



Department of Social and Family Affairs

Missionaries, Old Age Non-Contributory Pension And Habitual Residence Condition

Mary Coughlan TD, Minister for Social & Family Affairs, acknowledges the concerns raised by the Irish Missionary Union in recent days about the position of pensions coverage for Irish missionaries returning temporarily to Ireland for short periods since the introduction of an habitual residence condition in the social welfare code.

The Government introduced the new rules to restrict access to Unemployment Assistance, Supplementary Welfare Allowance, Carers Allowance, One-Parent Family Payment, Old Age Pension and certain other social welfare payments in the case of people newly arrived in Ireland. Prior to the introduction of the new rules, a person from another country who was aged 66 or more and who had no income could claim - and be paid - Old Age Pension even if they only first arrived in Ireland that day.

The basis for the restriction contained in the new rules is the applicant's habitual residence. The restriction is not based on citizenship, nationality, immigration status or any other factor. The effect of the restriction is that a person whose habitual residence is in the United States, Europe, Africa or elsewhere is not paid Old Age Pension, Unemployment Assistance etc. on arrival in Ireland. The question of what is a person's "habitual residence" is decided in accordance with European Court of Justice case law, which sets out the grounds for assessing individual claims.

"The Habitual Residence Condition is being operated in a very careful manner to ensure that Ireland's social welfare system is no longer open to everyone who is newly arrived in Ireland, while at the same time ensuring that people whose cases are appropriate to the Irish social welfare system get access to social assistance when they need it," Minister Coughlan said.

"Every effort is made to find grounds for making a positive decision when cases are being considered," she said. "These grounds, however, have to be compatible with EU law and other international and national legal obligations and it is not possible to discriminate in favour of any particular group or nationality".

Minister Coughlan is committed to ensuring that no person whose circumstances are appropriate to the Irish social welfare system is disadvantaged by the introduction of the new condition.

"The changes do not affect missionaries returning to Ireland on a permanent basis, for example to retire", she said. "They still qualify for Old Age Pension on the same basis as heretofore".

"The Habitual Residence Condition is a major new development in the Irish social welfare system. Now that it has been in place for almost 4 months, we will be reviewing its efficiency and effectiveness later in the year", the Minister said. "This will include an examination of the implications for various groups, whose cases have come up for decision, including elderly missionaries returning to Ireland on a temporary basis on holiday etc."

Minister Coughlan is also anxious to promote comprehensive pensions provision for all individuals and groups into the future. In that context, she is happy to enter into



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discussions with representatives of missionary orders and other groups to discuss their concerns in relation to pensions and any other social welfare payments
ENDS August 20th 2004

N.B.: SEE FACTSHEET BELOW

Habitual Residence Condition

The Government has introduced a habitual residence condition for access to social assistance payments with effect from May 1st 2004.

All applicants regardless of nationality are required from that date to be habitually resident in the State to qualify for these payments.

Schemes involved

The following payments are now subject to a habitual residence condition:

- Unemployment Assistance
- Old Age Non-Contributory Pension
- Blind Pension
 - Widow(er)'s and Orphan's Non-Contributory Pensions
- One-parent Family Payment
- Carer's Allowance
- Disability Allowance
- Supplementary Welfare Allowance (other than once-off exceptional and urgent needs payments) and - Child Benefit

Habitual Residence

The term "habitually resident" is intended to convey a degree of permanence and is intended to refer to a regular physical presence enduring for some time, usually (but not always) beginning at a date in the past and intended to continue for a period into the foreseeable future.

It implies a close association between the applicant and the country from which payment is claimed and relies heavily on fact.

The most important factors for habitual residence are the length, continuity and general nature of actual residence rather than intention.

Satisfying the conditions

Any applicant, regardless of nationality, who has spent most or all his/her life in the Republic of Ireland should satisfy the habitual residence condition.

Generally an applicant who has been present in the Republic of Ireland for 2 years or more, works here and has a settled intention to remain in the Republic of Ireland and make it his/her permanent home will also satisfy the habitual residence condition.

Persons who have lived in other parts of the Common Travel Area (The Republic of Ireland is part of the Common Travel Area. The other parts of the Common Travel Area consist of Northern Ireland, England, Scotland, Wales, the Channel Islands and the Isle of Man) two years or more and then move to Ireland with the intention of settling here are quite likely to satisfy the habitual residence condition.



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An applicant who satisfies the habitual residence condition must, of course, also satisfy the other conditions of entitlement in order to receive the payment claimed.

The European Court of Justice (EJC) has set down a number of factors to be considered when considering whether someone is habitually resident. The Court has determined that five factors are relevant in determining whether a person is habitually resident. The Court also stressed that the following list of factors is not exhaustive. No single aspect is consistently likely to be the deciding factor though some may be more persuasive in certain circumstances than in others. The five factors are;

1. Applicants main Centre of interest
2. Length and Continuity of residence in a particular country
3. Length and purpose of absence from a country
4. Nature and pattern of employment in a country
5. Future intention of applicant concerned as it appears from all the circumstances.

The above check list of questions or factors which will need to be considered is not exhaustive. Further enquiries may be needed. The circumstances of each case will dictate what information is needed, and all relevant factors are taken into account.

No single factor is conclusive. The evidential weight to be attributed to each factor will depend on the circumstances of each case.

Deciding on Habitual Residence

The question of whether a person satisfies the requirement to be habitually resident in the State is one for determination by a statutorily appointed Deciding Officer or in the case of Supplementary Welfare Allowance, an officer of the Health Board who is duly authorised to determine entitlement.

The officers will have due regard to the five factors outlined above and to any additional information elicited by way of further enquiries. As provided for by law, decisions can be appealed to the independent Social Welfare Appeals Office or, in the case of Supplementary Welfare Allowance to a Health Board Appeals Officer and if necessary subsequently, to the independent Social Welfare Appeals Office.

One of the factors which helps to decide whether an applicant is habitually resident in Ireland is to consider why the applicant has come to Ireland:

- to study;
- for holidays;
- to visit friends;
- to do seasonal work;
- for medical treatment;
- posted by his/her employer abroad to work in Ireland;
- to seek employment (rather than to take up an actual job offer).



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If a person comes for these reasons s/he is unlikely to be habitually resident in Ireland.

Retirement

Up to May of this year, any person in the State who met the standard conditions for Old Age Pension (or other payments such as Unemployment Assistance) would receive the payment in question regardless of their extent of their prior connection to the State. This included people who had no connection whatsoever with Ireland.

Government decided to restrict this open access to certain social welfare payments with effect from May 2004. For various reasons, including the need to comply with EU law and other international and national legal obligations, the new rules have to be applied in a fair and equitable manner to all applicants regardless of citizenship, nationality, immigration status, vocation, sex, age etc. For example, it is not possible to discriminate on the grounds of citizenship. This means that Irish citizens may fail to satisfy the Habitual Residence Condition if Ireland is not their long-term home, while citizens of other States may satisfy the Habitual Residence Condition if Ireland is their long-term home.

A person returning to Ireland on foot, say, of retirement and who has a settled intention to remain here would likely satisfy HRC. Persons who indicate that they are here on 'vacation' and who intend to return overseas in a matter of weeks would not be so likely to satisfy Habitual Residence Condition.

Each case received for a determination on Habitual Residence Condition is dealt with in its own right and a decision is based on application of the guidelines to the particular individual circumstances of each case.

Appeals

Any applicant who disagrees with the decision of the Deciding Officer has the right to appeal to the Social Welfare Appeals Office, which operates independently of the Department of Social and Family Affairs. No appeals of Habitual Residence Condition cases have yet been heard by the Appeals Office.

Should a person find themselves in an exceptional situation without funds, the Community Welfare Officers may be able to provide once-off funding under the Exceptional Needs Payment of the Supplementary Welfare Allowance.

ENDS August 20th 2004