# DISABILITY LIVING ALLOWANCE PAST PRESENCE TEST 3-16 YEAR OLDS

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## INTRODUCTION

1. This memo provides guidance to decision makers on the Upper Tribunal decision of Judge Ward on the past presence test for 3-16 year olds[1].

*1 [2020] UKUT 284 (AAC)*

## BACKGROUND

2. The appeal to the Upper Tribunal concerned two children under the age of 16 one who had arrived from New Zealand and one from Australia, both were British citizens. The decision makers in both cases disallowed the claims on the basis that they didn't satisfy the past presence test of 104 weeks out of the last 156. Both cases were appealed to the First tier Tribunal and the decision makers decision was upheld. Both were then appealed to the Upper Tribunal.

## THE DECISION

3. In the Upper Tribunal Judge's lengthy decision dated 12/10/2020 he decided that the change to the past presence test from 26 weeks out of 52 to 104 out of 156 breached the claimants human rights. He determined that the past presence test for 3 to 16 year olds should revert to 26 weeks out of 52.

## WHEN IT APPLIES

4. The decision of 12/10/2020 is a relevant determination for the purposes of section 27 of the Social Security Act 1998. Decision makers should follow guidance in DMG paragraphs 04280-04299. The shorter past presence test for 3 to 16 year olds applies to claims from that date.

## ANNOTATIONS

Please annotate the number of this memo (DMG Memo Vol 2/90) against DMG paragraph 071715.

## CONTACTS

If you have any queries about this memo, please contact:

Decision Making Services
Level 6
Causeway Exchange
3-7 Bedford Street
Belfast
BT2 7EG

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