

01-23: HRT & PPT exemptions for specific Irish citizens

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Introduction

1. This Memo should be read in conjunction with Memo ADM 11/22 and provides guidance on the Social Security (Habitual Residence and Past Presence) (Amendment) (No.2) Regulations 20221, which ensures meeting of residence tests for benefit entitlement from day one to certain persons arriving in Great Britain 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 and have an appropriate immigration status with recourse to public funds.

[1 SI 990/2022](#)

2. These regulations came into force on 18.10.22 and added new categories to the list of persons who are exempted from having to satisfy either the

1. Habitual Residence Test (HRT) for the income-related benefits **or**
2. Past Presence Test (PPT), 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 “a person treated as not being in Great Britain”, which means they must have a legal right to reside and be factually habitually resident in the Common Travel Area (CTA) (ADM C1225). To be entitled to a disability or carers benefit a person must be habitually resident in the CTA and be present in GB, after having been present for a specified period of time (ADM C2021). For income-related benefits, the persons covered by these regulations will be exempt from the HRT and for disability and carers benefits they will be exempt from the factual habitual residence test and the PPT. The exemptions will only apply to persons if they are not a person subject to immigration control (PSIC).

5. These regulations will exempt Irish Citizens that fall under Section 3ZA of the Immigration Act 1971 from having to satisfy the HRT and PPT providing they meet the following criteria they

1. 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 HRT in England, Wales and Scotland.

7. The relevant income-related benefits are

1. UC
2. ESA(IR)
3. Housing Benefit
4. Housing Benefit (65+).

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 PPT in England and Wales.

9. The relevant disability and carers benefit is PIP.

Note: The factual HRT and the PPT exemption for PIP claims made in Scotland is mirrored in relevant legislation¹.

[1 SS \(Miscellaneous Amendment & Transitional Provision\) \(Scotland\) Regs 2022, reg 6.](#)

ANNOTATIONS

The number of this memo is annotated against the following paragraphs of the ADM, [C1225](#), [C2026](#),

[C2029, C2032](#).

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA (Leeds): January 2023