

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 must show that they have a right to reside in the UK and are habitually resident here. Claimants are asked 3 questions that help us to decide when to apply the HRT:

- What's your nationality? (British, Northern Irish, Irish, other)
- Have you been out of the UK in the last 2 years? (Yes, No)
- How long have you been out of the UK at a time? (less than 2 weeks, 2 to 4 weeks, more than 4 weeks)

The HRT applies if the claimant indicates their nationality is 'other' or they have been out of the UK for more than 4 weeks at a time. The HRT applies to all nationalities.

What is the Habitual Residence Test?

The HRT 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 HRT 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.

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 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 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 the questions relevant to their circumstances, to enable more robust and consistent decisions and ensure 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:

- European Economic Area (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

Genuine prospect of work

The genuine prospect of work (GPoW) assessment is applied to EEA nationals looking for work who are exercising a qualifying right to reside as a retained worker, who did not leave their previous job voluntarily and have received Universal Credit for 6 assessment periods.

EEA nationals who lose their job involuntarily and are looking for work are able to retain a qualifying right to reside as a worker for a period of 6 months before attending the GPoW assessment. They must then provide reliable evidence that they have a genuine prospect of finding work.

If the claimant cannot provide sufficient evidence to satisfy that they have a GPoW, they will no longer be able to retain their worker status. They must be able to demonstrate another qualifying right to reside in order to be paid 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.

After this period, their right to reside as a worker will end. Therefore, they will no longer be entitled to Universal Credit unless they are exercising another qualifying right to reside.

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.

EEA claimants who are exercising a qualifying right to reside as a retained worker will be provided with a fact sheet at the outset of their Universal Credit claim. This informs them about this condition and that a GPoW assessment will take place after receiving 6 payments of Universal Credit.

Change of 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 must have their entitlement reviewed if the leave to remain expires
- a person in the UK as a family member of an EEA national must have 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 - not a complete list.

When a claimant reports a change of circumstances, the Service identifies if that change affects their 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.

Re-claims

A 'Review HRT decision' to-do will now generate automatically when a re-claim is made by claimants who already have a positive or negative HRT entitlement reason recorded on the service.

This is important as claimants may have a change of circumstances that impacts their HRT entitlement during the period between their claim closing and making a re-claim.