

CHAPTER 19  
SECTION 2

## ORDINARY RESIDENCE

## 1. INTRODUCTION

The term ordinary residence is not defined in the Immigration Act 1971 except in the negative sense that a person is not to be treated as ordinarily resident at the time when he is in breach of the immigration laws. The courts have interpreted ordinary residence as a regular habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences. Ordinary residence is established *only* if it is "adopted voluntarily" for a settled purpose *and* provided it is lawful.

## 2. ESTABLISHING ORDINARY RESIDENCE

When determining whether a person has established ordinary residence in the United Kingdom, the following conditions will apply:

- ◆ *Voluntarily adopted residence* - a person's lawful residence in the United Kingdom may be assumed to have been "voluntarily adopted" *unless* there is *clear* evidence that he is in this country against his will. This applies also to children even though, in their case, the voluntary decision to reside in the United Kingdom may have been taken on their behalf by their parent or guardian.

NB: see also paragraph relating to "*Gurkhas*", in *Chapter 15, Section 1 "Armed Forces - General"*.

- ◆ *Residence for a settled purpose* - in assessing whether a person has a settled purpose it is necessary to consider whether the applicant's purpose of living where he did had a sufficient degree of continuity to be properly described as settled. It is not necessary for the applicant to intend to stay where he is indefinitely. A purpose can be settled even though it is for a limited period. It may be a general or specific purpose, for example education, business or profession, employment, health, family or merely the "love of the place". In this context, the term "settled" should not be confused with "settled" as defined in the immigration Rules;
- ◆ *Lawful residence* - if the applicant has overstayed or otherwise broken the immigration laws (eg; by working when under an employment restriction or prohibition) this will break residence.

## 2.1. Categories of persons who can be ordinarily resident

Residence in connection with most of the purposes for which a person may enter, and remain, in the United Kingdom under the Immigration Rules is capable of constituting ordinary residence, and would do so provided the conditions outlined above are met. Lawful residence is likely to constitute ordinary residence in respect of entry in the following categories:

- \* settlement;
- \* employment (with or without a work permit);
- \* business;
- \* self employment;
- \* study;
- \* retired persons of independent means;
- \* working holiday makers;
- \* writers composers and artists.

*It is important to note that persons who "switch" from the capacity in which they entered the United Kingdom into one of the categories listed above, are also lawfully resident.*

## 2.2. The point at which a person becomes ordinarily resident

A person may become ordinarily resident immediately on arrival in the United Kingdom and generally will do so if seeking entry for settlement, or one of the purposes leading to settlement. It is also possible for a person initially coming for a temporary purpose not constituting ordinary residence to become ordinarily resident through a change in the quality and purpose of his residence. Where it is not possible to establish the date on which a person becomes ordinarily resident it may be reasonable to treat him as having been so from the date of arrival.

## 2.3. Absences from the United Kingdom

Single absences of up to 6 months may be assumed to be temporary absences, without investigation, unless there exists evidence to the contrary. If the claimed period of ordinary residence includes a longer absence than this, or frequent shorter absences, it will be necessary to ask the applicant to state the purpose of his visit(s) abroad and give details of any family, property or financial ties with the United Kingdom which persisted during the absences. Consideration must be given as to whether the absences destroyed the degree of continuity required to establish ordinary residence and whether a regular habitual mode of life in the United Kingdom has continued, despite what can be regarded as temporary absences.

Each case should be considered on its merits. For example, enquiries may reveal that the person was overseas for a settled purpose during his absence, leading to a possible conclusion that he was ordinarily resident abroad (in the country he had resided).

*This does not, however, necessarily mean that his ordinary residence in the United Kingdom has been broken.* Under the concept of ordinary residence established by the courts, it is possible for a person to be ordinarily resident in the United Kingdom *and* elsewhere at the same time (eg. a person based here but working abroad could be in this position).

However, since the test is *not* to decide where the applicant's real home is, the maintenance of a home and family in the United Kingdom during an absence abroad is *not conclusive evidence* that ordinary residence had continued, though it will often assist in assessing whether the absence was temporary in a regular, habitual mode of life in the United Kingdom. It should also be borne in mind that it is unnecessary to establish that a person has an ordinary residence somewhere in order to conclude that he is not ordinarily resident in the United Kingdom (it is, in fact, possible for a person *not* to be resident in any country).

### 3. ORDINARY RESIDENCE - EXEMPTION FROM DEPORTATION

Under the provisions of Section 7 of the Immigration Act 1971, a *Commonwealth citizen* or a citizen of the *Republic of Ireland* who was ordinarily resident in the United Kingdom on 1 January 1973 (the date on which that Act came into force) and has remained ordinarily resident since, may be exempt from deportation.

Caseworkers who encounter this situation may obtain further advice about the operation, in relation to the individual case concerned, of the provisions of Section 7 of the 1971 Act from the appropriate deportation group in the Immigration Service (Enforcement) Directorate (ISED).

NB: When deciding whether a person is exempt from deportation, section 7(2) is relevant. The definition of ordinary residence contained in section 33(2) does not apply.