Housing Benefit Circular

Department for Work and Pensions

Caxton House, Tothill Street, London SW1H 9NA

HB A7/2019

**ADJUDICATION AND OPERATIONS CIRCULAR**

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| **WHO SHOULD READ** | All Housing Benefit staff |
| **ACTION** | For information |
| **SUBJECT** | The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 |

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual. Please annotate this circular number against paragraph 4.40 of Chapter C4.

Queries

extra copies of this circular/copies of previous circulars can be found at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>

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The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019

Introduction

1. The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (SI 2019/872) were laid on 16 April 2019 and came into force on 7 May 2019.
2. These regulations make amendments to several pieces of benefits legislation, including regulation 10 of the Housing Benefit Regulations 2006 (SI 2006/213) and the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214). This is as a result of a new basis of stay being created for EEA (European Economic Area) and Swiss nationals under the EU Settlement Scheme (EUSS).
3. The amendments clarify that limited leave to enter or remain granted under the EUSS, which is also referred to as pre-settled status, is not a relevant right to reside for the purposes of the Habitual Residence Test (HRT). All further references to limited leave to remain (LLR) within this circular should be read as also including limited leave to enter.
4. Pre-settled status is not a relevant right to reside for Housing Benefit (HB). However, a claimant with pre-settled status may still be eligible to access HB if the claimant is exercising a qualifying right to reside under existing legislation, for example as a worker or self-employed person, or if they are deriving rights from a family member. In this case, they will satisfy the right to reside element of the HRT.
5. These regulations do not relate to indefinite leave to enter or remain granted under the EUSS, which is also referred to as settled status. Claimants holding settled status under the EUSS will satisfy the right to reside element of the HRTHB. All further references to indefinite leave to remain (ILR) within this circular should be read as including indefinite leave to enter.
6. These regulations also update references in regulation 10 to the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) so that they now refer instead to the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052). This is because the 2016 Regulations revoked and replaced the 2006 Regulations.

EUSS

1. The Home Office opened the EUSS on a national basis from 30 March 2019. The scheme was in a testing phase from 28 August 2018 to 29 March 2019.
2. The EUSS is the means by which EEA and Swiss nationals and their family members, resident in the UK by the specified date, can apply for a UK immigration status which will protect their entitlements and right to remain in the UK. The specified date has been set at 31 December 2020 in the event the UK agrees a deal with the EU and the deadline for applying to the EUSS is 30 June 2021. If the UK leaves the EU without a deal, then EEA and Swiss nationals will need to be living in the UK before it leaves the EU to apply and the deadline for applying will be 31 December 2020.

Settled status – ILR

1. Applicants to the EUSS who started living in the UK before the specified date and who have lived in the UK for a continuous 5-year period (with certain absences permitted) will usually be granted ILR under Appendix EU to the Immigration Rules, which is also referred to as settled status.
2. Where a claimant has been granted ILR, also referred to as settled status, under the EUSS, they will have a qualifying right to reside for HB.

Pre-settled status – LLR

1. Applicants who do not have 5 years’ continuous residence when they apply will usually be granted LLR under Appendix EU to the Immigration Rules, which is also referred to as pre-settled status. They can then apply to change this to settled status if they go on to accrue 5 years’ continuous residence in the UK.
2. Where a claimant has been granted LLR, also referred to as pre-settled status, under the EUSS, this is not sufficient in itself as a qualifying right to reside for the purposes of claiming HB.
3. However, if they can demonstrate that they are exercising a qualifying right to reside under existing legislation (the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052)), for example as a worker or self-employed person, or are deriving a qualifying right from a family member, they will satisfy the right to reside element of the HRT.

‘Zambrano’ carers

1. A ‘Zambrano’ carer is a non-UK and non-EEA national primary carer of a British citizen.
2. ‘Zambrano’ carers have a right to reside in the UK where the British citizen being cared for is residing in the UK and would be forced to leave if the primary carer were required to leave the UK.
3. A ‘Zambrano’ carer may be granted pre-settled or settled status under the EUSS.
4. Where a ‘Zambrano’ carer has been granted pre-settled status (LLR) under the EUSS, this is not a relevant right to reside for HB.
5. Where a ‘Zambrano’ carer has been granted settled status (ILR) under the EUSS, they will satisfy the right to reside element of the HRT for the purposes of claiming HB.