

EXTENDING GPoW ASSESSMENTS TO STOCK EEA NATIONALS

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INTRODUCTION

- 1 From 1.1.14, EEA nationals who had been unemployed and claiming JSA for six months lost their EU right to reside as either a jobseeker or retained worker, unless they provided compelling evidence that they continued to have a genuine prospect of work (GPoW) (DMG 073080 - 073123). From 10.11.14, further measures have been introduced for EEA jobseekers (the position for retained workers remains the same as introduced at 1.1.14) which reduces that six month period to 91 days (after serving the three month residence requirement) (see Memo DMG 31/14). If claimants are able to provide compelling evidence at their GPoW assessment interview, a short extension period of JSA(IB) may be allowed (DMG 073099 - 073100).
- 2 For ease of operational implementation, the above measures were initially applied to all new claims to JSA made on or after 1.1.14. From 9.2.15, the process of applying GPoW assessments to all remaining EEA nationals whose entitlement to JSA(IB) started prior to 1.1.14 ("stock cases") will commence. GPoW assessments will be applied to stock cases with effect from 9.5.15 (after a three month notification period has elapsed (see paragraphs 4 and 5 below).

DOES LEGISLATION ALLOW FOR GPOW TO BE APPLIED TO CLAIMS MADE BEFORE 1.1.14?

- 3 Immigration Regulations¹ allow DMs to apply the GPoW provisions to claims made before 1.1.14. However where the award commenced prior to 1.1.14, only periods from 1.1.14 count towards the time limit for calculating the relevant period as a jobseeker or retained worker (please see the following note).

Note: Guidance at DMG 073090 has been amended to clarify that the transitional provisions² provide that any period of duly recorded involuntary unemployment or any period during which a person was a jobseeker prior to 1.1.14, is to be disregarded.

1 Imm (EEA) Regs; 2 Imm (EEA) (Amdt) (No.2) Regs 2013, Sch 3, para 1(b)

THREE MONTH NOTIFICATION

- 4 From 9.2.15 existing JSA(IB) stock cases will be identified and claimants will be advised that a review of their right to reside in the UK and their continued entitlement to JSA(IB) will be undertaken in three months time, at their GPoW assessment interview. In areas where there are high volumes of stock cases, a phased approach will be agreed between Work Services Directorate and the relevant Benefit Delivery Centre.

Note: An EEA retained worker stock case will be subject to the same three month notice period as an EEA jobseeker stock case (see paragraph 9 below).

- 5 If the claimant has not found work within the three month notification period, they will be invited to attend a GPoW assessment interview, to enable the claimant to provide
1. evidence to show what their right to reside is (see paragraphs 6-8 below for alternative rights to reside) **and**
 2. where the person seeks to rely on their right to reside as a jobseeker, compelling evidence to show that they have a genuine prospect of work (see paragraphs 10, 13 and 14 below on compelling evidence).

ALTERNATIVE RIGHT TO RESIDE

- 6 During the GPoW assessment interview, the claimant may offer an alternative right to reside (see DMG 073230 et seq). Where the claimant is exercising an alternative right to reside, they are advised to provide supporting evidence.

7 Alternative rights to reside may include:

1. Self-sufficient persons with comprehensive sickness insurance (DMG 073244 - 073246) **or**
2. Self-sufficient students with comprehensive sickness insurance (DMG 073248) **or**
3. Family Members (DMG 073250) of
 - 3.1 a qualified person (DMG 073238) **or**
 - 3.2 a British Citizen (if certain conditions are satisfied) (DMG 073254 - 073262) **or**
 - 3.3 a student (DMG 073248) **or**
 - 3.4 an EEA national with a permanent right of residence (DMG 073351)
4. Family members who retain their right of residence (DMG 073300)
5. Extended family members (DMG 073294) **or**
6. Permanent right of residence (DMG 073350 et seq) **or**
7. Derivative right of residence (DMG 073381 – 073413).

This is not an exhaustive list.

8 Supporting evidence could include

1. Job contracts
2. Letters from employers
3. Evidence of permanent residence, which may include evidence of
 - 3.1 5 years as a qualified person
 - 3.2 Certified accounts, tax returns or HMRC registration (S/E people)
 - 3.3 Evidence of previous work
 - 3.4 P45s
 - 3.5 study and Comprehensive Sickness Insurance (Students)

3.6 self-sufficiency

3.7 Worker Registration and Worker Authorisation documents (Accession state nationals)

4. Evidence of a derivative right to reside e.g. evidence of a child in general education (DMG 073387 **2.3**), evidence that the child's EEA national parent was working in the UK whilst the child resided in the UK (DMG 073387 **2.2**)
5. Evidence of the claimant's nationality (where this is not already held).

This is not an exhaustive list.

IS THE RELEVANT PERIOD BEING APPLIED TO STOCK CASES?

- 9 The relevant period (DMG 073093 – 073095) is not being applied to stock cases as all claimants will already have had much longer than this period by the time of their GPoW assessment interview. EEA jobseekers and EEA retained workers are being given notice that their continued entitlement to JSA(IB) will be reviewed in three months time at their GPoW assessment interview, allowing them time to prepare. See paragraphs 11-14 where the claimant declares a change in their circumstances.

COMPELLING EVIDENCE

- 10 Where the claimant is exercising a right to reside as a jobseeker or retained worker, they must provide compelling evidence that they have a genuine prospect of work at the GPoW assessment interview, or evidence to show that they have an alternative right to reside. If they cannot provide such evidence, their right to reside will end and their award of JSA(IB) will terminate. For guidance on what constitutes compelling evidence, see paragraphs 13 and 14 below.

CHANGES IN CIRCUMSTANCE

Extensions

- 11 Where the claimant provides compelling evidence that a change in their circumstances has now given them a genuine prospect of work, the DM can extend the claimant's JSA entitlement.

12 As the relevant period is not being applied to stock cases (see paragraph 9 above), in order to be eligible for an extension, the change of circumstance should have taken place within the three month notification period (see paragraphs 4 and 5 above).

13 If there is a genuine offer of a specific job, which is

1. genuine and effective work (see DMG 073031 - 073058), **and**
2. due to commence within 3 months

an extension may be allowed to the day before the job actually starts, or is due to start (whichever is the earlier)(see DMG 073099 1. and 073100, Example 1).

14 Where the claimant

1. provides evidence that a change in their circumstance has given them a genuine prospect of employment (DMG 073112 – 073113) (for example, relocation to an area where there are improved labour market conditions) **and**
2. is awaiting the outcome of job interviews

an extension up to 2 months may be allowed (see DMG 073099 2. and 073100, Examples 3 and 4).

Note: Examples of a change in circumstances could include evidence of the recent completion of a vocational training course, or a recent change of location to improve labour market conditions, which may significantly improve the claimant's genuine prospect of employment. Using these examples, the date of change would be the date that any qualification was awarded from, or the date that the claimant moved into a different labour market area.

LOSS OF HOUSING BENEFIT

15 EEA nationals who lose their right to reside and lose their entitlement to JSA(IB) will also lose their entitlement to HB. HB circular A6/2014 provides guidance in relation to the removal of entitlement to HB in respect of EEA jobseekers.

ANNOTATIONS

The number of this memo (2/15) should be noted against the following paragraphs:

073090 (Heading); 073093 (Heading); 073099 (Heading); 073112 (Heading); 073230 (Heading)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, 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.

DMA Leeds: [February] 2015