Department for Work and Pensions

*via on-line journal*

**Mandatory reconsideration request**

Dear Sir or Madam

**Re: Your full name and address**

**NINo: Your national insurance number**

**Decision being challenged dated: dd/mm/yy**

**Mandatory reconsideration requested: dd/mm/yy**

1. I am writing in relation to my claim for Universal Credit (UC). As previously evidenced, I have EU Settled Status granted under Appendix EU to the Immigration Rules.
2. I am requesting a mandatory reconsideration of the DWP’s decision of *dd/mm/yy*, that despite my Settled Status I am not ‘habitually resident’ and therefore note entitled to UC. / I am writing further to my request for a mandatory reconsideration of the DWP’s decision of *dd/mm/yy*, that that despite my Settled Status I am not ‘habitually resident’ and therefore not entitled to UC.
3. In force from 7th of May 2019, the *Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019*amended the income-related benefit regulations in Great Britain to exclude people with limited leave to remain (pre-settled status) under Appendix EU to the Immigration Rules made under the Immigration Act 1971 from eligibility for income related benefits. Those with indefinite leave to remain (settled status) are not excluded:

***8.****—(1) The Universal Credit Regulations 2013 are amended as follows.*

*(2) In regulation 2 (interpretation) in the definition of “EEA Regulations” for “Immigration (European Economic Area) Regulations 2006” substitute “Immigration (European Economic Area) Regulations 2016”.*

*(3) In regulation 9 (persons treated as not being in Great Britain)—*

*(d)after paragraph (3)(b) insert—*

*“(c)a person having been granted****limited leave to enter, or remain****in, the United Kingdom under the Immigration Act 1971 by virtue of—*

*(i)****Appendix EU to the immigration rules****made under section 3(2) of that Act; or*

*(ii)being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act.”.*

1. The DWP’s ‘Advice for Decision Making’ guidance May 2019[[2]](https://mail.cpag.org.uk/owa/#m_7351112795130092295__ftn2) confirms unequivocally that those with settled status meet the Habitual Residence Test:

***Settled Status – Indefinite Leave to Remain***

*7 Where a claimant has been granted ILR i.e. Settled Status under the EUSS, they will satisfy the right to reside element of the Habitual Residence Test for the purposes of claiming UC.*

*Note: It is not necessary for DMs to apply the Imm (EEA) Regs 2016 where the claimant has been granted ILR, as the claimant does not need a qualifying right to reside.*

1. This right is further confirmed for Zambrano carers with settled status under para 3:

*From 1.5.19, applications can be made under the EUSS by a person with a Zambrano right to reside. Applicants will be granted ILR where they have completed a 5 year qualifying period3, and consequently will satisfy the right to reside element of the Habitual Residence Test for the purposes of claiming UC.*

*3 Appendix EU, Immigration Rule 11, condition 3*

1. By s. 4(1)(c) Welfare Reform Act 2012it is a condition of entitlement to universal credit that a claimant must be ‘in Great Britain’.
2. To be treated as ‘in Great Britain’ I must have a right to reside in the UK and be habitually resident under reg. 9 paras(1) and (2) Universal Credit Regulations 2013 (UC Regs2013)0.
3. By virtue of having settled status, I have a right to reside and am habitually resident.
4. I am not a person subject to immigration control, have a right to reside and am habitually resident. I therefore meet the condition of entitlement in s.4(1)(c) WRA 2012 that I am "in Great Britain" and the decision not to award UC is unlawful.​

**If you have already requested a mandatory reconsideration and there ha been a delay include the following:**

1. The DWP is under a duty to consider all claims for benefit within a “reasonable time” – *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).
2. The duty to make a decision within a reasonable time applies equally toS.9 of the Social Security Act 1998 (SSA 1998) under which Secretary of State may “revise” any decision made under s.8 or s.10, as to the analogous provision at s.8 under which the Secretary of State shall “decide any claim for a relevant benefit”.
3. What counts as a reasonable time depends on the circumstances, including the impact on the claimant[[1]](#footnote-1).
4. This delay is causing me significant financial hardship. **Explain what are you living on now**

**Request**

Please revise and award me UC immediately and from DATE.

**Reply date**

I expect a reply promptly and in any event no later than **DATE (in 14 days). Should I not have received a reply by this time I will be seeking legal assistance to send a judicial review pre-action protocol letter on this matter, on the grounds of delay, discriminatory impact and DWP’s failure to follow the law.**

Yours faithfully,

Your signature

**Print your name**

1. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-1)