

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A6/2007

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For use when considering advance claims
SUBJECT	Advance claims to HB and CTB by people who have not met the Habitual Residence Test: Amendment of the HB and CTB regulations

Guidance Manual

The information in this circular does affect the HB/CTB Guidance Manual. Please annotate the number of this circular against *Part A, Chapter 2, Advance claims*.

Queries

If you

- want extra copies of this circular/copies of previous circulars, they can be found on the website at www.dwp.gov.uk/hbctb
- have any queries about the
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Advance claims to HB and CTB by people who have not met the Habitual Residence Test: Amendment of the HB and CTB regulations

Introduction

- 1 From **23 May 2007** persons who have recently arrived from abroad will no longer be able to make an advance claim to Housing Benefit (HB) or Council Tax Benefit (CTB).
- 2 This change, which extends to all affected benefits, is needed after the Secretary of State decided not to contest the judgement by the Court of Appeal in *Secretary of State for Work and Pensions v Bhakta (2006) EWCA Civ 65, February 15, 2006*.

Background

- 3 The effect of the Court of Appeal judgment was to permit the decision-maker to use discretionary powers to make an advance award of benefit when, in their opinion, the
 - claimant will satisfy the requirement to be habitually resident at a future date unless there is a relevant change of circumstances, **and**
 - future date is within the time limits for making an advance claim (13 weeks for HB, eight weeks for CTB)
- 4 The Court's decision was not in accord with the Secretary of State's position, which is that decision-makers should look at the Habitual Residence Test (HRT) as it applies to an individual at the date of the decision on their claim. They should look for an appreciable period of actual residence in the UK as evidence to support a genuine intention to settle here. Decision-makers should not be required to speculate about a person's future in relation to the test.
- 5 These amending regulations will therefore restore this position by inserting wording into the relevant regulations to explicitly exclude people from abroad from making advance claims.

Details

- 6 The regulations confirm that local authorities (LAs) may not accept an advance claim from a person who fails to satisfy the HRT, even if they are thought likely to pass that test, barring a change of circumstances, after a certain period. This rule applies irrespective of whether the person satisfies the other conditions of entitlement to benefit.

- 7 This change only applies to advance claims made on or after 23 May 2007. LAs holding advanced claims made by people before 23 May 2007 who have not satisfied the HRT, may still accept and make decisions on those claims in due course, provided that the HRT test is satisfied.

Queries

- 8 If you have any queries regarding the content of this circular contact Matthew King, Email: Matthew.king@dpw.gsi.gov.uk