

## HABITUAL RESIDENCE TEST AND PAST PRESENCE TEST EXEMPTIONS FOR SPECIFIC IRISH CITIZENS

<b>Contents</b>	<b>Paragraphs</b>
Introduction	1 – 3
Background	4 – 5
Income-related benefits	6 – 7
Disability and carers benefits	8 – 9
Annotations	
Contacts	

### INTRODUCTION

1. This memo should be read in conjunction with DMG Memo Vol 2/96 and provides guidance on the Social Security (Habitual Residence and Past Presence) (Amendment No. 2) Regulations (Northern Ireland) 2022<sup>1</sup>, which ensures meeting of residence tests for benefit entitlement from day one to Irish citizens arriving in Northern Ireland from Ukraine in connection with the Russian invasion which took place on 24.2.22. The regulations only exempt individuals from the residency tests as below, and claimants will still need to satisfy the other benefit entitlement conditions.

*1 SR 2022 No 230*
2. These regulations came into operation on 18.10.22 and added a new category to the list of persons who are exempted from having to satisfy
  1. the Habitual Residence Test for the income-related benefits
  2. the Past Presence Test, in addition to the factual habitual residence test, for disability and carers benefits.
3. These regulations should be taken into account for any decision made from 18.10.22, including where the claim was received before 18.10.22. Applications made, and decided, before 18.10.22 should be considered

in accordance with the relevant benefit legislation as it stood prior to the coming in force of these regulations.

## **BACKGROUND**

4. To be entitled to income-related benefits a claimant needs to show that they are not treated as a “person from abroad” (for income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support and Housing Benefit) or “a person not in Northern Ireland” (for State Pension Credit), 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 or carers benefit a person must be habitually resident in the Common Travel Area and be present in Northern Ireland, after having been present for a specified period of time (DMG 071717). For income-related benefits, the persons covered by these regulations will be exempt from the Habitual Residence Test and for disability and carers benefits they will be exempt from the factual Habitual Residence Test and the Past Presence Test.
5. These regulations will exempt Irish citizens that fall under Section 3ZA of the Immigration Act 1971 from having to satisfy the Habitual Residence Test and Past Presence Test providing they meet the following criteria:
  1. they were residing in Ukraine immediately before 1.1.22 **and**
  2. they left Ukraine in connection with the Russian invasion which took place on 24.2.22.

## **INCOME-RELATED BENEFITS**

6. Persons covered by these regulations who apply for an income-related benefit will be exempted from satisfying the Habitual Residence Test in Northern Ireland.
7. The relevant income-related benefits are
  1. Income Support
  2. income-based Jobseeker’s Allowance
  3. State Pension Credit
  4. Rate Rebate
  5. Housing Benefit
  6. income-related Employment and Support Allowance.

## **DISABILITY AND CARERS BENEFITS**

8. Persons covered by these regulations who apply for a disability and/or carers related benefits, will be exempted from satisfying the factual Habitual Residence Test and Past Presence Test in Northern Ireland.
9. The relevant disability and carers benefits are
  1. Attendance Allowance
  2. Disability Living Allowance
  4. Carer's Allowance.

## **ANNOTATIONS**

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

071715, 072770, 073707

## **CONTACTS**

If you have any queries about this memo, please write to:

Decision Making Services  
Section 5  
Causeway Exchange  
Level 6  
1 - 7 Bedford Street  
Belfast  
BT2 7EG

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

**DECISION MAKING SERVICES**

**Distribution: All holders of  
DMG Volume 2**

**February 2023**

**The contents of the examples in this document (including use of imagery) is for illustrative purposes only**