



Amigos de la Gente de Edad

UK residence test

The introduction of the 'habitual residence test' into British legislation in August 1994 has led to a number of British citizens, returning from abroad, being denied access to income related benefits.

Age Concern England says that according to a briefing prepared by the UK Citizens Advice Bureau between August and December 1994, 16,876 British citizens were required to submit to the test. Although the vast majority, some 15,000 people, subsequently passed the test, many were left suffering hardship while awaiting a decision.

Information sent to us by the DSS Benefits Agency (now the Department for Work and Pensions) at the time stated:

'You wished to know how long an expatriate would have to live in the UK each year to establish residence here.

There is no fixed time period as the term 'habitual residence' is not defined in the legislation. The adjudication officer must reach a decision by considering the overall circumstances of each case taking into account existing case law. A claimant does not have to be present in the UK all the time to be habitually resident here. A person may be habitually resident in more than one country, or in none. The adjudication officer will consider a variety of factors, including a person's centre of interest, whether there is a stable employment record here or elsewhere, the nature of the occupation, a person's reason for coming to the UK, the length and continuity of residence elsewhere and the claimant's future intentions as to residence. The weight given to each factor will depend on individual circumstances and is a matter of judgement by the adjudication officer as the list is neither exhaustive nor conclusive.

The objective of the test is to prevent people who are visiting the UK from getting the taxpayer to fund their accommodation and living expenses for the duration through Housing Benefit and Income Support. There is no time limit beyond which a person must be considered as habitually resident. The adjudication officer's decision is based on the situation at the time of claim.

Habitual residence is therefore different from a more conventional test of past residence e.g. requiring a person to live in the UK for at least six months before becoming entitled. Because of provisions in European law requiring equal treatment for nationals of all member states, residence for six months in any member state would count towards entitlement in the UK. A straightforward test of past residence

would therefore not be effective against people living elsewhere in the European Economic Area. Habitual residence is a more subjective test, but has the advantage of already being recognised in European law.'

From 1 May 2004 a new step has been introduced into the 'habitual residence test'. This means that people, including UK Nationals, will be required to show that they have a 'right to reside' in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (known as the Common Travel Area (CTA)). This will be in addition to showing that they are habitually resident in the CTA.

The 'habitual residence test' will be applied to people who make a claim for income-related benefits within two years of arriving in the CTA.

The 'right to reside' may be established on production of documents such as a Passport, Birth Certificate, Home Office certificate confirming grant of citizenship, etc. This list is not exhaustive.

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