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| **Decision Maker’s response to an****appeal to the First-tier Tribunal***Rule 24 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008* |
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| **Respondent: Anytown District Council** |
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| **Benefits Service, Town Hall, Any Street, Any Town, AT1 1AT***This is also the address for service of documents in accordance with Rule 24(2)(c)* |
| **Appeal by:** Deborah Barker, 99 Acacia Lane, Anytown. Ref AA112233A  |
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| **Brief details of the case**The Council has decided that Mrs Barker is not entitled to Housing Benefit or Council Tax Benefit because it appears to the Council that she does not have a right to reside in the British Isles under Council Directive 2004/38/EC and the Immigration (EEA) Regulations 2006.  |
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| **Please refer to the detailed response and relevant documents attached** |

##### Appeal response – ANYTOWN BOROUGH COUNCIL

# Personal details

**Appellant**

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| **Surname** |  | **Address** |
| **BARKER** |  | **99 Acacia Lane, Anytown, AT1 6LP** |

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| **Other Names** |  | **NINO** |
| **DEBORAH**  |  | **XX** | **12** | **34** | **56** | **X** |

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| **Benefit appealed** **against** |  | **Other reference or date of birth** |
| **Housing Benefit** |  | **Council reference 123456789** |

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| **Date of decision** |  | **Date notified** |  | **Date of appeal** |
| **26 May 2006** |  | **26 May 2006** |  | **5 August 2006** |

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| **Date of reconsideration** |
| **10 September 2007** |

# Schedule of Evidence

| ***Document number*** | *Pages* | ***Date of document*** | ***Date of receipt*** | ***Brief description of document*** |
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# Decision

* 1. The Council has decided that @
	2. The decision notice informing Mrs Barker of the decision is attached as Appendix 1 (pages @)

# Appeal

* 1. Mrs Barker’s appeal is attached as Appendix 2 (pages @).

# Summary of facts

* 1. @
	2. @

# Relevant legislation and case law

**Threshold conditions of eligibility for Housing Benefit and Council Tax Benefit**

**Social Security Contributions and Benefits Act 1992**

* 1. Section 130(1) of the Contributions and Benefits Act (“the Act”) says that a person is entitled to Housing Benefit if he is liable to make payments in respect of a dwelling that he occupies as his home, subject to a means test. Section 137(2)(i) says that Regulations may prescribe circumstances in which a person who is liable to make payments should be treated as if he were not liable.
	2. Section 131 of the Act says that a person is entitled to Council Tax Benefit if he is liable to pay Council Tax as the resident of a dwelling, subject to a means test and subject also to the condition that he is not a “prescribed person” or a member of a “prescribed class” of person excluded from CTB.
	3. The relevant extracts from the Act are attached as Appendices @.

**Regulations: “person from abroad”**

* 1. Regulation 10 of the Housing Benefit Regulations 2006 (Appendix @) says that a “person from abroad” is a person who is treated as not liable to make payments for the purpose of s130 of the Act; and Regulation 7 of the Council Tax Benefit Regulations 2006 (Appendix @) says that a “person from abroad” is a “prescribed person” excluded from CTB for the purpose of s131 of the Act. HB Reg 10 and CTB Reg 7 are otherwise, in substance, identical. The references below are to HB Reg 10 but CTB Reg 7 makes identical provision.
	2. A “person from abroad” means someone who is not habitually resident in the British Isles (the UK, Irish Republic, Channel Islands or Isle of Man) – Reg 10(2). Reg 10(3) says that a person cannot be habitually resident unless he has a right to reside in the British Isles. There is, then, a two-part test:
* The claimant must have a right to reside in the British Isles, and
* He must be habitually resident in the British Isles
	1. However, the two-part test in Reg 10(2) and (3) is qualified by Reg 10(3A) and Reg 10(3B):
* The rights of residence specified in para (3A) are not sufficient to satisfy the “right to reside” requirement (this is a provision aimed principally at European work seekers entering the job market)
* A person listed in para (3B) cannot be a “person from abroad” – even if the Council would otherwise have taken the view that the person concerned had yet to establish himself as habitually resident in the British Isles

**EEA nationals and the right to reside**

* 1. Nationals of European Economic Area (EEA) member states have a right to reside in another member state if they satisfy conditions set out in European law. The following Articles of the Treaty establishing the European Community are relevant (see Appendix @):
* Article 18: general right to reside, subject to limitations and conditions
* Article 39: people in the job market, subject to conditions in the case of a person who has become unemployed
* Article 43: a self-employed person or company director with a controlling stake
	1. Since 30 April 2006, Council Directive 2004/38/EC (Appendix @) provides a comprehensive rights of residence scheme, including the limitations and conditions referred to in Articles 18 and 39 of the Treaty In particular:
* Article 7 provides a right of residence for workers (including work seekers), self-employed people, self-sufficient people, and students; it also provides for workers and self-employed people to retain their status while temporarily out of work for certain reasons.
* Articles 16 and 17 provide for a permanent right of residence after five years’ legal residence, or sooner in the case of workers and self-employed people who are forced to retire from work
* The rights of residence referred to above are extended to the EEA national’s family members of any nationality. “Family members” are defined in Article 2 as spouse, civil partner, children under 21 and direct ascendants/descendants who are dependant
* Articles 12 and 13 provide for a family member to retrain his or her right of residence even if the principal EEA national has died, left the country or divorced them (especially if there are children at school).
	1. Directive 2004/38/EC is transposed into UK law by the Immigration (EEA) Regulations 2006 (Appendix @).

# The Council’s submission in support of its decision

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