
Impact of the Habitual Resident Clause on Travellers



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Overview of HRC



- Purpose of HRC: “To Reduce Welfare Tourism”
- 2004 HRC introduced by DSFA
“to restrict access to social assistance and child benefit in the case of persons newly arrived in Ireland”
- 2008 Amended
“From Ireland to the Republic of Ireland”
- 2010 Amended and excluded the clause:
“In general however, an applicant who is now living in Ireland, and has lived here or in other parts of the Common Travel Area all of his/her life will probably satisfy the Habitual Residence Condition.”



Social Assistance Payments - HRC



- Jobseeker's Allowance
- State Pension (Non Contributory)
- Blind Pension
- Widow(er)'s Non Contributory Pension
- One Parent Family Payment
- Guardian's Payment
- Carer's Allowance
- Disability Allowance
- Supplementary Welfare Allowance (other than once off exceptional and urgent needs payments)
- Child Benefit



Qualifying Conditions of HRC



- The length and continuity of residence in the State or in any other particular country;
- The length and purpose of any absence from the State;
- The nature and pattern of the person's employment;
- The person's main centre of interest;
- The future intentions of the person concerned as they appear from all the circumstances;

(These five factors derive from the ECJ ruling in the Swaddling case.)



Qualifying Conditions of HRC



The complexity of the compliance criteria under the 5 grounds of the condition disregard the ethnicity of Travellers and allow no provision for Traveller specific issues i.e.

- Literacy Skills in the application process and document retention
- Nomadism
- Family Culture including marriage
- Conflict
- Cultural Employment/Employment Discrimination
- Nationality – Irish Travellers



1. The length and continuity of residence in the State or in any other particular country:



‘Residence determined if applicant is settled and habitual’ (HRC Guidelines 2010)

Travellers are nomadic and being nomadic may not live in standard accommodation but move from area to area within the CTA of Ireland and UK depending on:

- Family Circumstance and Occasion
- Religious Events
- Economic and Social Issues
- Threat and Conflict
- Discrimination.



2. The length and purpose of any absence from the State:



The length and purpose of an absence from the state determined by:

- Nomadism
- Evictions and Discrimination
- Conflict
- Economic Climate
- Family Associations - Arranged marriage
 - Caring for family members



3. The nature and pattern of the person's employment:



- This condition is of no relevance as it is contrary to the freedom of movement principle enshrined in the EC Treaty unless the State can show that “a period of residence is fundamental to establishing an entitlement to a social assistance payment.
- But some deciding officers use this condition as the main reason for not granting HR, thus magnifying the discrimination towards Travellers under the auspice of employment opportunity or history.



4. The person's main centre of interest:



- Strong family and nationality bond
- Difficulty in proving membership and integration due to discrimination.
- Lack of trust/usage of financial institutions
- Poor literacy results in lack of record keeping and paper trail



5. The future intentions of the person concerned as they appear from all the circumstances:

- If applicant has moved back to state due to conflict, no time to make arrangement, move belongings or contact agencies before departure.
- In relation to VRT or insurance, difficulty presenting due to new commercial vehicle law



Impact of HRC on Travellers



- Homelessness
- Poverty & the related impact on physical and mental health
- Increased debt spiral
- Enforced relationships with extended family
- Restriction of “freedom of movement” within CTA
- Loss of national and cultural identity
- Danger to personal safety if escaping a conflict situation



Infringement of HRC



- Violation of basic human needs
- Violation of human rights legislation
 - **UN General Assembly in 1948 of the Universal Declaration of Human Rights Article 25 refers;**

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (*Kenna 2006*).
 - **International Convention on Economic, Social and Cultural Rights 1966 Article 11;**

“The States Parties to the present Covenant recognise the right to everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent” (*Kenna 2006*).



Intricacy of HRC



- No consistency or standardisation of compliance between agencies, departments, geographic areas or individual deciding officers.
- Insufficient opportunity to prove HRC compliance prior to oral hearing
- Duration of appeal process 6-9 months
- Complexity and difficulty to prove HRC
- Lack of understanding of concept and implications of Traveller specific issues



Current Status of HRC



- 2008-2009 1,723 Irish Nationals refused welfare payments under HRC (Excludes HSE Supplementary Welfare Payments)
{ Dep of Social Protection }

- 2010 8 Families in Monaghan
4 Families in Louth



Recommendations



- Forms and appeal process more user friendly
- Standardisation of criteria for deciding officers/HSE & DSW/Geographic
- Acknowledgement that Travellers being a “Burden on the State” is a result of direct/indirect employment discrimination rather than choice.
- Recognition of the danger of conflict to Travellers and extend under the “Eligibility for Protection Regulation 2006”
- Acknowledgement of the concepts of and the rights of ethnicity and nomadism.
- Acknowledgement of the impact and consequence of conflict within the Travelling community.
- Inter-agency approach to supporting families during the appeal process as to eradicate homelessness and poverty.

