

Claiming Housing Benefit/Council Tax Support if you are a Person from Abroad

If you are a 'person from abroad' the Housing Benefit and Council Tax Support rules are very complex.

Who is a Person from Abroad?

There are three tests to apply in deciding if a person is 'from abroad':

1. The Immigration Status Test
2. The Right to Reside Test
3. The Habitual Residency Test

Each of the three tests is explained in full below. Please read **all three** explanations carefully. Provided you pass all three tests you will be eligible to apply for Housing Benefit and Council Tax Support.

1. The Immigration Status Test

The basic principle is:

Are you subject to immigration control?

This means that your entry conditions to the UK give you less than full rights to remain and work here.

- If yes, you are a 'person from abroad'.
- If no, you may still be a 'person from abroad'.

You are considered to be a person subject to immigration control if:

- You are an illegal entrant or 'overstayer'.
- You have no right to public funds.
- You are granted leave to remain subject to sponsorship. (The sponsor provides financial support to you sufficient to ensure that you do not need recourse to public funds).
- You are granted temporary leave to remain or any kind of limited leave.

There is no time limit on this. If you are subject to immigration control you cannot get benefit no matter how long you have lived here.

However, there are exceptions to this rule if:

- You are a sponsored immigrant, whose sponsors have died, or who have been here for five years or more.
- You are a national of Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, the Slovak Republic, Switzerland or Turkey.
- You have limited leave to remain and your funds have been interrupted for up to a total of 42 days in any one period of limited leave.
- You are granted refugee status or the new equivalents to exceptional leave (e.g. humanitarian protection).

2. The Right to Reside Test

You must show that you have a right to reside in the UK, the Republic of Ireland, the Channel Islands or the Isle of Man (the common travel area).

You will have a right to reside in the UK if you are:

- A returning British citizen or a British passport holder (including dual nationality).
- The holder of a British overseas passport, endorsed with a right of live in the UK.
- The holder of a British overseas passport, endorsed 'British Citizen'.
- The holder of a British overseas passport who is entitled to readmission to the UK.
- The holder of a Non-British passport endorsed 'British Citizen'.
- The holder of a Non-British passport endorsed 'given leave to remain in the UK for an indefinite period'.
- A refugee.
- Someone who has been granted humanitarian protection.
- Someone who has been deported to the UK.
- Someone with exceptional leave or discretionary leave to remain in the UK.
- Someone who left Montserrat after 1 November 1995 due to volcanic activity.
- A national from Croatia, Macedonia or Turkey (ECSMA /CESC states) who has been granted limited leave to remain in the UK.
- A national from the Republic of Ireland, the Channel Islands or the Isle of Man who has a right to reside in the common travel area.

- A national of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden or Switzerland and you are a worker or self-employed.
- Since 1st May 2011 a national of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic or Slovenia and you are a worker or self-employed.
- A national of Romania or Bulgaria who holds an accession work card or a seasonal agricultural workers scheme (SAWS) work card or a registration document confirming the individual has unrestricted access to the labour market or is self-employed.

Economically inactive people, such as pensioners or lone parents

All European Economic Area (EEA) Nationals have a right to live in the UK during the first three months of residence without needing to be self-sufficient. However, this right is a non-qualifying right to reside for the purposes of claiming income-related benefits such as Housing and Council Tax Benefits. This is because the UK is not required to provide social assistance during this initial three month period. When considering a claim from an inactive EEA National there are two considerations:

1. Self-sufficiency
2. Unreasonable burden

Self-sufficiency: In the UK EC directives stipulate resources shall be deemed sufficient when they are higher than the level of resources below which the UK may grant social assistance, eg Income support, Jobseekers Allowance (Income Based) Housing Benefit/Council Tax Benefit to its nationals, taking into account:

- The personal circumstances of the applicant
- Their dependents (if appropriate)

Unreasonable burden: We will consider the length of time the person will be dependent on public funds. If an EEA National claims benefits after being in the UK for some time, the fact that they have previously been self-sufficient will be a factor in the decision on whether the burden is reasonable, as well the length of time that they are likely to be claiming benefits.

EEA Nationals who are unlikely to find work or become self-sufficient.

Inactive EEA Nationals such as Pensioners or Lone Parents, making claim for benefits, would need to demonstrate that their private funds would resume before long and that they would not be an unreasonable burden on public funds.

3. The Habitual Residency Test

Provided you are not subject to immigration control a decision will be made as to whether you are 'Habitually Resident' here.

In deciding whether you are 'Habitually Resident' here we shall look at:

- Why you came to the UK.
- Whether you have lived here for an 'appreciable period'.
- Whether you have the intention to settle and make a home here.
- Whether you have a settled pattern of living here.

In making our decision we shall look at your whole situation to make an informed judgement.

You will be treated as being 'Habitually Resident' in the UK if you are:

- In receipt of Income Support, income-based Jobseeker's Allowance or Pension Credit (The Dept for Works and Pensions will have already checked your eligibility for benefits).
- A refugee.
- Someone given exceptional leave to enter or remain in the UK.
- A former asylum seeker granted Humanitarian Protection or Discretionary Leave
- Someone who left Montserrat after 1 November 1995 due to volcanic activity
- A national of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden (EEA nationals) Cyprus, Malta or Switzerland and you are a worker or self-employed.
- Since 1st May 2011 a national of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic or Slovenia and you are a worker or self-employed.
- A national of Romania or Bulgaria, depending on your worker status:

Highly skilled workers have unrestricted access to the labour market. You will be able to claim Jobseeker's Allowance and, if in receipt of that benefit, Housing Benefit and Council Tax Support whilst you look for work.

Skilled workers, authorised by the Home Office to work for a particular employer, you will be able to claim Housing Benefit and Council Tax Support whilst working. If you stop working you will no longer have a right to reside as a worker or claim income-related benefits. After 12 months continuous employment you will have the same rights and access to income-related benefits. After 12 months continuous employment you will have the same rights and access to income-related benefits as other EEA nationals.

Low skilled workers:

Employed in a sector based scheme in food processing - you will be allowed to work for one employer for up to 12 months. Whilst working, you will be able to claim Housing Benefit and Council Tax Support. After 12 months, even if you lose your employment, you retain your worker status if you remain in the labour market.

Employed in a seasonal agricultural workers scheme - you will only be allowed to work for six months at a time and must have a break of three months between employment spells. Whilst working, you will be able to claim Housing Benefit and Council Tax Support. During employment breaks you will not be able to claim any income-related benefits as you will lose your worker status. As you cannot accrue 12 months continuous employment you cannot gain full EEA worker status.

Self-employed workers - you are treated the same as other EEA nationals and will be able to claim Housing and Council Tax Benefits whilst you are working. If you stop working as a self-employed person you will be subject to the worker authorisation scheme and will probably lose your right to reside unless you are self-sufficient.

What if I am an Asylum Seeker?

An asylum seeker is someone normally subject to immigration control who seeks to enter or remain in the UK by applying for asylum as a refugee, or who indicates a fear of being required to return to his or her country of origin.

Asylum seekers entering the UK from 3 April 2000 are excluded from receiving Housing and Council Tax Benefits and other social security benefits.

As an asylum seeker your only rights to support are through the Home Office asylum support scheme managed by the National Asylum Support Service (NASS). Since January 2003 NASS support can be denied to any person who does not apply for asylum immediately on entering the UK.

Once your application for asylum becomes accepted and you are granted refugee status you become entitled to benefit in the normal way.

This information is for guidance only. Please contact us if you want to talk about your individual circumstances and we shall be able to give you more information.