

Frequently Asked Questions – EEA and A2/A8 workers

The following covers issues raised by HB/CTB staff. Detailed Information about EEA nationals and the right to reside is in [Section C4](#) of the **HB Guidance Manual**. The following covers issues not yet in the manual which cause problems for HB/CTB staff.

1. Does an award for contribution based benefit e.g. Jobseekers Allowance contribution-based give an individual a right to reside for Housing Benefit and Council Tax Benefit?

There is no requirement to test the right to reside for claims to JSA(C) and ESA(C). Therefore, being in receipt of one of these benefits will not automatically give an individual a right to reside for HB/CTB.

2. Who has the permanent right to reside?

From 30 April 2006 EEA nationals who live in another member state for 5 years or more, exercising EU rights, gain a right of permanent residence under article 16 of EC Directive 2004/38/EC.

To show they have gained a permanent right to reside, EEA nationals must demonstrate that they have been continuously resident in the host member state for 5 years and show that their residence was in accordance with the Immigration (EEA) Regulations 2006 or EC Directive 2004/38/EC. Under the Directive, this means that the EEA national must show that during at least 5 years in the UK, they have been a worker, self-employed, a jobseeker, a student, a self-sufficient person or the family member of any of these. A combination of these statuses can be used to gain a right of permanent residence.

The Immigration (EEA) Regulations 2006 are more generous than the Directive in that they allow EEA nationals to use periods of residence in the UK prior to 30 April 2006 but after 2 October 2000, to establish their right to permanent residence e.g. continuous residence from January 2001 to January 2006. There are special rules in the Directive and the Regulations about what counts as 'continuous residence'.

Applications for HB/CTB from EEA nationals who state that they have been living in the UK for more than 5 years should not automatically pass the right to reside test. Unless the EEA national can provide documentary evidence of what they have been doing in the UK since they arrived e.g. evidence of employment / self-employment or studying here, or a combination of these, they should be advised to apply for an EEA Residence permit (valid for 10 years) from the Home Office. Only an immigration officer can decide if an EEA national has gained a right of permanent residence and it isn't a decision which can be made by a benefit decision maker.

Accession nationals: Nationals from all the countries which acceded to the EU on 1 May 2004 can only count periods of residence in the UK from that date. Bulgarian and Romanian nationals can only count periods of residence from 1 January 2007. Therefore, the earliest date an A2 national can gain permanent residence is 1 January 2012. Accession state nationals may apply for an EEA Residence Permit from the Home Office in order to prove their permanent right of residence.

3. In which circumstances do EEA nationals who have worked in the UK have a right to reside for Housing Benefit and Council Tax Benefit?

- **Involuntarily unemployed EEA nationals who were employed for more than 1 year:** If the EEA national loses their employment and has worked for more than 1 year, they retain their worker status if they claim Jobseeker's Allowance. As they have worker status not jobseeker status, they have a right to reside for HB/CTB even if they are receiving contribution-based Jobseeker's Allowance and not income-based Jobseeker's Allowance. If they don't qualify for JSA(C) or JSA(IB) they still have a right to reside for HB/CTB purposes as long as they continue to be registered for national insurance credits as a jobseeker and look for work – if they stop attending the Jobcentre they lose their worker status and so would also lose their right to reside for HB/CTB, unless they are temporarily sick (see entry below). Worker status is retained as long as the EEA national has a genuine chance of being employed and continues to look for work.
- **Involuntarily unemployed EEA nationals who were employed less than 1 year:** EEA nationals who lose their employment but have worked for less than 1 year retain their worker status for at least 6 months as long as they claim Jobseeker's Allowance or national insurance credits as a jobseeker. As they have worker status they have a right to reside for HB/CTB even if they are only entitled to JSA(C). However, once they have been unemployed for more than 6 months they only have a right to reside as a jobseeker if they claim JSA or credits as a jobseeker, continue to seek work and have a genuine chance of being employed. As they have jobseeker status they only have a right to reside for HB/CTB if they are in receipt of JSA(IB).
- **Voluntarily unemployed EEA nationals (not undertaking vocational training) & previously employed (any period):** EEA nationals who leave their employment lose their worker status but can have jobseeker status if they apply for JSA and can show that they are seeking work and have a genuine chance of being employed. They will have a right to reside for HB/CTB purposes only if they are receiving JSA(IB) (jobseekers are excluded from the types of right to reside that count for HB/CTB purposes but people in receipt of JSA(IB) and certain other benefits do have a right to reside for HB/CTB purposes).

- **Previously employed and currently unemployed (voluntarily or involuntarily) due to an illness or accident:** EEA nationals who are temporarily unable to work due to an illness or accident retain their worker status. There is no requirement to be in receipt of a qualifying benefit for HB/CTB purposes but they would need to provide medical certificates. However, most EEA nationals in this position will have applied for Employment and Support Allowance. There is no definition of 'temporarily unable to work' and each case must be considered on its own merits. Generally you should rely on the information on the customer's medical certificate.
- **Sickness during periods of unemployment:** EEA nationals claiming JSA who have retained their worker status can retain their worker status if they have an accident or become sick during a period of unemployment. Therefore, they will continue to have a right to reside for HB/CTB. However, EEA nationals with jobseeker/workseeker status cannot retain that status if they become unable to work due to an illness or accident. They will not have a right to reside for income-related ESA and will also not have a right to reside for HB/CTB. Even if they qualify for contribution based ESA they won't have a right to reside for HB/CTB – there is no right to reside requirement for ESA(C) and an award of ESA(C) doesn't give a right to HB/CTB.

4. **Economically inactive EEA nationals must be self-sufficient, but what is self-sufficiency?**

The definition of self-sufficiency in regulation 4(c) of the Immigration (EEA) Regulations 2006 states that as well as having sufficient resources to avoid becoming a burden on social assistance, EEA nationals must have comprehensive medical insurance to cover their residence in the UK. NHS treatment doesn't meet the definition of comprehensive medical insurance as only EEA workers/self-employed people have a right to free NHS treatment. A European Health Insurance card is also not evidence of comprehensive medical cover as it only covers people taking short holidays in Europe. Therefore, an economically inactive EEA national must have taken out private medical insurance before coming to the UK and you should ask about this when considering an application for HB/CTB from an economically inactive EEA national.

5. **Do EEA nationals on maternity leave have a right to reside?**

If the EEA national is unemployed: There is nothing in EC Directive 2004/38/EC which allows worker status to be retained if an EEA national leaves their employment during pregnancy or during a period of maternity leave. If they are the family member of an EEA worker or self-employed person or a person with a right of permanent residence they will have a right to reside during this period for HB/CTB. Receipt of Maternity Allowance doesn't passport them onto HB/CTB or indicate that they have a right to reside as people claiming Maternity Allowance are not required to demonstrate a right to reside in order to be entitled to it.

If the EEA national is employed: EEA nationals who are still employed but on paid or unpaid maternity leave still have worker status even though they are not at work. If they apply for HB/CTB during this period they must provide a copy of their contract and confirmation that they are still employed. However, there may be other forms of contract, particularly in the case agency workers where it may not be clear if they still have worker status. For these cases, you should obtain as much information surrounding the contract and contact the PFA Team.

A8 and A2 nationals on maternity leave also have a right to reside as long as, in addition to their contract, they provide their worker registration card and certificate (A8 nationals) or Worker Authorisation Scheme card (A2 nationals).

6. Can family members who have separated from their EEA national family member, still derive a right to reside from them?

Married / civil partners: If the EEA national and their partner separate the partner continues to derive rights from the EEA national if they are married or in a civil partnership. This means that the family member of a worker or self-employed person or person who is otherwise exercising EU rights, continues to have a right to reside for HB/CTB purposes. **This right continues until the partners divorce or the civil partnership is brought to an end.**

Non-civil partnerships: Where the EEA national is not married or in a civil partnership their partner loses their family member rights if they separate. The estranged partner may still derive a right to live in the UK via their children but this doesn't give them a right to reside for benefit purposes.

Estranged Children under 21: The children of EEA nationals or their spouse / civil partner continue to derive rights from the EEA national even if they are estranged or have left home. They are not required to show that they are financially dependent on the EEA national but will have to provide evidence that the EEA national is working or otherwise exercising EU rights in the UK. This mainly applies where the estranged child is not themselves an EEA national.

7. What rights do self-employed A8 nationals have?

A8 nationals who work in a self-employed capacity have the same rights as other EEA nationals and are not subject to the Accession (Immigration and Worker Registration) Regulations, whilst they are self-employed. During this time they have a right to reside for HB/CTB. However, a self-employed A8 national doesn't gain full EEA rights after 12 months work as a self-employed person. If they cease to be self-employed then they become subject to the Accession Regulations and must register with the Worker Registration Scheme once they find employment. Whilst they are unemployed they are required to be self-sufficient and don't have a right to reside as a jobseeker. They do not retain worker status if temporarily incapable of working.

8. What rights do self-employed A2 nationals have?

Just like self-employed A8 nationals, A2 nationals who are working in a self-employed capacity are subject to the worker authorisation scheme if they cease to be self-employed. Twelve months work as a self-employed person doesn't give them full EEA status. They have full EU rights however whilst they remain self-employed. They cannot retain worker status if away from work sick.

9. How long will the accession rules for A8 nationals apply for?

The accession period for A8 nationals was extended for 2 more years from 30 April 2009. The Accession (immigration and Worker Registration) Regulations 2004 have been amended to show that the accession period will now end on 30 April 2011.