

# Habitual Residence Test

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## Introduction

The Habitual Residence Test (HRT) was introduced in 1994 after concerns about people coming from abroad to spend a holiday in the UK and claiming benefits whilst here.

In 2004 a second element was added to the HRT – the need to have a right to reside. A person who does not have a right to reside cannot be treated as habitually resident in the UK, however not every right to reside is a qualifying right, for benefit purposes.

People claiming Universal Credit have to show that they have a right to reside in the UK and are habitually resident here. Claimants are asked two questions that help us to decide when to apply the HRT:

- Are you a British Citizen?
- Have you been out of the country for more than 4 weeks in the last 2 years?

If the claimant answers no to the first question, or yes to the second question then HRT applies. The HRT applies to all nationalities.

## What is the Habitual Residence Test?

The Habitual Residence Test is a process where evidence is gathered through a set of questions. Less complex HRT cases are filtered by the Prove You Can

Apply (PYCA) service, while the evidence for more complex cases is gathered using the e-HRT tool.

The PYCA service contains straightforward questions to identify whether a claim can be fast-tracked, without the need for a full HRT Interview. It tells the user what evidence they need to gather to enable the Habitual Residence Test decision to be made.

The evidence is considered to decide whether the claimant (or the partner of a claimant):

- has the right to reside in Great Britain
- is habitually resident in Great Britain

If it is found that the claimant (or partner) does not have a right to reside, or that they are not habitually resident, the claimant (or partner) is treated as not 'in GB' for the purpose of Universal Credit legislation. Only people who are treated as 'in GB' can be paid Universal Credit.

If one member of a couple has a right to reside but the other does not, Universal Credit is paid at the single person rate. However, the circumstances of the ineligible partner, for example, work, earnings, savings will be taken into account.

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## **Common travel area**

Great Britain, Northern Ireland, the Isle of Man, the Channel Islands and the Republic of Ireland are collectively known as the 'Common Travel Area' (CTA).

People from the Common Travel Area (CTA) are treated in the same way as British Citizens for the purpose of the HRT.

## **e-HRT**

The information and evidence needed to carry out the HRT is gathered by completing the e-HRT tool.

The e-HRT is an electronic tool and is used to gather relevant information which is used to establish if a claimant can be considered habitually resident.

The questions that are asked are linked to what answer a claimant gives to earlier questions. This means that the route and number of questions can vary considerably depending on the claimant's circumstances.

The e-HRT tool is designed to ensure that the claimant answers all of the questions relevant to their circumstances to enable more robust and consistent decisions and important MI is collected.

## **HRT - differences between legacy benefits and Universal Credit**

There are differences between legacy benefits and Universal Credit when deciding if someone is habitually resident. The main differences are:

- EEA Nationals who have a right to reside only as a jobseeker are not eligible for Universal Credit
- Universal Credit claimants and their partners will both have to complete the HRT if applicable
- EEA Nationals need to show that they have a right to reside while they remain in the UK

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## **Genuine prospect of work**

The Genuine Prospect of Work (GPoW) test was introduced in 2014. Only EEA Nationals with a qualifying right to reside can claim Universal Credit.

The GPoW is applied to EEA nationals with retained worker status who are claiming Universal Credit because they are involuntarily unemployed, looking for work and are in the Intensive Work Search regime.

An EEA national who is involuntarily unemployed and is registered as looking for work by claiming Universal Credit can retain their worker status from their last job. However they can only retain their worker status for a maximum of 6 months.

At the end of six months as someone with a retained worker status, the claimant will be invited to attend an interview where they will be asked to provide evidence to show that they have a Genuine Prospect of Work (GPoW).

If the claimant cannot provide enough evidence to satisfy that they have a GPoW, they will not be able to retain their worker status. They will need to show another right to reside if they want to claim Universal Credit.

If the claimant does show that they have a GPoW, a decision will be made on how much longer they can retain their worker status, up to a maximum of 3 months.

A claimant might derive their right to reside from a family member who is subject to GPoW. The claimant will not be subject to GPoW themselves but, if the family member loses their right to reside following the GPoW, the claimant will not be able to derive this right to reside any more.

See GPoW interview ALP for more information.

## **Change in circumstances**

As a claimant's circumstances change, their right to reside might also change. Their right to reside and entitlement to Universal Credit must therefore be reviewed. For example:

- an EEA national who starts or stops work is likely to change their right to reside
- an EEA national who was looking for work but becomes ill is likely to change their right to reside
- a person who has leave to remain that is time limited would need to have their entitlement reviewed if the leave to remain expires
- a person in the UK as a family member of an EEA national would need their right to reside reviewed if the:
  - relationship with the EEA national ended
  - EEA national left the UK or the claimant wished to live in the UK without the EEA national
  - EEA national lost their own right to reside

These are examples - this is not a complete list.

When a claimant reports a change in their circumstances, the service identifies if that change affects the claimant's right to reside status and a Review HRT Decision To-do is generated. Consideration is given to whether the right to reside has changed and whether the claim should now end.

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