



## EU Nationals and access to the British Welfare State

### Summary

1. Access to the UK benefit system is primarily based on residence. An EU national who moves to the UK and is considered habitually resident has the same entitlement to benefits as a UK national regardless of their previous tax or National Insurance contributions. Habitual Residence is automatic in the case of workers and self-employed and qualification is easy for job-seekers. We recommend (paragraph 20) that there should be no access to benefits for job seekers and that the employed and self employed should have to wait for six months before qualifying.

### Benefits based on Residence

2. Most benefits are based on residence which is determined by means of the Habitual Residence Test<sup>1</sup>. This test has two elements:

- Do you have the right to reside, i.e. are you an EU citizen exercising your treaty rights
- Are you habitually resident, based on a demonstration of intention to stay and not based on length of stay thus far.

3. This intention to stay can be demonstrated by registering with a GP, registering on the electoral roll, registering children with the Local Authority for school, having accommodation available, having an accompanying family or joining relatives already here<sup>2</sup>. Cases are decided individually based on the applicant's circumstances– there are no firm criteria.

4. The time an applicant has been resident in the UK is also a factor. However some EU nationals, such as those who have worked in another member state, can be accepted as habitually resident immediately on arrival; for others the period of actual residence required is between one and three months<sup>3</sup>.

5. Benefits based on residence include Housing Benefit, Council Tax Benefit, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Child Benefit, Child Tax Credit, Working Tax Credit and State Pension Credit as well as social housing and homelessness assistance. The Local Authority must treat applications from EU citizens for social housing in exactly the same way as those from British citizens.

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1 House of Commons Library Note, SN/SP/416 [www.parliament.uk/briefing-papers/SN00416.pdf](http://www.parliament.uk/briefing-papers/SN00416.pdf)

2 Briefing by DWP at an Employment Law and Social Security Seminar, Embassy of Republic of Poland, 19<sup>th</sup> April 2012

3 House of Commons Library Note, SN/SP/416 [www.parliament.uk/briefing-papers/SN00416.pdf](http://www.parliament.uk/briefing-papers/SN00416.pdf)

## **Contributory Benefits**

6. Contributory benefits comprise contribution-based Jobseeker's Allowance (JSA) and contribution-based Employment and Support Allowance. They can be claimed by any EU migrant in the same way as a British citizen, provided they have made sufficient contributions; contributions in another EU country also qualify. In practice, however, income based JSA which does not require contributions is paid at exactly the same rate.

## **Relevant Departments – Divided responsibilities**

7. Decisions on entitlement to work related benefits are taken by the DWP. Local authorities decide on applications for housing benefit and council tax benefit and on applications for social housing. If the DWP has decided that an EU national is Habitually Resident then the local authority has to accept that decision. However, if the DWP does not find someone habitually resident then the local authority still has to consider the case and may still consider an applicant habitually resident for housing purposes. HMRC deals with applications for Working Tax Credit and Child Tax Credit.

## **Initial Right of Residence**

8. All EU nationals have an initial right to reside in the UK for three months. This initial right of residence does not in itself satisfy the Habitual Residence Test<sup>4</sup>.

## **Extended Residence**

9. Thereafter, EU nationals can extend their right of residence if they are a:

- jobseeker
- worker
- student
- self-employed person
- self-sufficient person

## **Family Members**

10. Family members of an EU national have the same right to reside as the EU national.

## **Applications for benefits and habitual residence**

11. The habitual resident criteria for benefits are met automatically in the case of workers and self-employed persons<sup>5</sup>. Other applications for benefit may be subject to the test.

## **Workers**

12. Workers have full access to the UK welfare state, in effect from day one. An EU national who has worked for at least a year but has stopped working because of redundancy can retain worker status by registering as a jobseeker.

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4        ibid

5        DWP Decision Makers Guide, Habitual Residence & right to reside, <http://www.dwp.gov.uk/docs/dmgch0703.pdf>, paragraph 071187

## Self-employed Persons

13. Self-employed Persons also have full access to the UK welfare state, in effect from day one. This status can be maintained if someone has to stop work temporarily because of illness.

## Job-Seeker

14. A job-seeker does not come under the definition of worker and can therefore be subject to a test for habitual residence when applying for benefits. However, a job-seeker who has registered with the job-centre to look for work can extend his right to reside in the UK. There is no time limit to being a job-seeker and the benefits can be claimed for as long as the person is considered to be seeking employment.

15. Unemployed EU nationals who are habitually resident as job-seekers can claim benefits at the same rate as an unemployed British resident can claim. These include income-based JSA, child benefit, housing benefit and council tax benefit. The only difference in terms of benefits between someone with 'worker' status and someone with 'jobseeker' status is that the latter cannot claim income support, income-related Employment and Support Allowance and Special Pension Credit<sup>6</sup>. They also do not have access to social housing (but they still have access to housing benefit).

## Self-sufficient persons and students

16. The right to reside under these categories does not meet the requirements for benefits.

## EU nationals with children

17. The child of an EU national would have the right to an education in the UK if there was a common period of time during which the child was in UK education and a parent had worker status. Once children are in education, they have a right to stay in the UK with their parent(s) until their education is completed at 18 regardless of whether the parents can support themselves. This treaty right does not apply when the parent has only had job-seeker status<sup>7</sup>.

18. However, in practice, the local authority may consider that the fact that a child is in education is of itself evidence of habitual residence. Even if it is determined that an EU national is not exercising his treaty rights and so has no recourse to public funds the local authorities have a duty of care to all children in their area. They are required to carry out an assessment of the child's needs which may include financial and accommodation support. Local authority housing departments have a power under Section 188 of the Housing Act 1996 to provide temporary accommodation to EU nationals while a decision is made on eligibility for public funds or while an appeal is made against a negative decision. Local authorities cannot withdraw public support if it would be in breach of Human Rights (e.g. Article 8, Right to Family Life) or if the child would become destitute as a result<sup>8</sup>. In some cases the local authority might be able to offer tickets back home as a way of meeting this duty of care.

## Permanent Residence

19. The right to permanent residence can be obtained by EU nationals who have resided in the UK for at least five years. They are not then subject to the habitual residence test if they apply for benefits. Someone with work or self-employed status can obtain permanent residence earlier if they retire or if they have lived in the UK for at least three years before stopping work and have worked for at least one year.

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6 DWP Decision Makers Guide, Habitual Residence & right to reside, <http://www.dwp.gov.uk/docs/dmgch0703.pdf>, paragraph 071231

7 DWP Decision Makers Guide, Habitual Residence & right to reside, <http://www.dwp.gov.uk/docs/dmgch0703.pdf>, paragraph 071250

8 <http://www.nrpfnetwork.org.uk/Pages/Home.aspx>

## **Recommendations**

20. We recommend that:

- a. There should be no access to benefits for Job Seekers from the EU. If they find that they cannot support themselves they should be given a free ticket home.
- b. Access for those who are employed or self employed should be made subject to the Habitual Residence Test; that test should be tightened to require six months actual work in the UK before access is granted.

13<sup>th</sup> February 2013