

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

<b>Contents</b>	<b>Paragraphs</b>
Introduction	1 - 4
Changes	5 - 7
Habitual Residence Test and Past Presence Test	8 - 9
Income-related benefits	10 - 11
Disability and Carers benefits	12 - 13
Examples	
Capital	14
Definitions	15
Qualifying person	16
Capital disregard	17
Notional capital	18
Income treated as capital	19
Housing costs	20
Annotations	
Contacts	

**INTRODUCTION**

1. This memo provides guidance on the Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 which came into force on 28.10.23.

2. These amendments ensure that residence tests for benefit entitlement are met, and certain capital is disregarded from day one or shortly after arrival 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.

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

## **CHANGES**

5. New categories were added to the list of persons who are exempted from having to satisfy
  - 5.1 the factual part of the Habitual Residence Test for the income-related benefits
  - 5.2 the Past Presence Test, in addition to the factual part of the Habitual Residence Test, for disability and carers benefits.
6. These regulations also add the Victims of Overseas Terrorism Compensation scheme to the list of compensation schemes and funds from which payments are disregarded as capital when calculating entitlement to income-related benefits.

7. These regulations should be applied to 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 into force of these regulations.

### **HABITUAL RESIDENCE TEST AND PAST PRESENCE TEST**

8. To be entitled to income-related benefits a claimant needs to show that they are not “a person treated as not being in Northern Ireland”, which means they must have a legal right to reside and be factually habitually resident in the Common Travel Area (DMG 072791). To be entitled to a disability benefit a person must be habitually resident in the Common Travel Area and be present in Northern Ireland for a specified period of time (DMG 071717). The persons covered by these regulations will be exempt from

**8.1** the factual part of the Habitual Residence Test for income-related benefits

**8.2** the factual part of the Habitual Residence Test and the Past Presence Test for disability and carers benefits.

Individuals will still need to evidence that they are not a person subject to immigration control to be entitled to these benefits.

9. These regulations will exempt the following categories of persons from having to satisfy the Habitual residence Test and Past Presence Test

**9.1** those with pre-existing right of abode in the United Kingdom (including British nationals)

**9.2** those not required to hold leave to enter or remain in the United Kingdom (Irish nationals)

**9.3** those granted leave under the Immigration Rules (as long as they have recourse to public funds) **and**

**9.4** for disability and carers benefits only, those granted leave outside the Immigration Rules (as long as they have recourse to public funds)

providing they meet the following criteria:

(a) they were residing in Israel, the Occupied Palestinian Territories, or Lebanon before 7.10.23 **and**

(b) they left Israel, the Occupied Palestinian Territories, or Lebanon in connection with the Hamas terrorist attack on 7.10.23 or the violence which rapidly escalated in the region following the attack.

**Note:** For income-related benefits, those granted leave outside the Immigration Rules (with recourse to public funds) are already exempted from satisfying the factual part of the Habitual Residence Test.

## **INCOME-RELATED BENEFITS**

10. Persons covered by these regulations<sup>1</sup> who apply for an income-related benefit will be exempted from the requirement to satisfy the factual part of the Habitual Residence Test in Northern Ireland (equivalent legislation is being laid to cover those in England, Wales and Scotland).

1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023, reg 2

11. The relevant income-related benefits are

**11.1** Universal Credit

**11.2** income-related Employment and Support Allowance

**11.3** income-based Jobseeker's Allowance

**11.4** Income Support

**11.5** State Pension Credit

**11.6** Housing Benefit

**11.7** Pension age Housing Benefit.

## **DISABILITY AND CARERS BENEFITS**

12. Persons covered by these regulations who apply for a disability and/or carers benefits, will be exempted from the requirement to satisfy the factual part of the Habitual Residence Test and Past Presence Test only in Northern Ireland<sup>1</sup> (equivalent legislation is being laid to cover those in England and Wales and Scotland).

*1 SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023, reg 10 & 11*

13. The relevant disability and carers benefits are

**13.1** Attendance Allowance

**13.2** Disability Living Allowance

**13.3** Personal Independence Payment

**13.4** Carer's Allowance.

### **Examples**

#### **Example One**

Raafe arrived in the United Kingdom from Lebanon on 17.10.23 with his family. They all hold Leave to Remain with recourse to public funds as granted by the Home Office.

He put in a claim for Disability Living Allowance (Child) for his daughter on 18.10.23.

The decision maker looked at the daughter's claim on 22.10.23 and determined that his daughter did not pass the Habitual Residence Test as she had not served an appreciable period to show that she was habitually resident in the United Kingdom, and also did not pass the Past Presence Test as she had not been present in the United Kingdom for 26 weeks out of 52.

On 16.11.23 he submitted a new claim to Disability Living Allowance as the new regulations came into force which apply to Raafe's daughter. The decision maker would then have to look at whether the new regulations assist her by exempting her from the Habitual Residence Test and Past Presence Test requirements from the beginning of her new claim, on 16.11.23.

### **Example Two**

Fatima arrived in the United Kingdom from the Occupied Palestinian Territories on 14.10.23 and holds Leave to Enter with recourse to public funds. She made an application to Attendance Allowance on 20.10.23. The decision maker has not yet determined her claim. On 28.10.23 new legislation came into force that applies to Fatima.

When looking at her claim, the decision maker needs to look at whether she satisfies the Habitual Residence Test and Past Presence Test conditions for the period prior to 28.10.23, as well as look at whether the new regulations assist her by excepting her from the Habitual Residence Test requirement from 28.10.23. It may be that Fatima is not entitled until 28.10.23.

### **CAPITAL**

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

**14.1** victims of Terrorist attacks **or**

**14.2** their next of kin

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

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

## Definitions

15. 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>.

<sup>1</sup> *Crime & Security Act 2010, s. 47(1)*

## Qualifying Person

16. 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.

<sup>1</sup> *IS (Gen) Regs (NI) 87, reg 2(1); JSA Regs (NI) 96, reg 1(2); SPC Regs (NI) 03, reg 1(2); ESA Regs (NI) 08, reg 2(1)*

## Capital disregard

17. 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

**17.1** income-related Employment and Support Allowance<sup>2</sup>

**17.2** income-based Jobseeker’s Allowance<sup>3</sup>

**17.3** Income Support<sup>4</sup>

**17.4** State pension Credit<sup>5</sup>.

<sup>1</sup> *SS (HR & PP, & C Dis) (Amdt) Regs (NI) 2023; 2 IS (Gen) Regs (NI) 87, Sch 10, para 22;*

<sup>3</sup> *JSA Regs (NI) 96, Sch 8, para 27; 4 ESA Regs (NI) 08, Sch 9, para 27*

<sup>5</sup> *SPC Regs (NI) 03, Sch 5, para 15*

**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 will 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.

### **Notional capital**

18. For Income Support<sup>1</sup>, income-based Jobseeker's Allowance<sup>2</sup>, and income-related Employment and Support Allowance<sup>3</sup>, any payment made under the Victims of Overseas Terrorism Compensation Scheme paid to

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

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

is not to be treated as notional capital.

*1 IS (Gen) Regs (NI) 87, reg 51(3A)(a); 2 JSA Regs (NI) 96, reg 113(3A)(a);  
ESA Regs (NI) 08, reg 115(5)(a)*

### **Income treated as capital**

19. For Income Support, income-based Jobseeker's Allowance and income-related Employment and Support Allowance, payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded as income treated as capital.<sup>1</sup>

*1 IS (Gen) Regs (NI) 87, reg 48(10); JSA Regs (NI) 96, reg 110(10); ESA Regs (NI) 08, reg 112(8)*

### **Housing costs**

20. For State Pension Credit payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded from a non-dependants' gross weekly income for the purposes of calculating deductions for allowable housing costs<sup>1</sup>.

*1 SPC Regs (NI) 03, Sch 2, para 14(8)*



## **ANNOTATIONS**

The number of this memo should be annotated against the following paragraphs of the DMG:

071707, 071715, 071930, 072770, 072986, 072990, 073707, 29446,  
52447, 84475

## **CONTACTS**

If you have any queries about this memo, please write to : Decision Making Services, Section 5, Causeway Exchange, Level 8, 1-7 Bedford Street, Belfast, BT2 7EG.

Telephone: (02890) 829110, 829327, 829336, 829201

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