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C4 People from abroad

About this chapter

4.00 This chapter explains how to deal with People From Abroad (PFAs). It is divided into two parts

- **Part 1** - the current position, which gives guidance on
 - Immigration Status Test
 - Habitual Residence Test (HRT)
 - ~ right to reside
 - ~ habitual residence
 - European Economic Area (EEA)
 - asylum seekers
 - sponsored immigrants
 - how to deal with claims
- **Part 2** - the position on or after 5 February 1996 up to and including 2 April 2000, which gives guidance on
 - claims from asylum seekers
 - ~ before 5 February 1996
 - ~ on or after 5 February 1996
 - PFAs with temporary admission
 - savings provisions
 - retrospective awards to refugees
 - liaison with Jobcentre Plus and the Home office

4.01 This chapter also contains guidance on dealing with evacuees from Kosova, see *Annex D* at the end of this chapter.

4.02-4.19

Part I – Current position

Introduction

4.20 Before April 1994 a person's status in the UK had no bearing on their eligibility to HB or Community Charge Benefit (CCB)/Council Tax Benefit (CTB). From 1 April 1994 there have been a series of legislative changes that have restricted eligibility for those benefits on the basis of a person's status in the UK. This section gives guidance on the current situation.

4.21 Housing Benefit (HB)/CTB are only available to people who

- are lawfully present in the UK with recourse to public funds, **and**
- are either nationals of a country within the Common Travel Area (CTA), **or**
- have the right to reside and are habitually resident in the CTA

Note: For the meaning of 'lawfully present' see *Annex A* at the end of this chapter.

4.22 To be eligible for HB/CTB a claimant must satisfy, the following tests

- Immigration Status test
- HRT
 - right to reside
 - habitually resident

4.23 When considering a person's eligibility for HB/CTB under these tests, you should consider whether the claimant might have been eligible for benefit under previous legislation. In some cases eligibility may continue under a savings provision. It is also possible that entitlement may need to be determined up to a date when legislation came into effect that resulted in an end to eligibility; this might be relevant where a claim is reviewed, for instance.

4.24-4.29

Immigration Status Test

- 4.30 Eligibility for social security benefits depends on a person's status in the UK. Local Authorities (LAs) are required to establish the terms of a claimant's entry or stay in the UK. This is called the **Immigration Status Test**. Claimants who do not satisfy the test are known as people subject to immigration control (PSIC) and are not entitled to HB or CTB. The regulations define precisely who are PSIC.

People affected by the Immigration Status Test

- 4.31 Under Section 115 of the Immigration and Asylum Act 1999 people subject to immigration control are excluded from social security benefits. 'A person subject to immigration control' is someone who is not a national of an EEA State and who
- a requires leave to enter or remain in the United Kingdom but does not have it
 - b has leave to enter or remain in the United Kingdom which is subject to a condition that they do not have recourse to public funds
 - c has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking, or
 - d has leave to enter or remain in the United Kingdom only while they are awaiting the outcome of an appeal against a decision to vary limited leave to enter or remain in the UK
- 4.32 People who fall into these categories, other than those people with transitional protection (more information is given later in this chapter) will **not** be eligible for HB or CTB. The majority of people affected will have been given limited leave to enter or remain in the UK on the clear understanding that they have sufficient resources to support and accommodate themselves and any dependants during their stay. This category includes tourists, visitors, students and members of religious orders; the list is not exhaustive. Some may be allowed to work while in the UK but they are still not entitled to support from public funds.

People not affected by the Immigration Status Test

4.33 Section 115 of the Immigration and Asylum Act 1999 does not apply to the following people (non-UK nationals)

- people given limited leave to enter or remain in the UK on condition that they have no recourse to public funds, but who are temporarily without funds from abroad and there is reasonable expectation that the funds will resume within three months. HB and CTB may be payable for a maximum of 42 days in any one period of leave (including any extension)
- people admitted to the UK as sponsored immigrants, as a result of a written maintenance undertaking, who have been resident in the UK for five years or more
- people admitted to the UK as sponsored immigrants, as a result of a written maintenance undertaking, who have been resident in the UK for less than five years and whose sponsor or sponsors, if more than one has died
- nationals of countries that have **ratified** the European Convention on Social and Medical Assistance (ECSMA) or Council of Europe Social Charter (CESC) and who are **lawfully present** in the UK*
**Social Security (Immigration and Asylum) Consequential Amendment Regulations 2000 (SI 2000/636), Reg. 6(3)(a-b); 7(3)(a-b); Schedule, Part I, paragraph 4*
- EEA workers
- people granted refugee status, humanitarian protection or discretionary leave to enter or remain or exceptional leave to enter or remain in the UK. This includes people granted indefinite leave to remain granted exceptionally outside the Immigration Rules
- people receiving IS, JSA(IB) or income-related Employment and Support Allowance (ESA(IR))
- people in the UK who left the territory of Montserrat after 1 November 1995 because of a volcanic eruption
- people who have 'settled status', ie who have been granted indefinite leave to enter/remain in the UK under the Immigration Rules
- holders of British passports showing them to be British Citizens or to have the Right of Abode in the UK
- holders of passports containing a Certificate of Entitlement to the Right of Abode in the UK
- nationals of countries within the EU, and EEA

4.34-4.39

Habitual Residence Test

4.40 From 1 August 1994, a test of habitual residence in the CTA was introduced, the HRT. This test applies to all claimants, irrespective of nationality, other than EEA workers. Claimants who are not habitually resident in the CTA are known as PFAs and are not entitled to HB/CTB. Although the Regulations impose no time limit it is suggested that the test should be applied to all claimants who have entered the CTA within the two years before the date of claim. Claimants who entered the CTA more than two years before the date of claim may usually be regarded as habitually resident.

From 1 May 2004

4.41 From 1 May 2004, the HRT is a two stage test, the

- first part being a test of the right to reside in the UK
- second part being a test of habitual residence

4.42 Claimants who have lived in the CTA all of their lives will satisfy the test, and claims from persons who have lived in the CTA for at least two years will not usually be subjected to the test on the basis that they are very likely to satisfy it. To determine whether persons, who have come to live in the CTA during the two years before the date of claim, satisfy the test will necessitate detailed enquiries into the circumstances of their entry and stay in the CTA.

4.43 The two-year period is **guidance only**. The HB/CTB Regulations do not require habitual residence to have been for a specific length of time. The HRT should be a process whereby a person's residence in the UK is decided on a number of factors, of which the time already spent living in the UK or CTA is one. Other factors may point to a lesser period of residence being acceptable.

Stage 1: Right to Reside

4.44 Right to Reside

- applies to people who have arrived or returned to live in the UK within two years of claiming IS, JSA(IB), ESA(IR), Pension Credit, HB/CTB. Habitual residence is not defined in law and each case must be considered on its own merits
- requires all claimants, including UK Nationals, to show they have a right to reside in the CTA if they have arrived in the UK in the two years before claiming HB and/or CTB

Anyone who fails to show that they have a right to reside in the CTA will not be eligible for HB/CTB.

4.45 All claimants who satisfy the right to reside test also have to show they are habitually resident in the CTA, unless they are exempt from showing habitual residence or are treated as being habitually resident. This part of the HRT has not changed and the current rules on deciding habitual residence continue to apply. Anyone who fails to satisfy this part of the HRT will not be eligible for HB/CTB.

People with Leave to Remain

- 4.46 People who have been given Leave to Remain in the UK have the right to reside in the CTA, ie people with
- Refugee Status with Indefinite Leave To Remain/Refugee Status with Limited Leave To Remain for five years (from 30 August 2005)
 - Exceptional Leave To Remain
 - Humanitarian Protection
 - Discretionary Leave To Remain
 - Indefinite Leave To Remain granted exceptionally outside the immigration rules, eg the Gateway Protection Programme, ILR Families Project or cases identified in the Case Resolution exercise
- 4.47 To confirm their status they need to provide either
- a passport containing the immigration stamp granting them leave
 - Home Office decision letter granting them leave
 - Home Office status document granting them leave to remain
- 4.48 They are exempt from the second stage of the HRT.

People with Indefinite Leave to Enter/Remain

- 4.49 People with Indefinite Leave to Enter/Remain are subject to both stages of the HRT if they came to the UK in the last two years unless they were identified in the Case Resolution exercise, see *Case Resolution exercise* later in the chapter. As well as providing one of the following documents, they need to show that they are habitually resident
- passport containing the immigration stamp granting them leave
 - Home Office decision letter granting them leave
 - Home Office status document granting them leave

Case Resolution exercise

- 4.50 If, through the Case Resolution exercise that started in November 2007, the UK Border Agency (UK BA) decide to grant ILE/R exceptionally outside the immigration rules to those receiving asylum support, a further 28 days of support is provided before the person is required to
- find alternative accommodation, and
 - make arrangements to support themselves
- 4.51 During this 28 day grace period successful asylum seekers are able to make a claim for HB/CTB and will be sent a NASS35 (termination of support) letter which details all the payments made and the dates of the support period. Take into account asylum support received for any period for which HB/CTB is payable, including the 28 day grace period.
- 4.52 To confirm their status claimants must also produce the following documents
- an Immigration Status Document (ISD) (ASL.2150) or Passport endorsed with ILE/R in the UK and annotated with 'This leave has been granted exceptionally, outside the Immigration Rules', see *Annex C: Appendix 17* at the end of this chapter
 - grant letter from UK BA to confirm that they have been granted ILE/R exceptionally outside the immigration rules, see *Annex C: Appendix 18* at the end of this chapter
- 4.53 To be exempt from the HRT the leave has to be ILE/R granted exceptionally outside the immigration rules. However, at the beginning of the Case Resolution exercise some ISDs and grant letters were issued that didn't make it clear that the type of ILE/R granted was leave exceptionally outside the immigration rules. To clarify the position, claimants
- originally issued with grant letters and ISDs that state the leave is ILE/R were issued with an explanatory letter which made it clear that the leave granted is ILE/R exceptionally outside the immigration rules. See *Annex C* the end of this chapter for a copy of the
 - original grant letter (*Appendix 19*),
 - explanatory letter (*Appendix 20*), and
 - ISD (*Appendix 21*)
 - issued with the correct letter but where the original ISD only refers to ILE/R a supplementary note has been added to the ISD to make it clear that the leave has been granted exceptionally outside the immigration rules. See *Annex C* at the end of this chapter for a copy of the
 - correct letter (*Appendix 17*)
 - original ISD that refers only to ILE/R (*Appendix 21*)
 - supplementary note (*Appendix 22*)
- 4.54 A customer is exempt from the HRT if they supply the above information when making a claim for HB/CTB.

UK Nationals

- 4.55 Returning UK Nationals or a UK passport holder coming to the UK for the first time have to satisfy both steps of the HRT. They need to provide one of the following to confirm they have a right to reside, a
- current passport
 - birth certificate
 - certificate from the Home Office confirming the grant of citizenship
- 4.56 They also have to show they are habitually resident, see *Habitual Residence Test* earlier in this chapter.

Nationals of EEA 16 and A2 Countries

- 4.57 EEA 16 and A2 Nationals, see Annex A, can derive their right to reside from EC law, see Annex B at the end of this chapter. They need to provide an ID card, passport, registration certificate or a residence permit, if they have one, to confirm that they are EEA 16 and A2 Nationals. Residence permits are issued to EEA Nationals on application and are not a requirement of law.
- 4.58 They also have to show they are habitually resident, see *Habitual Residence Test* earlier in this chapter.

A8 Nationals

Workers

- 4.59 A8 Nationals who are working legally, ie registered with the Home Office Worker Registration Scheme have the right to reside in the UK. The people required to register as a worker from 1 May 2004 are
- anyone not in one of the exempt categories
 - anyone taking up employment on or after 1 May 2004
 - anyone working illegally prior to 1 May 2004 who wants to regularise their position
 - anyone working legally in their current job for less than 12 months on 1 May 2004 who changes their job before they complete 12 months in that job
 - A8 worker's dependants who find work
 - students who want worker status
 - people working part-time
 - people registered with employment agencies or labour providers for temporary or short-term employment. **Note:** They will be required to register each time they start a new job. The person who pays the worker is the employer, this may not be the employment agency or labour provider

4.60-4.65

4.60 They need to provide the following evidence to confirm their status

- Worker Registration Card
- Worker Registration Certificate, only valid whilst the holder is employed by the employer named on it and only has the start date. Check with the employer to confirm the holder is still employed
- a passport or ID card

4.61 They are exempt from the second part of the HRT. They will only be able to claim income-related benefits whilst they are working because they lose their right to reside once they stop working.

Worker: post 12 months

4.62 Once a worker registered with the Worker Registration Scheme has worked for 12 months' uninterrupted they have the same rights and access to income-related benefits as EEA 16 Nationals. A worker must not be out of work for more than a total of 30 days in the 12 month period. Once the 12 months' uninterrupted work is completed they are no longer required to register as a worker.

ECSMA Nationals

4.63 ECSMA Nationals who have been given limited leave to remain, **not** temporary admission, will have the right to reside. They need to provide a passport showing their entry clearance or visa showing their leave to remain. They are subject to the second stage of the HRT. See European Convention on Social and Medical Assistance (ECSMA).

Stage 2: Habitual Residence

4.64 Habitual Residence

- must be satisfied by the claimant in each new or repeat claim for HB/CTB irrespective of the claimant's nationality
- should be applied to persons travelling under a British passport as well as to non-UK nationals

4.65 The second stage of the HRT will focus on a number of factors including

- the claimant's centre of interest
- the period and conditions of residence in the CTA
- employment prospects, and
- future intentions

This is not a complete list.

- 4.66 The evidential weight to be attributed to each factor will depend on the circumstances of each case and no single factor will be conclusive. You must balance the evidence for and against a person satisfying the second stage of the HRT and reach a decision based on the law, caselaw and the available guidance. Claimants who do not satisfy the test are not entitled to HB/CTB, see *Determining habitual residence* later in this chapter.
- 4.67 Certain claimants are exempt from the Immigration Status test or the test does not apply to them because they are nationals of countries that have ratified ECSMA or CESC who are not also nationals of an EEA or EU country. They are entitled to reside in the UK and, provided that they are lawfully present and satisfy the HRT, can claim HB and CTB.

People not affected by the second stage of the HRT

- 4.68 Although the second stage of the HRT will apply to all claimants, except EEA workers, the HB/CTB regulations specifically provide that certain other persons will not be affected.
- 4.69 People receiving IS, JSA(IB) or ESA(IR) are not affected by either stage of the HRT.
- 4.70 People are not affected by the second stage HRT if they
- are persons with limited leave to stay in the UK whose funds from abroad have been temporarily disrupted provided that there is a reasonable expectation that their funds will be restored. They will not be excluded for a maximum period of 42 days in any one period of limited leave (including any extension)
 - are refugees or have humanitarian protection or discretionary leave to remain or exceptional leave to remain, this includes people granted indefinite leave to remain exceptionally outside the immigration rules
 - people who are not subject to immigration control under Section 115(a) of the Immigration and Asylum Act 1999 and who are in the UK as a result of their deportation, expulsion or other removal by compulsion of law from another country to the UK
 - workers, self-employed persons, persons who retain either status and their family members for the purposes of *Council Directive No. 2004/38/EC*
 - people with a right to reside permanently in the UK by virtue of *Article 17* of that Directive
 - nationals from one of eight of the member states that acceded to the European Union on the 1 May 2004 who are workers by virtue of the Home Office Worker Registration Scheme
 - those who have been granted Refugee Status
 - those who are not subject to Immigration Control for benefit purposes and who have been deported or otherwise compulsorily removed from another country to the UK
 - people in Great Britain who have left Montserrat after November 1995 because of the volcanic eruption there
 - nationals from Bulgaria or Romania who are workers by virtue of the Home Office worker authorisation scheme

The 'Swaddling' judgement

4.71 On 25 February 1999 the European Court of Justice gave judgement in a case about the application of the HRT on a UK national returning to the UK from a period of residence in another European Union state (ECJ: C-90/97, 'The Swaddling case'). The case involved the application of the HRT on a claim for IS. The Court decided that a person with habitual residence in the UK who leaves and becomes habitually resident in another Member State and then returns to resume UK residence is habitually resident immediately on return. While the case involved a claim for IS the judgement also affects claims for HB and CTB.

4.72 The effect of the judgement is that

- 1 a claimant of any nationality who was previously habitually resident in the UK, Republic of Ireland, Channel Islands or Isle of Man, and
 - a moved to and lived in **any** country outside the CTA, and
 - b returns to resume the previous residence, is
- 2 habitually resident immediately on arrival in the CTA

This means that you should always take account of the length and continuity of the previous residence in the CTA and whether the claimant has sufficient links with that previous residence to be treated as habitually resident immediately upon their return.

Deportees

4.73 From 2 May 2000 people who are not subject to immigration control and who have been deported or otherwise removed by legal process from another country to the UK are **not** to be treated as 'not habitually resident' in the UK. In other words, a person not subject to immigration control in the UK must be treated as habitually resident upon their return to the UK when they have been deported or expelled by compulsion of law from another country.

4.74 People can be deported, expelled or removed by compulsion of law from a country for a number of reasons. Examples include

- prisoners on completion of prison sentences abroad
- people who have committed an offence in another country
- illegal entrants to another country

People in these circumstances may be forced to leave a country at short notice and are likely to have varying documentation depending on their circumstances.

- 4.75 A variety of evidence may be used to establish that a person has been deported, expelled or removed from another country to the UK. For example
- deportation documents (these may not be in English)
 - passport or copy of an emergency passport (emergency passports are usually surrendered on arrival in the UK)
 - a letter from Prisoners Abroad (a charity that provides support for released prisoners who have served a prison sentence abroad)

4.76-4.79

Determining habitual residence

- 4.80 The term 'habitual residence' is not defined in regulations but it is intended to convey a degree of permanence in the person's residence in the CTA. In particular, it is intended to refer to a regular physical presence enduring for some time, usually (but not always) beginning at a date in the past and intended to continue into the foreseeable future. It implies an association between the individual and the country and relies substantially on fact. It will be necessary to decide in the light of the law, caselaw, the available guidance and the facts of each individual case whether a claimant is habitually resident in the CTA.
- 4.81 The duration, continuity and durability of the claimant's residence are material to determining habitual residence, their intentions less so. It is not intended to be a test of past residence – though past residence may be an important factor. There is no set period in the legislation after which a claimant would automatically satisfy the second stage of the HRT (although in practice enquiries will not be made where the person has lived in the CTA for two years or more).
- 4.82 While it may be possible for a person to satisfy the second stage of the test immediately on entry into the country, habitual residence will more commonly be established after a period of self-support in the CTA. A claimant may be 'habitually resident' in more than one country at any one time, for example someone who shares their time equally between two countries with similar ties to each. Also, a claimant who was considered to be habitually resident in the CTA can remain so whilst temporarily absent, eg a person with a short-term job abroad or a voluntary worker abroad.
- 4.83 The caselaw that has developed through the European Court of Justice, in particular the *Di Paolo* (ref: C76/76) judgement is binding on benefit officers and forms the basis of the following guidance.

Factors to consider

- 4.84 In deciding whether a claimant is habitually resident in the CTA, you will have to take full account of all relevant evidence relating to the period before the claimant's entry into the CTA, the present period, and their intentions for the future. Persons who are not habitually resident at the time of one claim may become habitually resident by the time of a later claim because they will have lived here longer or because their circumstances have changed. Equally, claimants who satisfy the test in one claim will very likely, but not necessarily, satisfy the test in a subsequent claim.
- 4.85 The following factors should be considered in reaching a decision. They are expanded in subsequent paragraphs
- length and continuity of residence
 - employment prospects
 - reasons for coming to the UK
 - future intentions
 - centre of interest
- 4.86 The list is not exhaustive and should not be used as a tick sheet or as a means of scoring points for and against a person satisfying the test. No single aspect is consistently likely to be the deciding factor though some may be more persuasive in certain circumstances than in others.

Length and continuity of residence

- 4.87 It will be necessary to establish when the claimant first lived (as opposed to any visit or holiday) in the CTA and the subsequent period(s) of residence in the CTA. If they have a dependent family the length of time the entire family has lived in the CTA is likely to be persuasive evidence of an intention to live here.
- 4.88 Information should also be obtained about the length and continuity of residence in countries outside the CTA, and whether the claimant has a home or family abroad. A person who has a home or family (especially a dependent family) in another country would normally retain their habitual residence in that country. Equally, a person who has close family links in this country might, despite an absence abroad, retain habitual residence in the UK.

Employment

EEA Nationals

- 4.89 Claimants from the EEA who are 'workers' are exempt from the second stage of the HRT. Those EEA nationals who are not 'workers' are subject to the test. For information about EEA workers, see Annex B at the end of this chapter.
- 4.90 Information about any previous UK employment will be important. If the claimant has previously worked in the UK, you should establish the period(s) and dates of employment, in what capacity they were employed and why the job(s) finished - particularly the most recent employment. An existing work record in the UK, albeit one that does not bring the claimant within the definition of a 'worker', may give some indication of the person's commitment to this country.
- 4.91 Where the claimant is seeking employment, information about their prospects, intentions and efforts to find work including whether they are registered for work with the Jobcentre or Jobcentre Plus office, will be helpful. An offer of imminent permanent employment may point towards a commitment or an intention to stay, particularly if it is consistent with the claimant's qualifications, experience and the available job opportunities. However, a promise of work some months later may be less convincing. The type of work that is being sought, for example, whether it is long-term permanent work, casual or seasonal, may be indicative of future plans.

Non-EEA Nationals

- 4.92 A steady or permanent job in the UK, particularly one that has already lasted a significant period of time and perhaps offered some career advancement, may point towards a commitment or an intention to stay in the UK. Occasional casual work 'particularly when it is of a seasonal nature' does not amount to stable employment and will not normally suggest that a claimant is habitually resident. However, a series of temporary jobs and/or casual work over many months should not be set against the claimant especially if there is good reason to suppose this type of employment will continue. Factors to consider here are the duration of the job(s), the number of hours worked and whether the employment is consistent with the claimant's qualifications, experience, and the available job opportunities.
- 4.93 Information about any partner's employment may provide some indication of the claimant's intentions to remain in, and commitment to, the UK although the HRT itself does not apply to the partner.

4.94-4.99

Reasons for coming to the CTA

- 4.100 Many claimants come to the CTA to find work or to take up a pre-arranged job, perhaps with the idea of any dependants or the extended family following later. Others may come to the CTA for other reasons, for example
- to retire
 - to study or to train for employment, which may be sponsored by the EEA
 - for medical treatment, possibly on the NHS
 - to visit or join relatives or friends
 - because they are a UK national and had to leave their 'adopted' country due to civil or political unrest
- 4.101 Some claimants may claim benefits soon after arrival whereas others may initially live off their income and/or savings. The following are examples of questions to ask
- why the claimant decided to come to the CTA and when the decision was made
 - what was the claimant's/family's proposed means of financial support - what enquiries were made about job prospects or benefit claims before leaving the previous country of residence
 - whether the claimant has qualifications or experience that might lead to expectations of employment in the UK
 - whether employment prospects are thought to be better than in the country just left, and if so why
 - whether the claimant has lived in the CTA before and if so whether they have any property or belongings here
 - whether they are joining any dependent family in the area
- 4.102 EEA nationals have a right under the Treaty of Rome to come to the UK. However, EEA nationals (other than EEA workers who are exempt from the second stage of the test) should not be treated as automatically satisfying the HRT.

Future intentions

- 4.103 The fact that a claimant intends to live in the UK and considers their future to be here does not necessarily mean that they are habitually resident in the CTA, but it does point in that direction. The question to consider is whether the claimant's actions and plans support this statement. For example, since arriving in the UK what steps have been taken, or are under way, in regard to
- securing permanent accommodation for themselves and any family
 - arranging for any family to join them
 - arranging for any personal belongings to be brought to the UK and/or disposing of property held outside the CTA; securing full-time, permanent employment
 - contacting relatives and friends in this country
 - registering for further education, with a doctor, dentist etc
- 4.104 A stated intention to remain in the UK may be persuasive but will still need to be considered alongside other relevant factors. It should also be noted that intentions can change for good reason, not simply to get round the benefit rules although that possibility needs to be borne in mind. Consequently, an intention sincerely held at the time but which for reasons outside the claimant's control are not carried through will not justify disallowing a successful claim retrospectively.

Centre of interest

- 4.105 The claimant's centre of interest is an important factor in deciding whether they are habitually resident in this or another country. The details already provided in relation to the above factors will help to inform this area of enquiry. Account should be taken of the claimant's intention to follow a settled way of life in the CTA and the ties they have formed.

Ties with this country might include

- the presence of close relatives (eg dependent family, parents, brothers, sisters) and the extended family
- membership of any clubs or other local organisations in connection with, for example, hobbies or recreations
- decisions made about the location of personal possessions (and those of their dependent family), for example household furniture, clothes, forms of transport and definite plans to bring them to this country
- the nature of the accommodation and whether it is owned, being bought or rented and the duration of any tenancy or lease
- whether substantial purchases have been made in this country, such as furnishings, that may suggest a long-term commitment
- the existence or firm promise of permanent employment

4.106-4.108

- 4.106 A person who has lived most of their life in a country outside the CTA and has only recently arrived in this country may not have any immediate family or particular ties here. While this tends to suggest that their centre of interest is not within the CTA, all the evidence will need to be taken into account before making a decision on habitual residence.

Deciding on habitual residence

Habitually resident?

- 4.107 The second stage of the HRT is most likely to be satisfied where several of the following apply
- the claimant has been living in the CTA for longer than a year, managing on their own resources/family support and intends to remain here
 - the claimant has come to the UK to seek work, they have made preparations for finding work before arriving; they have relevant qualifications and a realistic prospect of finding work
 - the claimant has come to the UK from abroad and intends to remain in the UK for the foreseeable future, they maintain a home in the UK (ie accommodation which is more than a casual arrangement and the intention is to reside in that home apart from short absences abroad, eg on holiday)
 - the claimant has previously lived in different countries before moving here on a permanent basis
 - the claimant maintains their centre of interest here (eg a home, good job prospects, friends and relatives, membership of clubs) but may spend frequent periods in another country during the year
 - the claimant has severed all ties with the former country of residence

These are only examples. Other factors may be more important in a particular case. You must consider **all** the relevant evidence.

- 4.108 The second stage of the HRT might be satisfied where one of the following applies
- a single claimant has her parental home in another country. She has not previously worked in the UK. She has relations or contacts here who intend to help her find employment and her prospects are good. She has a six month lease on accommodation and has brought most of her personal belongings to the UK
 - a married claimant, who originates from outside the EEA, has lived and worked in this country for 18 months, his wife is also working part-time. They have two children and have lived in their present rented accommodation for over six months. They have severed their ties with their previous country but hope to visit relatives still living there from time to time. They are settled in this country, have a number of friends here and intend to remain in the UK

continued

- (4.108) • the claimant emigrated with her parents and has spent her working life abroad. Due to the serious deterioration in the political stability of the country in which she was living she has returned to the UK and is living temporarily with relatives. They are helping her find accommodation and a job. She has severed her ties with her previous country and intends to live permanently in the UK

4.109 These are **examples only**.

Not habitually resident?

4.110 The fact that a claimant is treated, for HB/CTB purposes, as having their main residence in the UK, or is liable for the payment of council tax, does not automatically mean that they satisfy the second stage of the HRT. Similarly, non-EEA claimants receiving Working Tax Credit or DWA will not automatically satisfy the test, although they are for the purposes of those benefits deemed to be 'ordinarily resident' in the UK.

4.111 A claimant may be regarded as not habitually resident in the CTA where one or more of the following apply

- the intention is to reside in the UK for only a short period, eg on holiday or visiting friends or relations
- the claimant has come from an EEA country outside the CTA, has worked in the UK for less than three months, perhaps doing seasonal work, and is presently unemployed. They would like to stay in the UK for a few months and then may move elsewhere
- there is a history of spending short periods in the UK during the year but the person usually resides for most of the year in a country outside the CTA
- the intention is to undertake a course of study, either full time or part time, after which they may obtain a job depending on results etc, or they may return to their country of origin outside the CTA
- the claimant has only casual accommodation arranged and usually moves from one country to another
- a permanent home is maintained in another country and the intention is to return there shortly
- the centre of interest is in a country outside the CTA, there are no ties with the UK, no members of their family live here (other than perhaps a distant relative) and they have poor employment prospects
- no adequate preparations for employment have been made, and the claimant has no experience or qualifications consistent with realistic prospects of finding work

continued

(4.111)-4.129

- (4.111)
- a claimant has recently arrived in the UK. She has no immediate family here and has previously been here only as a student or temporary visitor. She has made no prior enquiries about employment and has no particular qualifications or experience that might lead to realistic job prospects in the UK. She has only a very short-term lease or the promise of a few nights' accommodation. She has no other ties with the UK
 - a claimant has come to the UK specifically to take up part-time study and will probably return to her country of origin when the course is finished. Meantime, she has found rented accommodation, perhaps with other students, and is looking to fit work around her study. She may spend some of her vacations in her previous country
 - an EEA national has been in the UK for a few weeks. He has had one or two short-term casual jobs, but cannot be regarded as a worker. He is currently unemployed. He has no particular qualifications or experience that might lead to good job prospects. He is staying with friends but has no immediate family here. He has no other ties with the UK

4.112 This is not an exhaustive list.

4.113-4.119

Self-sufficiency test

4.120 The Self-sufficiency test is a two step test giving consideration of

- self-sufficiency
- unreasonable burden

4.121 **Step 1: Self-sufficiency:** EC directives stipulate that an individual's resources shall be deemed sufficient when they are higher than the level of resources below which the host Member State, eg UK, may grant social assistance, eg IS, JSA(IB), ESA(IR), HB/CTB, State Pension Credit, to its nationals taking into account

- the personal circumstances of the applicant
- their dependants, if appropriate

4.122 **Step 2: Unreasonable Burden:** EEA16, A2 and A8 nationals who are economically inactive only have a right to reside when they and their family members have sufficient resources to avoid becoming a burden on the social assistance system. Each case is considered on its own merits and considerations can include the length of time they will be dependent on public funds.

4.123 If EEA nationals claim benefits after having been in the UK for some time, the fact that they have been self-sufficient will be a factor in a decision on whether the burden is reasonable, as will the length of time that they are likely to be claiming benefits. EEA Nationals who have no prospect of finding work or becoming self-sufficient may be considered an unreasonable burden on the state.

4.124-4.129

Worker Registration Scheme

- 4.130 From 1 May 2004, A8 Nationals who find work in the UK have to register under the Home Office Worker Registration Scheme. They should do this as soon as they start work, and within one month of starting a job at the very latest. They will not be able to apply to register before starting work.
- 4.131 They will be issued with a Worker Registration Card, containing a reference number, and a Worker Registration Certificate authorising them to work for the employer concerned. The registration certificate is valid while they are working for the specified employer. If they take up new employment they have to apply for a new registration certificate authorising them to work for their new employer. See *Annex F* for
- more information about the Worker Registration Scheme
 - an example of the
 - Worker Registration Card
 - Worker Registration Certificate

4.132-4.139

EEA workers

- 4.140 EEA workers are not affected by the immigration status test and cannot therefore be treated as PSIC and excluded from entitlement on these grounds. They are eligible to claim HB/CTB in the normal way.
- 4.141 EEA workers have a right to reside in the UK and to claim HB/CTB without having to show habitual residence. The term 'EEA worker' has a fairly narrow definition but there is a much wider group of people who can legitimately claim to be treated as if they were workers.
- 4.142 Briefly, an EEA national who is engaged in work in the UK which is 'effective and genuine', see *Annex A* at the end of this chapter, irrespective of the number of hours worked or the payment received from it, is a worker. Certain former workers and their dependants are also covered by workers' rights, subject to specified conditions. *Annex B* at the end of this chapter, discusses the various categories and qualifying conditions in more detail.

4.143-4.149

Asylum seekers

Background

- 4.150 A person subject to immigration control may seek to enter or remain in the UK by indicating a fear of persecution if they were returned to their country of origin or habitual residence: this is the basis of an 'asylum application'. Every asylum application made in the UK is referred to the Home Office Immigration and Nationality Department (IND) for determination. Until a case has been determined or resolved by the Home Secretary, or the applicant withdraws the claim, no action will be taken to require the person's departure from the UK. LAs should not question an applicant about the basis of a claim for asylum.
- 4.151 All asylum applications are determined by the Home Secretary in accordance with the provisions of the 1951 United Nations Convention and 1967 Protocol relating to the Status of Refugees which has been ratified by the UK and other countries. The Protocol defines a refugee as a person who has a 'well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'. It restricts the freedom of a signatory state to expel a refugee from its territory and also provides for refugees to be given the same treatment with respect to public relief and assistance as the host state's own nationals.
- 4.152 Following an asylum application the Home Office may
- recognise the person as a **refugee** and grant asylum, or
 - refuse asylum but grant **humanitarian protection, discretionary leave to enter or remain or exceptional leave to enter or remain** in the UK, or
 - refuse asylum
- 4.153 If the asylum seeker is granted refugee status, humanitarian protection, discretionary leave to enter or remain or exceptional leave to enter or to remain, the Home Office will issue a letter and a status document to confirm their status, and they should produce both if they need to claim benefit. Refugees, and persons granted humanitarian protection, discretionary leave to enter or remain or exceptional leave to enter or to remain, are eligible for HB/CTB on the same basis as British citizens.
- 4.154 An appeal against the Home Office's decision not to grant refugee status will be considered first by an independent special adjudicator and, with leave, by the immigration appeal tribunal. Exceptionally, an individual applicant may apply to the Courts for the Home Secretary's decision to be judicially reviewed.
- 4.155 People who have been **granted asylum** are known as refugees and are not PFA. A refugee is given indefinite leave to enter or remain in the UK, with no restrictions on any claim for public funds. From 30 August 2005, refugee status is granted initially for five years with no restrictions on any claim for public funds.

- 4.156 As soon as a person is recognised as a refugee they are normally entitled to bring their immediate family to join them in the UK. They are not required to show that they can support and accommodate their family, whose admission will not contain a restriction on access to public funds.
- 4.157 Applicants who are refused asylum but are granted humanitarian protection, discretionary leave to enter or remain or exceptional leave to remain have no restrictions on any claim for public funds. However they will not normally qualify for their family to join them in the UK until they have applied for and been granted indefinite leave to remain.

Note: For asylum seeker's from EU Accession Countries, see *Asylum seeker's from EU Accession Countries* later in this chapter.

- 4.158 From 30 August 2005, people granted humanitarian protection can apply for their family to join them in the UK. They are not required to show they can support and accommodate their family, whose admission will not contain a restriction on access to public funds.

Asylum seeker arrangements from 3 April 2000

- 4.159 New arrangements for asylum seekers applied from 3 April 2000. These include
- the provision of support by the National Asylum Seeker Service (NASS)
 - transitional arrangements for existing asylum seekers claiming HB/CTB, and
 - an interim scheme that will provide support for existing asylum seekers who are removed from HB/CTB by new regulations and some new asylum seekers
- 4.160 Entitlement to Social Security Benefits for asylum seekers was removed by Section 115 of the Immigration and Asylum Act 1999, which
- came into force on 3 April 2000
 - removes asylum seekers from entitlement to Working Tax Credit and Child Tax Credit
- From 3 April 2000 new asylum applicants are **not** eligible for HB or CTB*. **Social Security (Immigration and Asylum) Consequential amendment Regulations 2000 (SI 2000/636), Regs. 6 and 7.*
- 4.161 From 3 April 2000 **new port applicant** asylum seekers arriving in the UK are supported under new arrangements managed by NASS set up by the Home Office.
- 4.162 The support provided by NASS will largely be in kind, and may include accommodation. The cost of accommodation will be funded by NASS. Asylum seekers requiring accommodation will be located in 'cluster areas', most of which will be sited outside the London and Kent areas. They will have no choice over the area in which accommodation will be offered.
- 4.163 The asylum seeker may receive support from NASS while any appeal against a negative decision on an asylum application is considered.

4.164-4.172

- 4.164 Asylum seekers supported by NASS will attract a non-dependant deduction if they choose to stay with people who are receiving HB or CTB, rather than take up accommodation offered by NASS. There are no special rates of deduction for asylum seekers. The amount of non-dependant deduction should be based on the non-dependant's income, in the normal way.
- 4.165 See *Claims from couples/civil partnerships or people living together as civil partners* later in this chapter for advice about dealing with couples/civil partnerships or people living together as civil partners where the claimant, who is not a PFA, claims for a partner who is an asylum seeker supported by NASS.
- 4.166 Unaccompanied children seeking asylum will continue to be supported by local authority Social Services Departments under the provisions of the Children Act 1991.
- 4.167 From 1 April 2000 there is no longer an upheaval list. However, a person who sought asylum on or before 2 April 2000, where the secretary of State has made an upheaval declaration, may continue to be eligible for HB/CTB.

The interim scheme

- 4.168 On 6 March 2000 the Home Office announced that the new arrangements for asylum seekers would be phased in. **In-country asylum seekers** are not eligible for NASS support and will be supported by LAs under interim arrangements that were introduced in December 1999*. **The Asylum Support (Interim Provisions) Regulations 1999.*
- 4.169 Under the interim provisions support for asylum seekers is to be provided by the Social Services Department (in Scotland, the Social Work Department) of the LA to whom they apply for support.
- 4.170 Support provided under this scheme replaces that previously available under the National Assistance Act 1948 and (for asylum seekers with children aged under 18) the Children Act 1991. However, unaccompanied children seeking asylum will continue to be supported under the Children Act 1991.

HB/CTB transitional arrangements

- 4.171 Asylum seekers who applied for asylum before 3 April 2000 will not be supported by NASS. If they were eligible for social security benefits at the time of their claim for HB/CTB they will continue to receive benefit until the first negative decision on their asylum application*. **Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 2000/636), Reg. 12.*
- 4.172 Asylum seekers who applied for asylum before 3 April 2000 and who are not eligible for HB/CTB may be eligible for support from Social Services Departments under the provisions of the interim scheme introduced by the Immigration and Asylum Act 1999*. **Schedule 9 of the Immigration and Asylum Act 1999.*

- 4.173 Most existing asylum seekers receiving HB or CTB will be protected by the transitional arrangements. Eligibility for HB/CTB will continue until the first negative decision on their asylum application*. **Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 2000/636), Reg. 12(6-8).*
- 4.174 However, people seeking asylum who had been receiving HB/CTB via the so-called 'loophole' in the regulations are no longer eligible for these benefits from 3 April 2000. They will now look for support from the interim scheme introduced by the Asylum and Immigration Act 1999.

Home Office determination of asylum applications

- 4.175 The Immigration and Nationality Department (IND) may decide an asylum application in one of three possible ways
- the asylum seeker may be granted leave to remain in the UK as a refugee. This is granted from the **date of the asylum application**. The applicant is no longer classed as a PSIC and normal benefit rules and conditions apply. (The applicant may be entitled to arrears of benefit)
 - asylum may be refused but humanitarian protection, discretionary leave to enter or remain or exceptional leave to remain in the UK may be granted. This is granted from the **date of the decision**. The applicant is no longer classed as a PSIC and normal benefit rules and conditions apply from the date of the decision
 - asylum may be withdrawn or refused. In this case the asylum seeker is classed as a PSIC with no entitlement to Social Security Benefits

Termination of Home Office support following a decision on the asylum application

- 4.176 If asylum is granted NASS will continue to provide full support for a 28-day grace period. During this period NASS will help with the transition to the benefit system before that support ends. The asylum seeker can make a claim to HB/CTB at any time from the date of the asylum decision. When the grace period has ended all support from NASS will cease. Take into account asylum support received for any period for which HB/CTB is payable, including the 28 day grace period.
- 4.177 There are savings rules for successful refugees.* If a claim is made for HB/CTB, the LA will need to have regard to any unmet Housing or CT liability. **Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 2000/636), Reg. 12(1)(c-d).*
- 4.178 HB/CTB regulations require that if a claimant has moved between different accommodation during application process then one LA will handle the claim made for all previous addresses.

- 4.179 NASS will issue an NASS 35 Termination of Support letter to asylum seekers when they receive a final decision on their asylum from the Home Office. NASS 35 details all the support that has been provided. See *Annex C* at the end of this chapter.

Asylum seekers from EU Accession Countries

Asylum seekers currently supported by NASS and LAs

- 4.180 On 1 May 2004, NASS and LAs withdrew support from the vast majority of asylum seekers who were nationals from the EU Accession Countries. They were not given the usual 28 day grace period nor was an NASS35 issued. The asylum application process will not have been completed so none of them will have been given any form of leave to remain. However, as they are now EEA Nationals they have the right to remain in the UK if they are self-sufficient or as registered workers. As they were not in receipt of an income-related benefit on 30 April 2004, they are not covered by the transitional arrangements in the Social Security (Habitual Residence) Amendment Regulations 2004. There may still be a small number of asylum seekers who are A8 Nationals who are currently receiving support from NASS or an LA pending a Home Office decision as explained below.
- 4.181 LAs can help any families or single asylum seekers who want to return to their home country. People with children will also be provided with temporary accommodation and a return ticket home. Single people will only be provided with a ticket home.

Identifying NASS and LA supported ex-asylum seekers

- 4.182 NASS and LAs issued letters notifying asylum seekers of the withdrawal of their support and accommodation from 30 April 2004. The letters also included a leaflet giving information about their rights as EU citizens and the Worker Registration Scheme. NASS support could be continued to avoid a breach of a person's rights under the European Convention on Human Rights. It was open to anyone in receipt of support to contact the body responsible for providing this to explain why the withdrawal of support would be an infringement of their human rights. NASS continue to support a small number of cases who made such representations and were successful. In addition, a number of accession state nationals who have been in the UK since before October 2000 were eligible for consideration for the grant of indefinite leave to remain (ILR) under the concession for families announced by the Home Secretary in October 2003.

Transitional Protection from 1 May 2004

- 4.183 The following people including A8 Nationals who are claiming and receiving HB/CTB on 30 April 2004 continue to be entitled on 1 May even if they are in one of the excluded groups. This protection applies to anyone
- entitled to HB/CTB on 30 April 2004, they are not affected by the changes introduced by the new regulations for the duration of the claim
 - who makes a claim for HB/CTB on or after 1 May 2004 and it is subsequently determined that their entitlement covers the period including 30 April 2004, they are protected for the duration of the claim
 - whose entitlement to HB/CTB is continuous with a period of entitlement to the same or any other specified benefit and the period includes 30 April 2004, they are protected for the duration of their claim. Review claims for HB/CTB which are continuous with a claim including 30 April 2004 are protected. The specified benefits are IS, JSA(IB), Pension Credit, HB/CTB

4.184-4.189

Sponsored immigrants

Background

- 4.190 Sponsored immigrants are given unlimited leave to enter or remain in the UK on the understanding that they have relatives who are prepared to support them by providing accommodation and day-to-day living expenses. There may occasionally be more than one sponsor. The Home Office requires each sponsor to complete and sign a written maintenance undertaking to acknowledge this. There are no restrictions on their length of stay in the UK.
- 4.191 Sponsored immigrants who made a new claim for HB/CTB on or after 5 February 1996 were normally excluded from benefit, irrespective of the date of the sponsorship undertaking, except in the following circumstances
- **death of the sponsor(s).** A sponsored immigrant whose sponsor(s) dies will be eligible to claim HB/CTB at any time, and benefit should be awarded subject to the normal conditions of entitlement. The Home Office will be able to advise whether the immigrant has been sponsored and by whom, except where the maintenance undertaking was obtained pre-entry at the diplomatic post overseas. However the death of a sponsor is unlikely to be reported to the Home Office, and confirmation will have to be sought from other sources, for example, the immigrant may produce a death certificate, or the sponsor might have been receiving benefit. Sponsored immigrants who claim HB/CTB because their sponsor(s) dies before they have been in the UK for five years need to provide

continued

(4.191)-4.209

- (4.191)
- passport
 - a copy of the maintenance undertaking
 - a copy of their sponsor(s) death certificate to confirm their status.

They aren't subject to the second stage of the HRT

- **the sponsored immigrant has been resident in the UK for a minimum of five years.** If benefit is claimed under this rule, the five years must be counted from the date of the maintenance undertaking or the date of entry to the UK (whichever is the later). Sponsored immigrants will have access to the full range of social security benefits from a date five years after the appropriate date, irrespective of whether the immigrant applies for naturalisation. The Immigration Status Test will be satisfied because sponsored immigrants have no limits placed on their leave to remain in the UK

4.192 Sponsored immigrants are not subject to the second stage of the HRT.

Identifying sponsored immigrants

4.193 Although it is not specified in legislation the majority of sponsored immigrants are elderly people over the age of 65. Exceptionally the Home Office will allow someone in who is under 65 years old because they are unable to look after themselves. They may have a passport, but it will not be stamped to show that they have entered the UK under a maintenance undertaking. This may only become apparent when conducting the HRT and the Immigration Status Test.

4.194 Once the conditions attached to a person's leave have been removed by the Home Office and they have been allowed to settle in the UK, the Home Office cannot reimpose conditions.

People temporarily without funds

4.195 People who have limited leave to remain in the UK and have no recourse to public funds are allowed to claim HB/CTB when they are temporarily without funds or remittances from abroad have stopped temporarily. There must be a reasonable expectation that the supply of funds will resume within three months. The payment of HB/CTB is limited to 42 days in any one period of leave.

4.196 To confirm their eligibility for HB/CTB in these circumstances claimants need to supply

- passport with immigration stamp showing entry conditions
- a letter from their bank or other source of funding confirming their temporary lack of funds

4.197-4.209

Claims

Questions to be included on the HB/CTB claim form

- 4.210 To identify people who may be affected by the Immigration Status Test or the HRT, appropriate questions need to be included on the HB/CTB claim forms. The following questions relate only to claimants and not to any member of their family

'Have you come to live in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man in the last two years?'

Answer: No/Yes

If 'Yes'

'What is your nationality?'

- 4.211 Answers to these questions will indicate whether further information is needed to establish the right to reside and habitual residence, while the person's nationality will show whether you need to enquire about immigration status.

Advising claimants of the possible need to contact the Home Office

- 4.212 In addition, you will need to advise HB/CTB claimants that there may be a need to contact the Home Office about their terms of entry or stay in the UK. The following sentence should be included on the claim form

'I understand that the Local Authority may approach the Home Office to check information I have given on this form and to obtain further relevant information'

- 4.213 The Office of the Data Protection Registrar has been consulted on this matter.
- 4.214 To ensure that affected claimants notice the advice, it is suggested that this is prominently located next to the questions on the right to reside and habitual residence rather than within the standard declaration at the end of the claim form. It will not be necessary to obtain a claimant's specific consent to contact the Home Office about their claim.

4.215-4.219

- 4.215 To identify sponsored immigrants we suggest that the following question is included on claim forms, after the question relating to the right to reside and habitual residence

Have you come to live in the United Kingdom as the result of a maintenance undertaking?

No Yes

Please tell us about the maintenance undertaking

Sponsor's surname

Other names

Address

.....

.....

Home Office ref no

Date of maintenance undertaking

- 4.216 You will need to consider including the declaration about the possible need to contact the Home Office, see *Advising the claimant of the possible need to contact the Home Office* earlier in this chapter.

Claims from couples/civil partnerships or people living together as civil partners

- 4.217 Where the claimant is not entitled to HB/CTB because they are a PFA or a PSIC but that person is also a member of a couple, you should consider, ideally during any interview with the claimant, whether a claim should be invited from their partner. This will depend on whether or not the evidence suggests that the partner is a PFA or PSIC.
- 4.218 If both the claimant and partner are PFA or PSIC neither will be entitled to benefits. When only one partner is excluded, the other partner can claim HB/CTB for both of them in the normal way. In these cases, allow the couple's personal allowance in full. Aggregate income and resources. When the claimant is not a PFA or PSIC but the partner is an asylum seeker supported by NASS; treat as a couple, do not apply the non-dependent addition, and take the NASS support into account as income. There is no provision to treat the partner who qualifies for benefit as a single person.
- 4.219 When considering which member of a couple should claim you should note that non-UK spouses of UK nationals are admitted to the UK for a period of two years limited leave, on the understanding that they will not have recourse to public funds, unless they are otherwise eligible for benefit. When the amount of HB is increased as a result of a non-UK spouse's presence, these will be recourse to public funds. However, LAs are not required to inform the Home Office about this. During this period, the spouse will not satisfy the Immigration Status Test and will not usually be entitled to benefit in their own right. After two years, non-UK spouses can be granted settled status provided that the Home Office is satisfied that the relationship is continuing and they are self-supporting. A person is to be treated as satisfying the Immigration Status Test when settled status has been granted.

- 4.220 Claims from individual members of a separated couple are to be treated in the normal way, with each having to satisfy the appropriate Habitual Residence and Immigration Status tests.

Claims from students

- 4.221 All full-time students (ie UK and non-UK students) are excluded from HB and CTB, unless they are in one of the vulnerable groups. In addition, since 1984 certain overseas students, whether full-time or part-time, have also been excluded by virtue of their nationality/immigration status.
- 4.222 The position of vulnerable overseas students has, in practice, remained unchanged. Vulnerable students (including part-time students) from countries which are not members of the EEA, ECSMA or CESC are subject to the Immigration Status Test. Students are normally given limited leave to enter the UK for the duration of their course, on the understanding that they have no recourse to public funds. Therefore, most of them will be PFA and not entitled to HB/CTB. A few students may be given limited leave on the basis that they will receive regular financial support from abroad. Where that support is temporarily disrupted, benefit may be awarded for up to 42 days in any one period of leave.
- 4.223 All students, including those classed as vulnerable students, are subject to the HRT. They will need to provide
- an ID card or Passport, and
 - a letter from the college confirming they are registered and enrolled on a course and the type of course they are following
- 4.224 Students who are receiving IS, JSA(IB) or ESA(IR) are not excluded under these provisions and their claims should be dealt with in the normal way.

Action on receipt of claim

- 4.225 You should determine from the HB/CTB claim form
- 1 whether the claimant has come to live in the CTA within the last two years, and, if so
 - 2 their nationality
- 4.226 If the claimant fails to answer the question about residence it should be followed up. Claims from persons who have not come to live in the CTA within the last two years should be determined in the normal way unless there is other evidence which clearly indicates the need for further enquiries about the claimant's habitual residence in the CTA, and/or terms of entry or stay in the UK.
- 4.227 If the claimant has lived in the CTA for less than two years, the next step will depend on whether the claimant is receiving IS, JSA(IB) or ESA(IR).

4.228-4.235

4.228 You should be alert to the possibility of genuine mistakes when answering these questions. A person may, for example, confuse the date they came to live in the UK with the date they returned to the UK from a visit or holiday abroad, or confuse their nationality with that of the country they lived in before entering the UK.

4.229 Cases of dual nationality should be tested under the HRT and the Immigration Status Test.

Claims from IS, JSA(IB) or ESA(IR) recipients and potential IS, JSA(IB) or ESA(IR) recipients

4.230 A claimant who is receiving IS, JSA(IB) or ESA(IR) is not to be treated as a PFA and the normal rules of benefit entitlement apply. It should normally be assumed that Jobcentre Plus has applied the appropriate tests, but see *The 'Swaddling' judgement* earlier in this chapter.

4.231 Whether a claimant is in receipt of IS, JSA(IB) or ESA(IR) will normally be apparent from the completed notification sent by the local Social Security/Jobcentre Plus office, or from the claimant's declaration on the HB/CTB claim form if a tenancy has only recently been granted.

4.232 When simultaneous claims are made for IS/JSA(IB)/ESA(IR) and HB/CTB, you should ask Jobcentre Plus to decide the IS or JSA(IB) claim first and to advise you immediately of the outcome. If IS, JSA(IB) or ESA(IR) is awarded, you should follow the IS, JSA(IB) or ESA(IR) decision and determine the HB/CTB claim in the normal way.

4.233 When IS, JSA(IB) or ESA(IR) is refused because the claimant is a PFA the Social Security/Jobcentre Plus office will forward the NHB1 as usual. A note of the reason for the exclusion, the effective date of the decision and a record of the evidence supporting that decision (but not the Decision Maker's reasoning) will also be provided. You will need to ask the claimant to provide any further information necessary to determine whether they are a PFA.

4.234 The claimant's separate rights of appeal on HB/CTB claims require you to adjudicate entitlement separately. Where HB/CTB is claimed some time after IS, JSA(IB) or ESA(IR) has been refused on the grounds that the claimant is a PFA, Jobcentre Plus will forward the above information on request.

4.235 When a claim for HB/CTB is made and IS, JSA(IB) or ESA(IR) is already in payment (eg where the claimant has recently obtained a tenancy), and the answers on the HB/CTB form indicate that the person may be a PFA and not entitled to HB/CTB (eg the claimant has come to live in the CTA in the last two years), you should confirm with Jobcentre Plus that the appropriate tests have been considered and the claimant is not a PFA. If the question has not yet been considered, Jobcentre Plus should be asked to take the lead and to advise you immediately of the outcome.

Claims from people not receiving IS, JSA(IB) or ESA(IR)

- 4.236 The following approach will ensure that those claimants who are PFA and not entitled to benefits are identified as soon as possible.
- 4.237 If a claimant indicates on the HB/CTB claim form that they have come to live in the CTA within the last two years, you should first consider the HRT.
- 4.238 If it can be established quickly (ie within two weeks of receiving the claim) that the claimant is not habitually resident in the CTA, they should be treated as a PFA and not entitled to HB/CTB. It should not be necessary to make further enquiries about the claimant's terms of entry or stay in the UK, unless that decision is appealed against.
- 4.239 When, however, one of the following applies
- the claimant is not a UK national or a person of settled status and the HRT cannot be decided quickly, or
 - the claimant satisfies the HRT, or
 - the claimant does not satisfy the HRT but the decision has been appealed against
- you should make enquiries about the claimant's terms of entry into the UK in order to establish the position under the Immigration Status Test.
- 4.240 At the same time, you should continue to decide the HRT where this is still outstanding.
- 4.241 If the claim form shows that the claimant's nationality is
- **of a non-EEA country which has ratified ECSMA or CESC** and the claimant is lawfully present in the UK - the Immigration Status Test does not apply
 - **of another country** - obtain further information to confirm the claimant's immigration status

4.242-4.249

Effective date of decision

- 4.250 Where a claimant does not satisfy
- the HRT, there is no entitlement to HB/CTB from the date of claim
 - the **Immigration Status Test**, there is no entitlement to HB/CTB from the date of claim

Advance claims

- 4.251 People who do not satisfy the HRT are excluded from making advance claims.

4.252-4.269

Summary

4.252 It will be appropriate to make decisions

- **in the case of a claimant from an EEA country**, under the HRT
- **in the case of a claimant from a non-EEA country which is a ratified member of ECSMA or CESC**, and where the claimant is lawfully present in the UK, under the HRT only
- **in the case of a claimant from a country which is not a ratified member of the EEA, ECSMA or CESC**, under the Immigration Status test, then the HRT

4.253-4.269

Part II – Position after 5 February 1996 but before 3 April 2000

Introduction

4.270 From 5 February 1996 changes to the HB/CTB regulations resulted in

- certain asylum seekers, and
- sponsored immigrants

who made a **new** claim for HB/CTB on or after 5 February 1996 being treated as 'persons from abroad' (PFA) and not entitled to HB/CTB.

4.271 There was no change to the benefit rules for

- claimants who had been granted refugee status or exceptional leave to enter or to remain. They continued to be eligible for HB/CTB (subject to normal conditions of entitlement)
- those who claimed HB/CTB before 5 February 1996 whose claim had continued unbroken ever since. An 'unbroken' claim will include a claim where a benefit period had come to an end and a renewal claim was made or a repeat claim had been backdated to form a single continuous claim. There is no 'linking rule'

*Regulation 72 of the Housing Benefit (General) Regulations 1987 and regulation 62 of the Council Tax Benefit (General) Regulations 1992.

4.272-4.279

Asylum seekers

HB/CTB claimed before 5 February 1996

4.280 This section deals with people who claimed HB/CTB before 5 February 1996 **and** have been receiving benefit continuously ever since.

4.281 All asylum seekers who claimed HB/CTB before 5 February 1996 are treated alike. You need not attempt to differentiate between those who applied for asylum at the port of entry and those who applied later.

4.282 If a **final decision** (normally after exhausting the appeal process) to refuse asylum was made before 5 February 1996, and the person was not granted exceptional leave to enter or to remain, there is no entitlement to benefit from the date of that decision.

4.283-4.287

4.283 For all other applicants

- if a **negative Home Office decision** has been made before 5 February 1996, and the claimant has an appeal outstanding on 5 February 1996, or an appeal was made within the specified time limit*, benefit may be awarded up to the next negative decision (but not during any subsequent appeal)

*A person refused asylum has 28 days from the date the decision is notified to them to make an appeal against it.

- if **no decision** has been made on the asylum application before 5 February 1996, entitlement to HB/CTB will cease from the date of the first negative Home Office decision on or after that date. In general, there is no further entitlement to benefit even if the claimant appeals against this decision.

On 21 June 1996 the Court of Appeal restored the benefit rules in force before 5 February 1996, effective retrospectively. This meant that from 21 June to 23 July (the day before the Asylum and Immigration Bill received Royal Assent), asylum seekers could

- request a review of a decision to refuse or withdraw benefit, where that decision was made on or after 5 February 1996 because the asylum application was refused, or
- make a backdated application for benefit following an application for asylum on or after 5 February, but before 24 July 1996

4.284 Both port and in-country asylum seekers were eligible. Benefit was payable from the date of the original benefit claim, the day after the day on which benefit was withdrawn, or the date the application for asylum, as appropriate. Under the restored regulations, benefit entitlement continued until the application was finally determined or abandoned. However every case had to be reviewed from 24 July 1996, the date of the Asylum and Immigration Act.

HB/CTB claimed on or after 5 February 1996

4.285 For claims received from asylum seekers on or after 5 February 1996, you need to distinguish between persons who arrive in the UK and claim asylum on entry (port applicants) or after entry (in-country applicants).

4.286 From 5 February 1996, the only applicants eligible for benefit up to the date of the first negative Home Office decision on the asylum application, were

- port applicants, and
- in-country applicants who were nationals of a country on the 'upheaval list'

4.287 Benefit should be withdrawn from the date of the first negative Home Office decision. There is no subsequent entitlement to benefit even if the claimant appeals against this decision. Asylum seekers with temporary admission may be eligible for HB/CTB throughout their asylum application or until 2 April 2000, whichever is earlier.

Port applicants

- 4.288 Port applicants are asylum seekers who
- make an asylum application at the port when entering the UK, and
 - have entered the UK from outside the CTA, and
 - whose application is recorded by the Home Office

In-country applicants

- 4.289 In-country applicants are asylum seekers who make an asylum application
- after entering the UK, whether legally or illegally, or
 - at the port when entering the UK from another part of the CTA, for example where the journey to the UK took them through a CTA country

4.290-4.299

People from abroad with temporary admission

- 4.300 From February 1996 certain categories of people were treated as PFA and excluded from IS and JSA(IB). However, they were not treated as PFA in HB/CTB, and therefore remained entitled to HB/CTB until the rules were changed from 3 April 2000. The categories are
- people given 'temporary admission' to UK. These include: those arriving at UK ports who have not been granted leave to enter; and illegal entrants detected after arrival. The majority of these people will have claimed asylum. Those who are refused asylum may appeal against the decision. They will retain their temporary admission status until the appeal is determined or while they are waiting to return to their country of origin. They remain entitled to HB/CTB throughout
 - people subject to a deportation order or who have been served with removal directions whose removal has been deferred in writing by the Home Secretary
 - people who have not yet had their immigration status determined
- 4.301 There is some overlap between these categories: for example, some illegal entrants will have been granted temporary admission whilst arrangements are made for their removal.
- people in the categories above are excluded from IS and JSA(IB). It follows that a person excluded from IS/JSA(IB) as a PFA **may** be eligible for HB/CTB. You will need to make an independent determination on the issue
 - every person who has been given 'temporary admission' to the UK will have a form IS96 issued by the Immigration Service
 - use the established liaison procedures to check a particular person's immigration status with the Home Office
 - a person classified in any one of the categories above is still required to satisfy the habitual residence test and to show they have a liability to make payments of rent

4.302-4.309

Savings provisions

- 4.310 The original regulations introduced on 5 February 1996 'saved' any asylum seekers already in receipt at that date from the effects of the new regulations until the first (or next) negative decision on their asylum application. There was a question as to whether this saving was extended when the regulations were restored by the Asylum and Immigration Act 1996.
- 4.311 The Court of Appeal, sitting on 18 March 1997,* decided that the savings provision applied only to asylum seekers receiving benefit immediately before 5 February 1996. Although benefit could legally be paid to some people after that date (because of the ultra vires issue), entitlement would finally cease from 24 July 1996, the date from which the Asylum and Immigration Act 1996 became law.
**Reg v. Secretary of State for Social Security ex parte T and the Joint Council for the Welfare of Immigrants*
- 4.312 An asylum seeker can benefit from the savings provision, and continue to receive HB/CTB, if
- they claimed and received IS, HB or CTB as an asylum seeker in respect of a period immediately before 5 February 1996, and
 - they have not received a negative decision on their asylum application since that date
- 4.313 The savings provision only extended asylum seekers' entitlement to benefit beyond 5 February 1996 in respect of the current **continuous** award where there had been no negative decision on the asylum application. It does **not** survive a break in entitlement.
- 4.314 An asylum seeker who has a break in entitlement of more than four weeks after 5 February 1996 would, therefore, fall to be treated as a person from abroad, as defined in regulations, on any new claim
- an unbroken claim will include a claim where a benefit period has come to an end and a renewal claim has been made*, or a claim that has been backdated to form a single continuous award
**Regulation 72 of the Housing Benefit (General) Regulations 1987 and Regulation 62 of the Council Tax Benefit (General) Regulations 1992*
 - there is no 'linking rule'

Transitional protection for dependants

- 4.315 When the February 1996 regulations were introduced, transitional protection was available to asylum seekers who were entitled to HB/CTB immediately before 5 February 1996. It expired when the next negative decision on the asylum application was made. Dependants of the asylum seeker who needed to make a claim in their own right - for example, on leaving school - were not protected and would usually fail to qualify for benefit because of their immigration status.

- 4.316 The transitional provisions were amended on the enactment of the Asylum and Immigration Bill to provide that people who were a member of an asylum seeker's family immediately before 5 February 1996 are also covered by the transitional arrangements. This provision covers people who were members of an asylum seeker's family (that is, part of their benefit assessment unit) when the February regulations came into force. If these family members need to claim HB/CTB in their own right, they will not be affected by the 'on arrival/in-country' issue.
- 4.317 This transitional protection is retrospective in effect. Persons who were part of an asylum seeker's family before 5 February 1996 but who became independent before the next decision on the asylum application may be awarded benefit backdated to the appropriate date.

Protection for dependants

- 4.318 People who entered the UK as dependants of an asylum seeker but who become independent after arrival, but before the first decision on the asylum application, are eligible to claim benefit under the same terms as the asylum seeker: that is, benefit may be paid up to the date of the first Home Office decision on the application, but not beyond that date.
- 4.319 When an asylum seeker dies the asylum application ends with them. The former dependant would be required to submit an asylum application in their own right.

4.320-4.329

Upheaval list

- 4.330 Before 3 April 2000 the Home Secretary would make a declaration listing those countries recognised as having undergone an 'upheaval'. A country may undergo an 'upheaval' - for example, severe political unrest - such that the Home Secretary would not normally seek to return people to that country for the time being. If they leave their home country in consequence of the upheaval they will be expected to make their application for asylum at the port of entry. Others may have come to this country as bona fide visitors but find themselves trapped when an upheaval occurs during their stay.
- 4.331 A person who is a national of a country on the upheaval list will be eligible to claim benefit as an asylum seeker if they entered the UK before the country was added to the list, **and** they make an asylum application, which is recorded by the Home Office, **within three months** from the date the Home Secretary's declaration was effective
- if an application for asylum was made before the effective date of the Home Secretary's declaration, it will not be acceptable for the purposes of a benefit claim
 - where a claim was successful, benefit will continue in payment only up until the first negative decision on the asylum application (regardless of whether the country is subsequently removed from the list after the initial three months)

4.332-4.339

4.340-4.351

Retrospective awards to refugees

4.340 Asylum seekers granted refugee status on a final determination, who were originally refused benefit outright, or whose benefit was terminated as a result of a negative decision on the asylum application, are able to receive a retrospective award of benefit.

4.341 Form DLHB/729 should be used to obtain information from the Home Office about backdated or retrospective awards when asylum has been granted. This must be completed in duplicate to provide a database of enquiries

- no acknowledgement will be issued for form DLHB/729 since the Home Office expects to respond to all enquiries made on this form within ten working days. If, exceptionally, no response is received by the due date you should send a duplicate DLHB/729, clearly marked as such
- the Home Office has agreed to keep all duplicates of forms DLHB/729 received. Where form DLHB/729 is received for the same person from more than one LA the first enquiry will be copied to the second LA
- if you receive a copy of another LA's DLHB/729 in respect of an asylum seeker claimant in your area you should discuss the issue with the claimant and consider fraud action
- the Home Office Central Point of Contact can **only** deal with forms DLHB/727 and DLHB/729 sent by post. **Any other enquiries, or forms sent by fax, will be rejected**

4.342 Any claim for a retrospective award is to be handled by the LA responsible for the last address at which the claimant lived during the relevant period. However, in the absence of a national strategy for identifying multiple claims, there are fears that several successful claims could be lodged. Since a claim for a retrospective award will be cleared by a single payment, there is scope for fraud. The form at Annex E may be used to obtain information from other authorities in whose area the claimant has lived.

4.343-4.349

Liaison with Jobcentre Plus

4.350 Where IS, JSA(IB) or ESA(IR) has been claimed in parallel with HB/CTB, any decision to refuse benefit during the course of the claim will result in a termination notice being forwarded to the appropriate LA. It will be annotated (eg 'asylum seeker') to indicate the reason for withdrawal of IS or JSA(IB): you should take this into account if a standard HB/CTB claim is subsequently received.

4.351 As an independent adjudicator you will be required to decide any subsequent claim to standard HB/CTB. However the claimant's immigration status will be a question of fact, which should be determined on the evidence supplied by the Home Office, and you should be able to decide benefit entitlement fairly quickly.

- 4.352 Jobcentre Plus will pass to you a note about the evidence taken into account in making the decision about entitlement to IS.

4.353-4.359

Liaison with the Home Office

- 4.360 If standard HB/CTB is claimed you will need to arrange with the Home Office to be advised of the outcome of the asylum application direct. Form DLHB/727 is used to obtain information from the Home Office about asylum decisions. The structure and content of the form have been agreed with the Home Office and it should not therefore, be amended. Use form DLHB/727 to find out the outcome of an asylum application in a non-IS case. A copy of this form is contained in *Annex C* at the end of this chapter.

Obtaining information from the Home Office

- 4.361 The Home Office can pass information about a person's immigration status, including information about progress on an asylum application, only to LAs **registered** to receive that information. Any enquiries from non-registered LAs will be returned without being actioned.
- 4.362 The sample approved forms provided at *Annex C* are templates: **they should be photocopied** as required and completed clerically, using blue or black ink and preferably in block capitals. Forms that have been altered **will not be accepted** by the Home Office unless the corrections have been signed off by the **registered officer**.
- 4.363 Home Office officials deal with hundreds of these forms every month, and deviations from the agreed format make them much more difficult and time consuming to process. Home Office staff **cannot** respond to urgent telephone requests for information.
- 4.364 Form DLHB/727 is used to ask for Home Office information about an asylum seeker. It includes an acknowledgement slip (DLHB/727c) which will be returned within 14 days of receipt at the Home Office. Responses to DLHB/727 enquiries will be issued as soon as the asylum application has been decided.

Confirming asylum seeker status with the Home Office

- 4.365 Form IS96 may be issued to a variety of people in a variety of circumstances. Not all will be asylum seekers, and for this reason you are advised to contact the Home Office to establish the claimant's immigration status. Use form DLHB/727 where the claimant alleges that they are an asylum seeker; and DLHB/728 where you are unable to establish their status.
- 4.366 Once you have submitted a form DLHB/727 that has been acknowledged by the Home Office, no further enquiries should be necessary.

4.367-4.389

4.367 Form DLHB/728 enables LAs to obtain information about PFA claimants (other than asylum seekers) from the Home Office Immigration Department. **Home Office requests that LAs make copies of the forms and complete them clerically**

- if supplementary information needs to be provided, you should use a separate sheet of paper (ensure this includes information to identify the claimant in case it becomes separated from the form)
- telephone enquiries cannot be accepted, but form DLHB/728 may be faxed to the Home Office if you wish. However this will not necessarily guarantee a faster response time than postal enquiries. The Home Office is unable to deal with 'urgent' enquiries
- no acknowledgement will be issued for form DLHB/728 since the Home Office expects to respond to all enquiries made on this form within ten working days. If no response has been received after, say, a month, the request should be repeated with a duplicate form DLHB/728

Benefit position

4.368 If the claimant has provided all the information and evidence they have been asked for, eg Home Office documentation, the 14-day payment target must be met. If you cannot finally determine the claim, for example, because you need information from the Home Office, you **must** make a payment on account, see *A6 Payment on account* earlier in this manual.

4.369-4.379

Other persons formerly eligible for HB/CTB before 5 February 1996

4.380 The benefit rule changes of February 1996 also affected certain other immigrants. Certain people (other than asylum seekers) formerly eligible for HB/CTB are, as a result of these regulations, to be treated as PFA and **not** entitled to benefit. From 5 February 1996 benefit is no longer payable to any person who

- is awaiting the outcome of an appeal under Part II of the Immigration Act 1971 (including any period for which an appeal is treated as pending under section 33(4) of that Act), or
- has no or no further right of appeal under the Immigration Act 1971 but has been allowed to remain in the UK while an application to remain or representations on their behalf are being considered by the Home Secretary, or
- has been granted permission to remain in the UK pending the removal of a person who is subject to a deportation order but whose removal from the UK has been deferred in writing by the Home Secretary, or
- is subject to a direction for their removal from the UK but whose removal has been deferred in writing by the Home Secretary

4.381-4.389

IS/JSA/ESA claimed - general points

- 4.390 'Interim payments' made by Jobcentre Plus staff on behalf of the Secretary of State represent payments of money, not benefit, and **do not** confer eligibility for HB/CTB. The payments are handled clerically, and form NHB1 should not be issued. Contact your local Social Security/ Jobcentre Plus office if there is any doubt about the payment being made - for example, if a claimant insists that they are in receipt of IS but an NHB1 has not been issued.
- 4.391 Payments of IS, JSA(IB) or ESA(IR) made under Urgent Cases regulations (UCPs) **do** confer eligibility for HB/CTB. Under IS rules, a couple comprising one person who is eligible for benefit and another who is a PFA will be treated as a couple - just as in HB/CTB. But, unlike HB/CTB, IS rules permit the applicable amount to be modified in such cases. The amount payable for the couple is equivalent to the usual applicable amount for a single person. For HB/CTB purposes you should assess benefit based on the couple's joint applicable amount and take in any income or other assets belonging to both of them in the usual way.

4.392-4.999