

## JSA(IB) – THREE MONTHS RESIDENCE REQUIREMENT

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### INTRODUCTION

- 1 This Memo gives guidance on a new residence condition for jobseekers claiming JSA(IB) which is brought in by the Social Security (Jobseeker's Allowance: Habitual Residence) Amendment Regulations 2013<sup>1</sup>. The amendment takes effect from 1.1.14<sup>2</sup>.

*1 SI 2013 No. 3196; 2 SS (JSA: Habitual Residence) Amendment Regs 13, reg 1*

- 2 A claimant who is a "person from abroad" has an applicable amount of £nil and so is not entitled to JSA(IB)<sup>1</sup>. DMG 071177 lists the persons with certain specific types of right to reside who are deemed not to be persons from abroad<sup>2</sup> ("the exempt group"). This includes, for example, claimants who have EEA rights to reside as workers or

because they retain worker status upon becoming involuntarily unemployed<sup>3</sup>). Any other JSA (IB) claimants must be habitually resident in one of the territories in the CTA<sup>4</sup> (the UK, the Channel Islands, the Isle of Man and the Republic of Ireland). A claimant cannot be habitually resident in any of those places unless they have a qualifying right to reside in that place<sup>5</sup>.

*1 JSA Regs, reg 85. 85A and Sch 5, para 14; 2 reg 85A(4); 3 reg 85A(4)(a)& (c); 4 reg 85A(1); 5 reg 85A(2)*

## THE CHANGE

3. With effect from 1.1.14 (in addition to the right to reside requirement) a JSA(IB) claimant (who is not in the exempt group) cannot be treated as habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland **unless** that claimant has been living in any of those places for the past three months<sup>1</sup> (“the three month rule”). Where this condition (which is described in more detail in paragraphs 5 to 7 below) is not met, such a claimant will be a person from abroad and not entitled to JSA(IB). Where the three month rule condition is met and the claimant has a qualifying right to reside, the DM will need to go on to consider whether the claimant is actually habitually resident, in accordance with the guidance in DMG 071340.

**Note 1** The three month period could be made up of, for example, 1 month living in the Channel Islands immediately followed by 2 months living in the UK

**Note 2** Questions of whether the person was actually habitually resident in accordance with the guidance in the DMG 017340 only arise once a person has satisfied the three month rule.

*1 JSA Regs, reg 85A(2)(a)*

### Example 1

Milan is a Belgian citizen. He entered the UK for the first time on 6.1.14 to look for work. He was unable to find a job and claimed JSA(IB). The date of claim was 17.3.14. There was no question of backdating and the first day of potential entitlement would have been 20.3.14. On 20.3.14, the DM decided that Milan could not be treated as habitually resident in the UK until 6.4.13. He was therefore a person from abroad with an applicable amount of nil. The DM accordingly disallowed the claim.

### Example 2

Andreea is a Romanian citizen. She arrived in the UK for the first time on 2.1.14 in order to look for work. The date of her claim for JSA(IB) was 7.4.13. There was no question of backdating. On 10.4.14, the DM decided the claim. The DM decided that

the claimant had an EU law right to reside in the UK as a jobseeker. She determined that the claimant completed a period of three months living in the UK on 1.4.13. Finally, the DM also concluded that Andreea was (actually) habitually resident in the UK as at the date of claim. He therefore decided that Andreea was entitled to JSA (IB) and made an award accordingly.

### **Applying the Three Month Rule**

- 4 In deciding whether there is entitlement to JSA(IB) where the three month rule applies, DMs will need to consider the period from the first day of possible entitlement down to the date they make a decision on the claim (see DMG 02428). If the three months is completed during that period the DM will need to make a decision that the claimant
  1. is not entitled to JSA from the date of claim up to and including the date before the three month rule is satisfied, and
  2. is entitled to JSA (IB) from the first day on which the three month rule is satisfied

### **Example**

Hans is a German national. He entered the UK for the first time in his life on 2.1.14 in order to look for work. He was unable to find a job and claimed JSA (IB) on 24.3.14. The DM decided the claim on 4.4.13. He determined that Hans had completed 3 months living in the UK on 1.4.14. Accordingly he decided that Hans was not entitled to JSA (IB) from 24.3.14 up to and including 1.4.14 but was entitled from and including 2.4.14.

### **Meaning of “living in”**

- 5 This expression is not defined in the regulations and as such should be given its ordinary everyday meaning taking into account the context. The New Oxford English Dictionary says that to “live” somewhere means to “makes one’s home in a particular place” The Shorter Oxford English Dictionary says that “living” means dwelling in a specified place. “Dwelling” is defined as the action of residing living or having one’s home.

### **Temporary Absences**

- 6 If, during the three month period the claimant has spent some time outside the CTA, the DM will have to make a judgement as to whether that claimant ceased to be “living in” the CTA during that absence.

- 7 It is not possible in this Memo to deal with all the circumstances in which a temporary absence from the CTA will mean that a person has or has not ceased to be living in the CTA. DMs should take a common sense approach by applying the normal everyday meaning of “living in”.

### **Example 1**

Louis is a Belgian national. On 9.1.14 he came to the UK to look for work. Having been unable to find a job, he claimed JSA (IB). The date of claim was 14.4.13. It emerged from questions asked in relation to the claim that, since arriving, Louis had lived in a rented flat in the UK and that he had spent the period 2.3.14 to 15.3.14 in Belgium. His father had died and he had attended the funeral and had stayed in his mother’s house. The DM decided that, as at 14.4.13, Louis had lived in the UK continuously for 3 months. The 2 week absence did not mean that Louis had ceased to live in the UK.

### **Example 2**

Mia is a German national. She came to the UK alone on 2.1.14 in order to look for work. She rented a bedsit on a short-term one month tenancy and stayed in the UK until 1.2.14 when she returned to Germany. In Germany she stayed with her husband and children in the family home until 30.3.14. She did no work in Germany during that time. When she came back (again alone) to the UK on 30.3.14, she took up a 6 month tenancy on a flat. On 7.4.14 Mia claimed JSA(IB). On 8.4.13, the DM decided that Mia had a right to reside as a jobseeker but that she was not to be treated as habitually resident in the UK because she had not lived here for the three months prior to her claim. The DM therefore decided that Mia was not entitled to JSA(IB).

## **Saving Rule**

- 8 The three month rule does not apply to a claim for JSA(IB) which is

1. made or
2. treated as made

before 1.1.14.

### **Example 1**

Tereza is a national of the Czech Republic. She entered the UK for the first time in her life on 21.12.13 in order to look for work. Having been unable to find any work in the interim, she claimed JSA(IB) on 31.12.13. The DM decided that the three month rule

did not apply to her. He proceeded to consider whether the claimant was actually habitually resident in the UK.

### **Example 2**

Rasmus is an Estonian national. He entered the UK for the first time on 9.12.13. He was unable to find any work and he claimed for JSA(IB) on 2.1.14. The DM decided that because there had been a domestic emergency on 31.12.13, the claim could be backdated and accordingly treated the claim as made on 31.12.13. He therefore concluded that the three month rule did not apply to Rasmus and proceeded to consider whether Rasmus was actually habitually resident in the UK.

### **JSA (Cont)**

- 9 The habitual residence test (including the new three month rule) does not apply to JSA(Cont).

### **FURTHER CHANGES**

- 10 DMG guidance on some further changes, including some amendments that have been made to the Imm (EEA) Regs, will be given early in 2014.

### **ANNOTATIONS**

The number of this Memo (28/13) should be noted against the following DMG paragraphs

071170 (main heading); 071175 (heading); 071188; 071340 (main heading)

### **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13 - Obtaining legal advice and guidance on the Law.](#)