

Habitual Residence Test

Contents

Introduction

What is the Habitual Residence Test?

Common Travel Area

HRT - differences between Legacy benefits and Universal Credit

Change of circumstances

Re-claims

Claims from Afghan citizens

Victims of forced marriage

Transnational marriage abandonment

Migrant Victims of Domestic Abuse Concession

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.

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.

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

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.

Claims from Afghan citizens

Afghan claimant who are part of the Afghan Relocation Assistance Policy (ARAP scheme) or Afghan Citizens Resettlement Scheme (ACRS) are exempt from the habitual residence element of the HRT when applying for Universal Credit, only once evidence of their immigration status has been confirmed by decision makers.

Immigration status documents are generally being issued after they have arrived in the UK. At present these are expected to be stamps on paper, unless passports are available. See Refugees and asylum seekers.

Victims of forced marriage

British nationals who are victims of forced marriage overseas do not lose their habitual residence in the UK and are therefore viewed as being habitually resident from the outset of their claim like victims of transnational marriage abandonment.

For more information refer to the guidance on forced marriage

Transnational marriage abandonment

Transnational marriage abandonment is a form of domestic abuse. Victims are individuals who have been abandoned overseas by their spouse who is a British

national or with indefinite leave. Their travel documents have often been destroyed or have expired.

These people, who have been removed from the UK, where they would be normally resident and have been detained abroad against their will have been prevented from residing habitually in the UK through no fault of their own.

In these cases, the individual can apply to the Home Office for Indefinite Leave to Enter (ILE) to allow them to return to the UK. This leave provides recourse to public funds so they can access benefits.

Like victims of forced marriage, victims of transnational marriage abandonment have not lost their habitual residence in the UK and are therefore viewed as being habitually resident from the outset of their claim.

Victims of transnational marriage abandonment will be given Indefinite Leave to Enter by the Home Office. They will be provided with a biometric residence permit letter which will have the endorsement of 'SETTLEMENT ILE TMA'.

Migrant Victims of Domestic Abuse Concession

The Destitute Domestic Violence Concession (DDVC) is now known as Migrant Victims of Domestic Abuse Concession (MVDAC).

The MVDAC supports migrants on a spousal or partner visa facing domestic abuse, allowing them to apply for Leave Outside of the Rules (LOTR) for three months. This leave enables them to seek Indefinite Leave to Remain (ILR). Those granted LOTR are exempt from the habitual residence element of the HRT when applying for Universal Credit.

To verify their immigration status the claimant must produce their letter which confirms they have been granted LOTR and their biometric residence permit (BRP) from the Home Office.