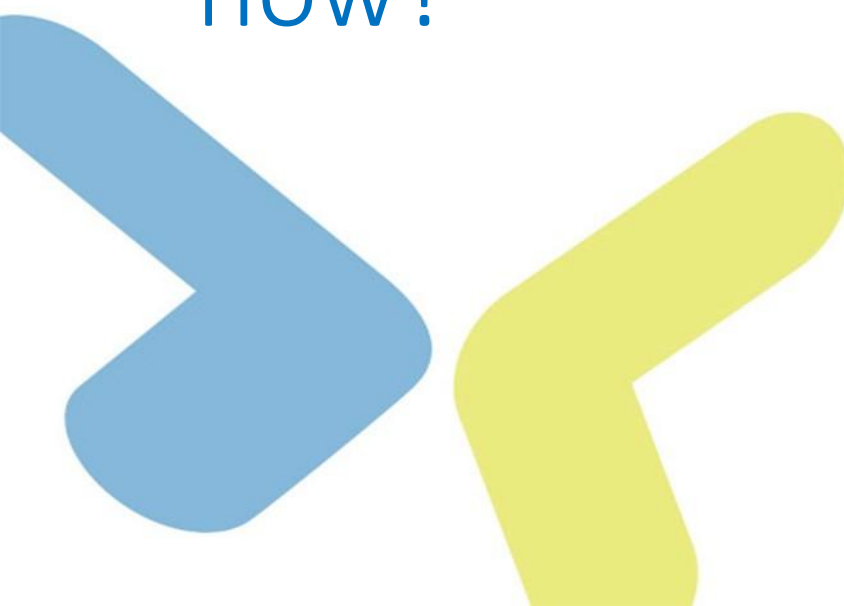


EU Rights & the AT Case – Where are we now?



Not subject to immigration control

- Those granted status under the EU Settlement Scheme, and those who have applied and have a Certificate of Application pending a decision, are NOT classed as people “subject to immigration control” for the purposes of welfare benefits and homelessness legislation.
- As such, they **may** be eligible for welfare benefits and homelessness assistance
- However, those with only pre-settled status or a certificate of application must pass the Habitual Residence Test by showing that they are a “qualified person” at the point of application in order to meet the eligibility requirements

No Right to Reside

- Those with pre-settled status or a certificate of application –
- If found not to be a “qualified person...
- ...deemed not to have a “right to reside” in the UK; and
- Therefore, do not pass the Habitual Residence Test

AT Case – the basic principle

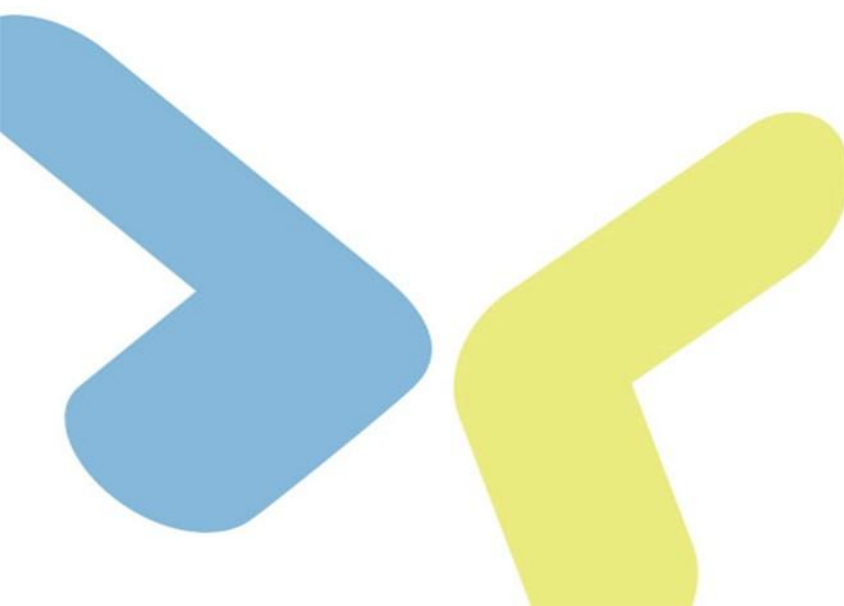
SSWP v AT [2022]

Before refusing Universal Credit on a right to reside ground to a claimant with pre-settled status, the Secretary of State must be satisfied that refusal would not prevent them living in dignity



Which benefits

- Universal Credit
- Pension Credit
- Housing Benefit



AT Criteria

- Applications made from 12/12/2022
- Applicant has Pre-settled Status; &
- Does not pass the Habitual Residence Test; &
- Is **unable** to work; &
- Has no support from local authority or other third party; &
- Cannot meet or is in danger of being imminently unable to meet “most basic needs”

To whom does AT NOT apply?

- Only applies to those with **EU pre-settled status** NOT to those with settled status, a cert of application, or any other status
- Does NOT apply to EEA nationals who are not EU nationals (Norway, Iceland, Liechtenstein, Switzerland)
- Does NOT apply to those who are able to work
- Does NOT apply to those who can meet their most basic needs through other forms of support

Changes to who AT DOES apply to

- DWP previously did not accept that AT applied to non-EU family members but in Feb 2025 changed its guidance to acknowledge that it did apply to non-EU family members Discussion: Change to guidance on SSWP v AT --- DWP now accept it applies to third country nationals – Rightsnet
- Prior to 02/12/2025, to benefit from AT, an applicant also had to show that they had been exercising a treaty right on 31/12/2020. Due to the effect of s45 of the Border Security, Asylum & Immigration Act 2025, which came into force on 02/12/2025, applicants no longer have to show that they were exercising a treaty right adm memo 15-25
- Can apply to joining family members

Unable to work

DWP Memo to decision makers, June 2024:

“When determining a claimant’s inability to work, consideration should reasonably be given to factors preventing the claimant from working. Examples of these could be physical or mental health conditions, homelessness, having childcare or other caring responsibilities, being a victim of domestic violence, or having other complex needs which mean the claimant is unable to work at that moment”

“Most basic needs”

- Is the applicant unable to meet their “most basic needs” at present or in the near future
- “most basic needs” includes food, accommodation, heating, clothing, personal hygiene. Not a closed list – depends on circumstances of individual
- If an applicant can meet their most basic needs from another source, will not meet the AT criteria;
- Decision Maker must look at the present reality, not speculate on possible ways of meeting needs
- CPAG provides template witness statement where applicant can set out inability to meet their basic needs

AT & Homelessness eligibility

- AT principles should also be applicable to eligibility for housing & homelessness assistance under the Housing Act 1996
- Local authority would have to apply the AT test to decide if a refusal to assist would prevent an applicant from living in dignity
- May be arguments that if they are already getting UC then a refusal of accommodation help would not be fatal to concept of living in dignity

Other ways forward

- Advisers should check thoroughly that no qualifying right of residence applies before relying on AT
- Any person with pre-settled status who can show evidence that they have been in the UK for 5yrs can re-apply to the EUSS for settled status
- An applicant can potentially become a qualified person if they find work



Summary

- AT gives a possible route to benefits for those with pre-settled status who cannot pass the HRT and are unable to work
- Do not neglect to look at other possible routes

