

DMG Memo 05-23: Sudan HRT & PPT Exemption

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Introduction

1. This Memo provides guidance on the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 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 [SI 2023/532](#)

2. These regulations came into force on 15.5.23 and added new categories to the list of persons who are exempted from having to satisfy:

- the factual part of the Habitual Residence Test (HRT) for the income-related benefits,
- the Past Presence Test (PPT), in addition to the factual part of the HRT, for disability and carers benefits.

3. These regulations should be taken into account for any decision made from the 15.5.23, including where the claim was received before 15.5.23. Applications made, and decided, before 15.5.23 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 Great Britain”, which means they must have a legal right to reside and be factually habitually resident in the Common Travel Area (CTA) ([DMG 072791](#)). To be entitled to a disability benefit a person must be habitually resident in the CTA and be present in GB 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 HRT and for disability and carers benefits they will be exempt from the factual part of the HRT and the PPT. Individuals will still need to evidence that they are not a person subject to immigration control (PSIC) to be entitled to these benefits.

5. These regulations will exempt the following categories of persons from having to satisfy the HRT and PPT:

- i. Those with pre-existing right of abode in the UK, including British nationals,
- ii. Those not required to hold leave to enter or remain in the UK (Irish nationals),
- iii. Those granted leave under the Immigration Rules (as long as they have recourse to public funds) and
- iv. 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 Sudan before 15.4.23; **and**
- b. 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 HRT.

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 HRT in England, Wales and Scotland (equivalent legislation is being laid to cover those in Northern Ireland).

7. The relevant income-related benefits are:

- Universal Credit,
- Employment and Support Allowance (IR),
- Jobseeker's Allowance (IB),
- Income Support,

- State Pension Credit,
- Housing Benefit,
- 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 the requirement to satisfy the factual habitual residence test and PPT only in England and Wales (equivalent legislation is being laid to cover those in Northern Ireland and Scotland).

9. The relevant disability and carers benefits are:

- Attendance Allowance,
- Disability Living Allowance,
- Personal Independence Payment,
- Carer's Allowance.

Examples

Example One

Akesh arrived in the UK from Sudan on 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 DLA (Child) for his daughter on 28.4.23.

The DM looked at the daughter's claim on 3.5.23 and determined that his daughter did not pass the HRT test as she had not served an appreciable period to show that she was habitually resident in the UK, and also did not pass the PPT as she had not been present in the UK for 26 weeks out of 52.

On 16.5.23 he submitted a new claim to DLA as new regulations came into force which apply to Akesh's daughter. The DM would then have to look at whether the new regulations assist her by exempting her from the HRT and PPT requirements from the beginning of her new claim, on 16.5.23.

Example Two

Sanjana arrived in the UK 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 DM has not yet determined her claim. On 15.5.23 new legislation came into force that applies to Sanjana.

When looking at her claim, the DM needs to look at whether she satisfies the HRT and PPT conditions for the period prior to 15.5.23, as well as look at whether the new regulations assist her by excepting her from the HRT requirement from 15.5.23. It may be that Sanjana is not entitled until 15.5.23.

Annotations

The number of this memo should be annotated against the following paragraphs of the DMG:
[071707](#), [071715](#), [071930](#), [072770](#), [072986](#), [072990](#), [073707](#).

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 [4/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA (Leeds): May 2023

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