

Habitual Residence Condition

What is the habitual residence condition?

Habitual residence in Ireland is a condition that you must satisfy for certain social welfare payments and Child Benefit. This condition took effect from 1 May 2004 and affects all applicants regardless of nationality.

What does 'habitual residence' mean?

Habitual residence means you are residing in Ireland and have a proven close link to the state. If you have lived in Ireland all your life, you will probably have no difficulty showing that you satisfy the factors which indicate habitual residence.

The most important factors for proving this link are:

- Satisfying the right to reside;
- Length of time you have spent in the Republic of Ireland;
- Continuity of your residence;
- General nature of your residence.

You can spend time out of Ireland on short holidays, studying or travelling and still be regarded as habitually resident here.

For what payments must I satisfy the habitual residence condition?

You must satisfy the habitual residence condition for:

- Back to Work Family Dividend,
- Blind Pension,
- Carer's Allowance,

- Child Benefit,
- Disability Allowance,
- Domiciliary Care Allowance
- Guardian's Payment (Non-Contributory),
- Jobseeker's Allowance,
- Jobseeker's Transitional Payment
- One-Parent Family Payment,
- State Pension (Non-Contributory),
- Supplementary Welfare Allowance (other than once-off exceptional and urgent needs payments) and
- Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension.

Note

Habitual residence is just one condition of these payments. You must also satisfy other conditions to receive a payment.

Exemptions from the HRC Condition

Family Benefits

In certain circumstances the provisions of EU Law override national legislation. For example a person with EU migrant worker status qualifies for a family benefit even if they may not satisfy HRC for other payments.

In determining claims for Child Benefit, One Parent Family Payment, Guardian's Payment (Non-Contributory), Domiciliary Care Allowance and Back to Work Family Dividend for EU nationals who are migrant workers, regard of EC Regulations must be taken into consideration as these schemes are considered 'family benefits' in EU law and are payable to a person who qualifies for EU migrant worker status.

Social Advantage Payments

For the purposes of any claim to Supplementary Welfare Allowance (SWA) an EU national who is engaged in genuine and effective employment in Ireland is regarded as a migrant worker under EU law and does not need to satisfy the habitual residence condition. This means that EEA nationals who have been employed since arriving in Ireland may be entitled to SWA, even if they may not satisfy the habitual residence condition for another scheme subject to the condition.

Family Benefits under EU Law are:

- Back to Work Family Dividend
- Child Benefit
- Domiciliary Care Allowance
- Guardians Payment (Non-Contributory)
- One-Parent Family Payment

Social Advantage payment under EU law:

- Supplementary Welfare Allowance (SWA)

See HRC Guideline on www.welfare.ie for more details or go directly to Chapter 1 of the HRC Guidelines at:

<http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx>

What factors are considered when deciding if I satisfy this condition?

Right to Reside

The Right to Reside Condition is set out in Section 246 (5) of the Social Welfare Consolidation Act 2005 (as amended).

This provides that a person who **does not have** the right to reside in the Republic of Ireland would not be regarded as being habitually resident in the Republic of Ireland.

Who has a right to reside?

Subsection (6) sets out a list of persons who shall be taken as having a right to reside.

These include:

1. Irish nationals have a right of residence in Ireland.

2. UK nationals coming in from the Common Travel Area (CTA) also have a right to reside here under the CTA agreement.
3. EEA nationals who are employed or self-employed in Ireland have a right to reside.
4. Non-EEA nationals who have a residency or work permit to legally reside and work in the State.

Permission to reside will generally be evidenced by an appropriate immigration stamp in the person's passport, a letter of authorisation or a Certificate of Registration issued by the Garda National Immigration Bureau (GNIB), that is a GNIB card.

See HRC Guideline on www.welfare.ie for more details or go directly to Chapter 5 of the HRC Guidelines at:

<http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx>

Main Centre of Interest

Irish and European law set down the following five factors to be considered when deciding if you are habitually resident:

- **Your main centre of interest**, based on facts such as:
 - whether you own or lease a home here,
 - where your close family members live,
 - whether you belong to social or professional associations here,
 - and
 - any other evidence or activities indicating a settled residence in Ireland.
- **The length and continuity of your residence in Ireland.**
- **The length and purpose of any absence from Ireland. For example, you can spend time on short holidays, studying or travelling and still be regarded as habitually resident here.**
- **The nature and pattern of your employment, if any.**
- **Your future intention to live in the Republic of Ireland as it appears from all the circumstances.**

We will consider the five factors equally when making a decision. The evidence we use for each factor depends on all the facts of your case.

What documents do I need to provide?

If you come to Ireland from abroad and apply for any of the payments listed on page 1, you will need to provide personal and employment records such as your:

- passport or National Identity Card;
- bank statements;
- details of benefit payments;
- utility bills such as electricity, gas, telephone, mobile phone or broadband;
- rent or mortgage agreements;
- or
- receipts for local authority charges.

If you have been granted special permission to remain in Ireland (for example through refugee status or leave to remain on humanitarian grounds, as the parent of an Irish born child or under family reunification), you will also need to provide:

- An official letter from the Department of Justice and Equality to confirm your status, and/or
- A copy of your residency permit (Garda National Immigration Bureau card).

Note

You are responsible for providing any documents requested by this Department in support of your claim.

Who makes decisions on habitual residence?

If you apply to this Department, the decisions are made by statutorily appointed Deciding Officers and Designated Persons who are appointed by the Minister for Social Protection.

What if I am not happy with a decision?

Review

If you are not happy with a decision by this Department, you may ask a Deciding Officer or Designated Person to review it.

Appeal

If you are unhappy with the review of the decision, you may appeal to the independent Social Welfare Appeals Office. If you prefer, you may appeal directly to the independent Social Welfare Appeals Office without first asking for a review.

If you have any new facts or extra evidence, you should send these in with your request for a review by the Deciding Officer or Designated Person.

For more information, log onto www.welfare.ie.

What are my options if I do not satisfy the habitual residence condition?

If you do not satisfy the condition, you may qualify, under the Supplementary Welfare Allowance scheme, for a payment to meet a once-off exceptional or urgent need. The Department of Social Protection takes all the facts of your situation into account before deciding whether to make this payment. Note that you are unlikely to get money to pay for predictable or regular expenses such as rent. You can get more information about Supplementary Welfare Allowance from the nearest Intreo office or log onto www.welfare.ie.

If you have come to the Republic of Ireland from one of the following EU Member States*:

- Bulgaria
- Cyprus
- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Malta
- Poland
- Romania
- Slovakia
- Slovenia

and do not have any means of support, you should contact a Designated Person at your local Intreo Office.

Issued by:
Information Services
Department of Social Protection
Social Welfare Services
College Road
Sligo

For more information:

- Log on to www.welfare.ie.
- LoCall Information Line **1890 66 22 44** or if calling from outside the Republic of Ireland please call **+353 71 91 93302**.
- Drop in to your local Citizens Information Centre, your local Intreo Centre or your local Social Welfare Office.

*Other EU nationals should contact their own embassy. Non EEA nationals should contact their embassy or the offices below.

The Asylum Seekers and New Communities Unit (ASNCU) of this Department or the Reception and Integration Agency (RIA) of the Department of Justice and Equality may help you if you want to return to your home country.

Note

If you wish to apply for this service, you should contact a Designated Person at your local Intreo office.

*The following 31 countries are in the European Economic Area:

- Austria
- Belgium
- Bulgaria
- Croatia
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Republic of Cyprus (Cyprus South)
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- the Netherlands
- the United Kingdom

Family Benefits and EEA nationals

Family benefits Under European law,

- Back to Work Family Dividend,
- Child Benefit,
- Domiciliary Care Allowance,
- Guardian's Payment (Non-Contributory),
and
- One-Parent Family Payment

are classed as family benefits.

You do not need to satisfy the habitual residence condition for one of these payments if you:

- are a national of Switzerland or a country in the European Economic Area*,
- are employed or self-employed,
and
- pay Irish PRSI or receive Irish Jobseeker's Benefit.

Supplementary Welfare Allowance

If you are an EEA national* and can be considered an EU migrant worker, you will be entitled to Supplementary Welfare Allowance under the same conditions as Irish nationals. To be considered an EEA migrant worker, you must be in or have been in genuine employment in Ireland.

If you are out of work, you can only be considered an EEA migrant worker if you meet other conditions, for example being registered with the Activation Unit of your local Intreo Office as a jobseeker, taking part in vocational training or not being able to work due to a temporary illness.

* See list of EEA countries.

For more information on social welfare services and application forms log on to www.welfare.ie or use the **text messaging service**. You can download the **HRC 1** from www.welfare.ie.

Note

The rates charged for using 1890 (LoCall) numbers may vary among different service providers.

This leaflet is intended as a guide only and is not a legal interpretation.