

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

1st Floor, Caxton House, Tothill Street, London SW1H 9NA

HB/CTB A13/2010

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff and Fraud Staff
ACTION	For information
SUBJECT	Further guidance on the application of the National Insurance Number condition of entitlement

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *paragraph A1.300, D1.280 headings*.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
- have any queries about the
 - **technical content of this circular**, contact Wayne Spencer
Tel: 0113 232 4981
Email: wayne.spencer@dwp.gsi.gov.uk or dmaleeds.leadsteam2b@dwp.gsi.gov.uk
 - **distribution of this circular**, contact Corporate Document Services Ltd Orderline
Email: orderline@cds.co.uk

Crown Copyright 2010

Recipients may freely reproduce this circular.

Contents

para

Further guidance on the application of the National Insurance Number condition of entitlement

Introduction.....	1
Scope of the provisions	2
Overview of the tests	7
The first test.....	12
The second test.....	13
The third test	14
Appeals	20
Sections 1(1A) and 1(1B) of the Social Security (Administration) Act 1992	Appendix A

Further guidance on the National Insurance Number condition of entitlement

Introduction

- 1 This circular provides updated guidance to Local Authorities (LAs) on the application of *Sections 1(1A) and 1(1B) of the Social Security (Administration) Act 1992 (SSAA)* in light of several recent decisions by the Social Security Commissioners (now the Upper Tribunal). The legislation is attached as *Appendix A* to this circular.

Scope of the provisions

General rules

- 2 *Sections 1(1A) and (1B)* set out an HB/CTB condition of entitlement that relates to National Insurance Numbers (NINOs). It must be satisfied by both the claimant and any person in respect of whom the claim is made, unless an exemption applies.
- 3 In *Secretary of State for Work and Pensions v Wilson* [2006] *EWCA Civ 882* (reported as *R(H) 7/06*) the Court of Appeal held that the phrase 'a person in respect of whom a claim is made' includes a partner who is a person from abroad even though no additional benefit is payable because of that person.
- 4 In *CH/2366/2008* (paragraphs 22-29) the Commissioner held that the NINO condition of entitlement applies to changes of circumstances as well as to claims for benefit. If a partner who is not exempt from the NINO requirement joins the household of an existing benefit recipient, continuing entitlement to benefit will depend on the new partner passing the test.
- 5 If the NINO condition is not satisfied by every person to whom it applies, entitlement to HB/CTB as a whole is lost. If one of the partners does not meet the requirements of *section 1(1B)*, it is not a case of assessing benefit without regard to that person.

Exceptions to the NINO requirement

- 6 *Regulation 4 of the HBGR and regulation 2B of the CTGR* provide that the NINO condition does not have to be satisfied by
 - a person without a NINO who is subject to immigration control and is a person from abroad for HB/CTB purposes
 - a claim in which the claimant or any person being claimed for is liable to make payments for a hostel
 - a child or young person

Overview of the tests

- 7 The NINO condition of entitlement sets out three tests
- **first test.** The claimant must provide a statement of the person's NINO **and** information or evidence that establishes that this number has been allocated to this person
 - **second test.** The claimant must provide information or evidence that enables a NINO already allocated to the person to be ascertained
 - **third test.** The person must make an application for a NINO **and** provide sufficient information or evidence to allow a NINO to be allocated
- 8 The tests apply to both persons who are already receiving a benefit from the DWP and those who are not. The following guidance should be applied to **all** cases.
- 9 A person satisfies the NINO condition if they meet any of the three tests, and fail to satisfy it only where **all** three tests are not met. If the first test is not satisfied, the second test must be applied. If the second test is also not satisfied, the third test must be applied.
- 10 In accordance with the general principles of benefit decision making (see paragraphs 78-9 of *R(H) 3/05*), it falls to the adjudicating authority to tell the claimant what is required in order to satisfy the NINO condition. A decision that the NINO condition is not met cannot properly be made until the claimant has been told what is required to satisfy each of the three tests and the person concerned has been given a reasonable opportunity to comply. For example, a person cannot be held to have failed to apply for a NINO for the purposes of the third test until they have been told an application is required and allowed enough time to make one. The period allowed depends on the particular circumstances of each case.
- 11 If a person satisfies the conditions of one of the tests before the LA makes its decision on whether the tests are met by that person, the test is not just met from the date the test was satisfied. The NINO condition will be met for the whole period during which they have been part of the claim (*CH/4085/2007*, paragraph 28).

The first test

- 12 If a NINO is submitted for the claimant or another person to whom the NINO condition applies
- the LA should establish whether it holds or has access to information that identifies the person to whom that NINO has been allocated
 - any such information should be compared with the details given by the claimant
 - if the two sets of information match to such an extent that the LA can see that the claimant/partner is in all probability the person to whom the NINO was allocated, the first test will be satisfied

The second test

- 13 If the first test is not met
- the LA should next see whether a NINO for the person can be traced on the basis of the information that has been provided
 - if a NINO that potentially belongs to the person is found, the LA should compare the information about the person to whom that NINO has been allocated with the details of the person given by the claimant
 - if the two sets of information match to such an extent that the LA can see that the claimant/partner is in all probability the person to whom the NINO was allocated, the second test will be satisfied

The third test

- 14 If no NINO can be verified or traced for a person to whom the NINO condition applies, the LA **must** complete and send a form DCI 1 to the DWP in respect of that person. Tell the claimant what you have done.
- 15 The DCI 1 sent counts as an application for a NINO (*CH/4085/2007*, paragraph 24). But in order to satisfy the third test, it is not enough merely to apply for a NINO. The application must also be accompanied by sufficient information or evidence to allow a NINO to be allocated. In *CH/4085/2007* (paragraph 29) the Commissioner held that this second requirement is met where the application is accompanied by the information and evidence that the application asks for, regardless of whether that material properly allows a NINO to be granted. In *CH/2366/2008* (paragraph 35) a second Commissioner held that this view of the law is wrong. In his view, an application is accompanied by sufficient information or evidence to allow a NINO to be allocated if and only if the applicant establishes his or her identity to such an extent as to justify the allocation of a NINO (paragraphs 35 and 39 of the decision). LAs should prefer *CH/2366/2008* over *CH/4085/2007* as its analysis is more consistent with the wording of *section 1(1B)(b) of the SSAA*. The third test is **not** satisfied merely by the making of an application for a NINO that includes everything the instructions on the application form request.
- 16 It is for the LA to decide whether an application for a NINO has been made. But it is for the Secretary of State to decide whether any such application is supported by sufficient information and evidence to allow a NINO to be allocated. The Secretary of State's finding on this matter is not a free-standing decision. Rather it is a determination that serves as one of the building blocks of the LA's outcome decision on the claimant's entitlement to HB/CTB (cf. paragraph 55 of *R(IB) 2/04*). This determination takes effect when the LA incorporates it within its outcome decision and notifies that decision to the claimant. It can be reconsidered by way of a revision or supersession of the outcome decision. It can be challenged by way of an appeal against the outcome decision.

- 17 LAs should not follow the decision in *CFC/4082/1998* which suggests that the decision as to the sufficiency of information and evidence is for HMRC to determine. Subsequent decisions, including the Court of Appeal decision reported as *R(H) 7/06*, indicate this is a decision for the Secretary of State for Work and Pensions.
- 18 If the claimant or the LA considers that the Secretary of State's determination should be reconsidered, the question of whether the relevant information and evidence properly allows a NINO to be allocated must be referred to the Secretary of State. Then
- if the Secretary of State refuses to change his determination, the LA should incorporate this refusal into a new outcome decision that refuses to revise or supersede the original outcome decision
 - if the Secretary of State changes his determination, the LA should incorporate this change into a new outcome decision that sets out the effect of the new determination on the claimant's entitlement to HB/CTB. It will be for the LA to decide what the grounds of revision or supersession are, and what the effective date of any change to the claimant's entitlement is
- 19 If a DC1 is returned with the annotation 'immigration status invalid', this is not a determination that the information and evidence submitted does not allow a NINO to be allocated; it indicates the Secretary of State's investigations suggest the applicant qualifies for an exemption (see above). The LA should look again at whether it is necessary for the person concerned to satisfy the NINO test. If there is any doubt about the meaning of the DWP's annotation, seek clarification from the DWP.

Appeals

- 20 Any decision that the claimant is not entitled to benefit because the NINO condition is not met (and any decision not to supersede such a decision) carries the right to appeal to a first-tier tribunal.
- 21 On appeal, the tribunal are at liberty to reconsider all the questions relating to the NINO condition, including any determination by the Secretary of State that the available information and evidence does not allow a NINO to be allocated.
- 22 The LA must provide the tribunal with all of the available evidence relevant to the matters in dispute. In particular, if the appeal includes a challenge to the Secretary of State's determination, obtain and submit
- copies of all of the evidence the person submitted in connection with the NINO application
 - copies of all of the evidence regarding the applicant's identity that the Secretary of State obtained during their investigation of the application
 - an explanation from the Secretary of State as to why the available evidence was not considered sufficient to allow a NINO to be allocated

- 23 To obtain material from the Secretary of State, LA appeals officers should contact the relevant DWP NINO Delivery Centre. There are two centres
- **Glasgow NINO Delivery Centre**, covers Scotland, North East England, Yorkshire and Humberside, North West England and London
 - **Isle of Wight NINO Delivery Centre**, covers the East of England, the East Midlands, South East England, South West England, Wales, and the West Midlands
- 24 The following officers may be contacted

Name	Centre	Telephone Number	Postal address
Georgina Fitzsimmons	Glasgow	0141 2073739	Glasgow NINO Delivery Centre, Portcullis House, 21 India Street, Glasgow, G2 4PH
Deidre Macleod	Glasgow	0141 2073687	Glasgow NINO Delivery Centre, Portcullis House, 21 India Street, Glasgow, G2 4PH
Roly Richardson	Isle of Wight	01983 237032	Isle of Wight NINO Delivery Centre, Broadlands House, Staplers Road, Newport, Isle of Wight, PO30 2HX
Sean Kealty	Isle of Wight	01983 273070	Isle of Wight NINO Delivery Centre, Broadlands House, Staplers Road, Newport, Isle of Wight, PO30 2HX

- 25 It should be noted that the Secretary of State's determination is made solely under *section 1(1B)(b) of the SSAA* and does not involve *section 182C of the SSCA* or any of the regulations made under *section 182C* (such as *regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001*) (see paragraphs 19 to 21 of decision *CH/4085/2007* and paragraph 33 of *CH/2366/2008*).
- 26 *Section 1(1B)* and *section 182C* constitute two separate regimes for the allocation of NINOs. The former applies to NINOs required in connection with benefit entitlement; the latter applies to non-benefit-related applications for NINOs. In the case of an application for a NINO made in relation to HB/CTB, the only relevant legislation is *section 1(1B)(b)*.

Sections 1(1A) and 1(1B) of the Social Security (Administration) Act 1992

- (1A) No person whose entitlement to any benefit depends on his making a claim shall be entitled to the benefit unless subsection (1B) below is satisfied in relation both to the person making the claim and to any other person in respect of whom he is claiming benefit.
- (1B) This subsection is satisfied in relation to a person if
- (a) the claim is accompanied by
 - (i) a statement of the person's national insurance number and information or evidence establishing that that number has been allocated to the person, or
 - (ii) information or evidence enabling the national insurance number that has been allocated to the person to be ascertained, or
 - (b) the person makes an application for a national insurance number to be allocated to him, which is accompanied by information or evidence enabling such a number to be so allocated
- (1C) Regulations may make provision disapplying subsection (1A) above in the case of
- (a) prescribed benefits
 - (b) prescribed descriptions of persons making claims
 - (c) prescribed descriptions of persons in respect of whom benefit is claimed, or
 - (d) other prescribed circumstances