



Determining if a person is properly settled in the UK in order to establish if they are ordinarily resident here

It will not be necessary to use this tool for each patient, but only when there are doubts about a patient's entitlement to free NHS hospital treatment and when their ordinary residence (OR) status is not immediately clear.

A person is ordinarily resident if they are normally residing in the UK (apart from temporary or occasional absences), and their residence here has been adopted voluntarily and for settled purposes as part of the regular order of their life for the time being, whether for short or long duration. The concept of "settled purpose" has been developed by the courts. There may be one purpose or several, it may be specific or general, and it may be for a limited period. All that is necessary is that the purpose for living in the UK has a sufficient degree of continuity to properly be described as settled.

Some examples of factors which may help to indicate whether a person is ordinarily resident or not are listed in the table below. Normally, no one factor on its own will determine that a person is, or is not, ordinarily resident. While answering "yes" to a question may be an indicator that a person is ordinarily resident and vice versa, a decision will need to be made according to all the circumstances of the particular case.

It is also important to note that:

- some factors listed below may carry more weight/importance than others;
- questions listed below should not be taken into account if they are not relevant to the individual patient;
- the reasons why a particular question is answered "no" will need to be taken into account. For example, a person may not be able to provide a fixed address because of lack of means or other reasons, not because they are not ordinarily resident. The reason they do not have bank accounts in the UK may be that they do not have bank accounts at all.

The table below can only therefore be a guide to reaching a decision and is not a substitute for legal advice in individual cases.

A list of questions that OVMs may want to ask the patient in discussing if they are ordinarily resident in the UK is also provided. There are also notes for the OVM to accompany these questions. Alternatively, the questions could be given to the patient to complete. OVMs can then populate the table to aid them in coming to a conclusion on the patient's ordinary residence status in the UK.

NB – Non-EEA nationals who are subject to immigration control (the vast majority) cannot pass the ordinary residence test unless they also have indefinite leave to remain, so it is not necessary to consider if they are properly settled here with this tool.

If the patient is a child complete for the parent/legal guardian they live with.

		Yes	No
1a	Have they been in the UK for the last 6 months or more? ¹		
1b	Do they intend to remain in the UK for 6 months or more? ²		
1c	Is their stay in the UK one of a number of regular and significant stays?		

2a	Can they provide an address of their own in the UK?		
2b	Can they show that they are paying utility bills and council tax at their UK address?		
2c	Does their housing situation in the UK appear stable and settled, e.g. a tenancy agreement in their name?		
	If the answer to 2a-c is no:		
2d	Is the reason due to homelessness e.g. rough sleeping or temporary accommodation such as a B&B?	*	
2e	Are they a Gypsy or Traveller established in the UK, i.e. a person with a cultural tradition of nomadism or of living in a caravan?	*	
2f	Is there another reason why they do not have a settled home in the UK? (e.g. see Q7, Q9)		

* If yes,
discount
answers 2a-c

3a	Are they employed or self-employed in the UK?		
3b	Are they a recognised job seeker ³ in the UK?		
3d	Do they hold a bank account in the UK and is there evidence of recent and regular UK transactions?		

4a	If they have a spouse/civil partner or children do they also live in the UK? What about parents or extended family?		
4b	Are they dependent on a family member ⁴ – including an extended family member such as sibling, unmarried partner – who lives in the UK?		
4c	If they are the primary carer of school-age children, do they go to school in the UK?		

¹ The longer a person has been in the UK, the stronger the indication that they are ordinarily resident. While the current ordinary residence guidance indicates that a person is less likely to be ordinarily resident if they have been here for under 6 months, it is important to note that a person can be ordinarily resident from the first day they arrive in the United Kingdom if they have genuinely come to settle for the time being.

² See 1, above.

³ Receiving Job-seekers' allowance and/or registered as a job seeker at the job centre

⁴ Non-EEA nationals who are 'extended' family members of EEA nationals living here are required to have an EEA family permit issued by the Home Office, otherwise they are not in the UK lawfully. Non-EEA nationals that are 'direct' family members are not required to have this documentation to be in the UK lawfully, although they can choose to. For more information on family members of EEA nationals see Appendix 6 of the main guidance.

5	If an EEA/Swiss pensioner, have they registered an "S1" in the UK, to demonstrate their entitlement to NHS healthcare in the UK for which the UK is reimbursed by the country which pays their pension? ⁵		
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6	If a student, are they attending a course in the UK the length of which suggests they would have to settle here for the time being? ⁶		
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7a	Is there a known reason for them being in the UK, other than for healthcare, which indicates they are now properly settled here? ⁷		
7b	Are there other indicators that the UK is where they live or intend to live as part of the regular order of their life for the time being?		

8	If the person has recently come to the UK is there evidence of activity in another country that suggests that they are establishing residence here, for example: ⁸		
8a	Have they sold or rented out their house/ended a rental agreement in the other country?		
8b	Have they ended their employment/studies in the other country?		
8c	Have they shipped goods to the UK?		
8d	Have they transferred their assets to the UK?		
8e	Have they ended insurance policies, utility contracts etc in that country?		

	If they have recently been absent from the UK, was that absence temporary and not indicative of emigration overseas, for example:		
9a	Travel for UK-based business or employment?		
9b	Posting overseas as part of an employment contract for a finite period?		
9c	A defined, temporary period of study?		
9d	Posting overseas as a missionary or volunteer for a UK organisation for a finite period?		
9e	A one off extended period of travel whilst continuing to be a UK resident?		

⁵ It is important to note that registering an S1 is not a requirement for establishing ordinary residence and individuals might, for example, not have been aware of the process, but it is a strong indicator of ordinary residence in the UK. Someone who has registered such a form is entitled to NHS care for which the UK is reimbursed by the state paying their pension.

⁶ For the purposes of EU law, students from the EEA are usually considered to be 'habitually resident' in their home member state when their funding comes from that state, they return there frequently, and intend to reside there again after their studies. This is the case even if they could also be said to have established ordinary residence here. Therefore, they may still have, or be entitled to hold, an EHIC from their home member state, even if they are OR here, in which case relevant NHS bodies should still capture this information and process it for the UK to be reimbursed for the provision of healthcare.

⁷ The attached list of questions for the patient may assist with 7a and b.

⁸ It is important to note that the fact that someone continues to own property or other assets elsewhere does not necessarily mean that they cannot be ordinarily resident in the UK. Although moving or transferring property or assets to the UK may indicate their intention to settle here.

Questions for the patient (or, if a child, the parent they live with). Please answer as many as possible.

1. How long have you been living in the UK?

How long do intend to stay in the UK?

Is your stay in the UK one of a number of regular and significant stays?

2. Do you have a settled home address in the UK? Can you provide evidence of that address, for example, utility bills, council tax payments, tenancy agreement, proof of property ownership, insurance policies etc.

If you do not have a settled home in the UK:

- a. Are you in temporary accommodation (e.g. B&B, staying with family/friends temporarily)?
- b. Are you homeless or sleeping rough?
- c. Are you a Gypsy or Traveller established in the UK (i.e. a person with a cultural tradition of nomadism or of living in a caravan)?
- d. Is there another reason why you do not have a settled home here?

3. Are you employed or self-employed in the UK? Can you provide evidence such as payslips, letters from employers, bank statements with evidence of payment for employment being received, unique tax reference number (for self-employed) etc?

Are you looking for work in the UK? Can you provide evidence that you are a jobseeker, e.g. receiving Job Seekers' Allowance, or being registered with the Job Centre?

Do you have a bank account(s) in the UK that you regularly and routinely use – can you show evidence of recent transactions here?

4. Do you have a spouse or civil partner or dependent children (under 18)? If so, are they living with you in the UK?

Are you the primary care-giver to children living in the UK?

If you have children living in the UK, do they go to school here?

Do you have any other family living in the UK?

Are you dependent on a family member (including an extended family member such as a sibling, parent, adult child, unmarried partner)? If yes, does that person live in the UK?

5. If you are a pensioner from the EEA, have you registered an 'S1' form?

6. Are you studying in the UK? If so, how long is your course of study?

7. What is the purpose of your stay in the UK?

Can you provide any other information or evidence to show that you have settled in the UK for the time being?

8. Do you own or rent a home abroad?

Do you intend to return there to live, and if so, when?

Have you recently emigrated from another country and can you show evidence of this, e.g. selling or renting out your property, ending rental agreements, employment contracts, insurance policies or utility contracts? Transferring your assets here or shipping your belongings to the UK?

9. Have you been outside the UK in the past six months?

If so, how often and for what purpose?

Was the absence(s) temporary?

Notes for the OVM

Question 1 – duration of residence

The longer a person has been living in the UK the stronger the indication they are ordinarily resident here. A period of 6 months is only a rule of thumb and should be used with caution. It is important to note that a person can be ordinarily resident from the first day they arrive in the UK if they have genuinely come to settle for the time being.

A pattern of regular and significant stays over a number of years, or indication that such a pattern is likely to emerge, may indicate that the person is ordinarily resident. The more frequent, and the longer the stays, the more likely the person is to be ordinarily resident.

Question 2 – home address

Having a settled home in the UK may indicate that the person is ordinarily resident. However, not having a settled home here does not necessarily mean a person is not ordinarily resident. The reasons why someone is not in a settled home are important to consider – it may be because of lack of means.

Homeless people or Travellers may be ordinarily resident despite difficulties they may have in proving that status.

Question 3 – employment and finances

If a person is properly employed or self-employed in the UK, or about to commence such work, it is a strong indication that they are now ordinarily resident here.

Question 4 – family

If the person's spouse/civil partner and/or children or a family member that they are dependent on also live in the UK this may indicate that the person (and his or her family) has a settled intention to remain in the UK, and is ordinarily resident.

'Dependent' means financially dependent for essential needs, or a member of their household, or where they have a serious health condition that means they rely on the family member for care.

Question 5 – pension/S1

The S1 is a European healthcare entitlement form for state pensioners living in a different European country to that which is responsible for paying their pension. The S1 certificate of entitlement allows state pensioners access to the healthcare system in the European country where they have chosen to retire, and for that country to reclaim costs. For the UK to reclaim costs, the S1 must be sent to the Department of Work and Pensions' Overseas Healthcare Team.

Registering an S1 in the UK is not a requirement for establishing ordinary residence, but if the patient has done so, it is a clear indication that they have moved their place

of residence to the UK, and therefore they are highly likely to be ordinarily resident here. Furthermore, if the S1 is registered here, the UK is then responsible for providing their healthcare and is reimbursed by their home member state, so the patient should not be charged.

Question 6 – students

Students from the EEA/Switzerland are generally considered to continue to reside in the state they arrived from, if they return there regularly, and if the source of their funding comes from that other member state. For example, this may come from their parents there, and they may intend to return to that other state at the end of their studies. If that is the case, they should present an EHIC/PRC from the member state they came from for as long as they remain insured there. However, they are not required, although they should be encouraged, to provide an EHIC if they are now considered ordinarily resident here for the time being, which, depending on all the factors, they may be. You cannot refuse treatment or ask for payment from an ordinarily resident person who continues to be insured by another member state and refuses to present their EHIC/PRC.

Question 7 – other indicators of settlement

Purposes such as holiday or recreation, short or irregular business visits, or temporary stays with family/friends are unlikely to be sufficiently settled to meet the ordinary residence test.

Purposes such as education, employment or joining family may indicate a settled purpose and are more likely to satisfy the test for ordinary residence.

All the circumstances of each person's case must be considered.

Question 8 – actions taken in previous country of residence

Not owning or renting a property overseas is more likely to indicate that a person is intending to settle in the UK for the time being.

However, owning or renting property overseas will not prevent a person being ordinarily resident in the UK if they can demonstrate that they are in the UK for a settled purpose. It is possible to be ordinarily resident on more than one place at once.

But if the person claims to be resident in two countries, they will need to demonstrate clearly that they are settled in the UK when they are here.

Question 9 – absence from the UK

There should be a degree of continuity for a person's residence in the UK to be settled.

Temporary or occasional absences from the UK will not prevent a person from being ordinarily resident, including extended or regular periods of travel for pleasure.

Travel for UK based business or employment will also not prevent a person being ordinarily resident.

Finite periods of volunteering, missionary work or study abroad while the person remains a UK resident will not prevent a person being ordinarily resident.