

**ISRAEL, OCCUPIED PALESTINIAN TERRITORIES AND  
LEBANON HABITUAL RESIDENCE TEST & PAST PRESENCE  
TEST EXEMPTIONS AND CAPITAL DISREGARDS**

<b>Contents</b>	<b>Paragraphs</b>
Introduction	1
Background	2 - 4
Changes	5 - 8
Capital	9
Definitions	10
Qualifying person	11
Capital disregard	12
Notional capital	13 - 14
Income treated as capital	15
Non-dependant deductions	16
Contacts	

**INTRODUCTION**

1. This memo provides guidance on the Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 (“SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023”), S.R. 2023 No. 184. The changes come into operation from 28.10.23<sup>1</sup>.

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023, reg 1(1)*

## BACKGROUND

2. These amendments ensure that residence tests for benefit entitlement are met, and certain capital is disregarded from day one for certain persons arriving from Israel, the Occupied Palestinian Territories or Lebanon in connection with the Hamas terrorist attack in Israel on 7.10.23 or the violence which rapidly escalated in the region following the attack.

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023*

**Note:** For the purposes of this memo, the Occupied Palestinian Territories are the West Bank, the Gaza Strip, East Jerusalem, and the Golan Heights.

3. These amendments<sup>1</sup> also provide that any payment received from the Victims of Overseas Terrorism Compensation scheme is disregarded.

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023*

4. The regulations only exempt individuals from the residency tests and allow for capital disregards as below. Claimants will still need to satisfy the other benefit entitlement conditions and have recourse to public funds.

## CHANGES

5. New categories were added to the list of persons who are exempted from having to satisfy the factual part of the Habitual Residence Test for the income-related benefits

- those with pre-existing right of abode in the UK, including British nationals
- those not required to hold leave to enter or remain in the UK (Irish nationals)
- those granted leave under the Immigration Rules (as long as they have recourse to public funds)

providing they meet the following criteria:

- they were residing in Israel, the OPTs or Lebanon immediately before 7 October 2023, and
  - they left Israel, the OPTs or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack.
6. These regulations also add the Victims of Overseas Terrorism Compensation scheme to the list of compensation schemes and funds from which payments disregarded as capital when calculating entitlement to working age and pension age Housing Benefit.
  7. These regulations should be taken into account for any decision made from the 28.10.23, including where the claim was received before 28.10.23. Applications made, and decided, before 28.10.23 should be considered in accordance with the relevant benefit legislation as it stood prior to the coming in force of these regulations.
  8. People granted leave outside the Immigration Rules (with recourse to public funds) are already exempted from satisfying the factual habitual residence part of the Habitual Residence Test.

## **CAPITAL**

9. These regulations<sup>1</sup> provide that compensation payments made by the Victims of Overseas Terrorism Compensation Scheme to

**9.1** victims of Terrorist attacks **or**

**9.2** their next of kin

do not affect recipient's entitlement to means-tested benefits.

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023*

**Note:** While the classification of the Hamas attack on Israel on 7 October 2023 has raised the need to disregard payments under the Victims of Overseas Terrorism Compensation Scheme as capital, the regulations cover any and all payments made under the scheme. There is no intention to differentiate between compensation payments made to victims of different terrorism attacks which are recognised under the compensation scheme.

## **DEFINITIONS**

10. In these regulations, “Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 (introductory) of the Crime and Security Act 2010<sup>1</sup>.

*1 Crime & Security Act 2010, s. 47(1)*

## **QUALIFYING PERSON**

11. In the definition of qualifying person, a Victims of Overseas Terrorism Compensation Scheme payment is inserted into relevant legislation<sup>1</sup>. This means prescribed persons that receive a payment from these schemes is added to the definition of a qualifying person.

*1 HB Regs (NI), reg 2(1); HB (SPC) Regs (NI), reg 2(1)*

## **CAPITAL DISREGARD**

12. These regulations<sup>1</sup> provide that any payment made under the Victims of Overseas Terrorism Compensation scheme is disregarded indefinitely from a person’s capital for working age<sup>2</sup> or pension age<sup>3</sup> housing benefit.

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023; 2 HB Regs (NI), Sch 7, para 25(1) & (7);*

*3 HB (SPC) Regs (NI), Sch 7, para 16(1)(a)*

## **NOTIONAL CAPITAL**

13. For working age Housing Benefit<sup>1</sup>, any payment made under the Victims of Overseas Terrorism Compensation Scheme paid to

**13.1** a third party for the claimant or their partner **or**

**13.2** the claimant or their partner for a third party

is not to be treated as notional capital.

*1 HB Regs (NI), reg 46(4)(a)*

14. As pension age Housing Benefit does not have a notional capital rule no amendments are required.

## **INCOME TREATED AS CAPITAL**

15. For working age<sup>1</sup> Housing Benefit, payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded as income treated as capital.

*1 HB Regs (NI), reg 43(6)*

## **NON DEPENDANT DEDUCTIONS**

16. For working age and pension age Housing Benefit payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded when assessing the non-dependant's income.<sup>1</sup>

*1 HB Regs (NI) reg 72(9)(b); HB (SPC) Regs (NI), reg 53(10)(b)*

## **CONTACTS**

If you have any queries about this memo, please contact:

Decision Making Services

Section 7

Level 8

Causeway Exchange

1-7 Bedford Street

Belfast

BT2 7EG

Ext: 38529, 37388 and 38537

**DECISION MAKING SERVICES**

**Distribution: All holders of HB  
DMG**

**November 2023**