will be required to provide compelling evidence that he has a genuine prospect of getting work otherwise his JSA entitlement will cease. Josef also made a claim to Housing Benefit when he became entitled to JSA on 18 November 2014. Before the amendments, Josef would have been entitled to Housing Benefit as he was in receipt of a passporting benefit, income-based JSA. However, the changes mean that he is not entitled as his only right of residence is as a jobseeker.

2. *Monika, a Romanian national, came to Northern Ireland on 18 January 2014. She was able to find employment with a local restaurant on 25 January 2014. She worked there for five months and was then made redundant. She claimed JSA and Housing Benefit when she lost her job.*

When she was working, she earned on average £120 per week. This was below the minimum earnings threshold so she is not automatically accepted as a worker. However, her work is accepted as genuine and effective and she was therefore a worker during her employment. By claiming JSA once her employment had ended, she retains her worker status. She will therefore be entitled to JSA and Housing Benefit. As her employment was for less than twelve months, she is only able to retain worker status for six months.

Advisers who need help with resolving similar cases or other social security and tax credit issues are encouraged to contact the Law Centre's social security advisers.

Law Centre (NI)'s advice line operates between 9.30am and 1pm, Monday to Friday.

Telephone: 028 9024 4401 or 028 71262433

The advice line also covers legal rights in community care, mental health, immigration, trafficking, employment.

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We also offer training courses for practitioners and information through our publications and website.

We hold regular legal practitioner meetings in social security, community care, mental health and immigration where practitioners can exchange expertise and receive important updates.

Advice line: Mon to Fri 9.30am to 1pm, 9024 4401 and 7126 2433

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