

Habitual residence test

This factsheet explains how the council decides if a person applying as homeless is 'habitually resident'.

This may affect you if you are a foreign national or a UK citizen coming to the UK after living abroad.



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Registered charity in England and Wales (263710) and in Scotland (SC002327).

What is habitual residence?

Habitual residence is about whether you have your settled home in the 'Common Travel Area'. That's the UK, Ireland, the Isle of Man and the Channel Islands.

You normally need to be habitually resident to get homelessness help from the council.

Habitual residence isn't defined in law and the council will need to look your circumstances.

A tourist won't pass this test because their home is elsewhere.

Exempt from habitual residence

You'll be exempt from the test if you :

- are an EEA national¹ who is working or self-employed in the UK and you have pre-settled status or are awaiting a decision from the scheme
- have been granted refugee status
- have been granted 'humanitarian protection'
- have been granted 'discretionary leave' or leave to remain on human rights grounds, without a 'no recourse to public funds' condition
- were deported back to the UK

¹The EEA includes all the countries that are in the EU plus Iceland, Liechtenstein, Norway and Switzerland.

Resuming habitual residence

You can be habitually resident as soon as you arrive in the UK if you were previously habitually resident in the UK and have returned to resettle here. The council may ask why you left and what links you kept with the UK.

Passing the habitual residence test

If you're not exempt or resuming a previous period of habitual residence, you must have lived in the UK for some time.

Each case depends on the facts. Sometimes one month is enough but a longer period may be required.

The council will look at how long you've been in the UK, what you're doing here, if you've lived here before, and your future plans.

Evidence that you're habitually resident could include if you:

- have enrolled your children in school
- have family ties in the UK
- are registered with a doctor
- have joined any local clubs or societies
- have brought your possessions to the UK
- have opened a UK bank account
- are working or looking for work

Going on holiday abroad doesn't mean you stop being habitually resident. But habitual residence will be lost if you leave the UK intending to settle abroad.

The habitual residence test for claiming some welfare benefits includes a requirement that you must have lived in the UK for at least three months. This isn't the test if you apply as homeless. Get advice if the council hasn't looked at your individual circumstances.

What duty does the council have?

If the council decides you are habitually resident and that you are homeless or likely to be homeless within 56 days, it must assess your housing and support needs and take reasonable steps to help you keep your home or find somewhere new to live.

Challenging a decision

You have the right to ask for a review of a decision by the council that they don't have a duty to help you. Your request must be made within 21 days of being notified of the council's decision.

Get advice quickly if you want to do this. If you're on a low income you may qualify for **legal aid** to help you do this.

If your review doesn't succeed, get advice to see if you can appeal to the county court.

Further advice

You can get further advice from england.shelter.org.uk/housing_advice, a local Shelter advice service or local Citizens Advice. If you have nowhere to sleep tonight, are at risk of harm or losing your home within the next 2 months, call Shelter Helpline on **0800 8004444** for advice and information on your options.*

*Calls are free from UK landlines and main mobile networks.

Note

Information contained in this factsheet is correct at the time of publication. Please check details before use.