

SUDAN HABITUAL RESIDENCE TEST AND PAST PRESENCE TEST EXEMPTION

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INTRODUCTION

1. This memo provides guidance on the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2023¹, which ensures that residence tests for benefit entitlement are met from day one for certain persons arriving from Sudan in connection with the violence which rapidly escalated on 15.4.23 in Khartoum and across Sudan. The regulations only exempt individuals from the residency tests as below and claimants will still need to satisfy the other benefit entitlement conditions and have recourse to public funds.

1 SR 2023/80
2. These regulations came into force on 18.5.23 and added new categories to the list of persons who are exempted from having to satisfy
 1. the factual part of the Habitual Residence Test for income-related benefits
 2. the Past Presence Test, in addition to the factual part of the Habitual Residence Test, for disability and carers benefits.
3. These regulations should be taken into account for any decision made from the 18.5.23, including where the claim was received before 18.5.23. Applications

made, and decided, before 18.5.23 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 “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). For income-related benefits, the persons covered by these regulations will be exempt from the factual part of the Habitual Residence Test and for disability and carers benefits they will be exempt from the factual part of the Habitual Residence Test and the Past Presence Test. Individuals will still need to evidence that they are not a person subject to immigration control to be entitled to these benefits.
5. These regulations will exempt the following categories of persons from having to satisfy the Habitual Residence Test and Past Presence Test
 1. those with pre-existing right of abode in the United Kingdom, including British nationals;
 2. those not required to hold leave to enter or remain in the United Kingdom (Irish nationals);
 3. those granted leave under the Immigration Rules (as long as they have recourse to public funds) **and**
 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:

1. they were residing in Sudan before 15.4.23; **and**
2. they left Sudan in connection with the violence which rapidly escalated on 15.4.23 in Khartoum and across Sudan.

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

6. Persons covered by these regulations 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.

7. The relevant income-related benefits are
 1. Universal Credit
 2. income-related Employment and Support Allowance
 3. income-based Jobseeker's Allowance
 4. Income Support
 5. State Pension Credit
 6. Housing Benefit 65+
 7. Housing Benefit.

DISABILITY AND CARERS BENEFITS

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

EXAMPLES

Example One

Akesh arrived in Northern Ireland from Sudan on the 18.4.23 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 for his daughter on 28.4.23.

The decision maker looked at the daughter's claim on 3.5.23 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 Northern Ireland for 26 weeks out of 52.

On 18.5.23 he submitted a new claim to Disability Living Allowance as new regulations came into force which apply to Akesh'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 18.5.23.

Example Two

Sanjana arrived in Northern Ireland from Sudan on 24.4.23 and holds Leave to Enter with recourse to public funds. She made an application to Attendance Allowance on 30.4.23. The decision maker has not yet determined her claim. On 18.5.23 new legislation came into force that applies to Sanjana.

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 18.5.23, as well as look at whether the new regulations assist her by excepting her from the Habitual Residence Test requirement from 18.5.23. It may be that Sanjana is not entitled until 18.5.23.

ANNOTATIONS

The number of this memo should be annotated against the following paragraphs of the Decision Makers Guide:

071707, 071715, 071930, 072770, 072986, 072990, 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.

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DECISION MAKING SERVICES

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