

## 10-23: 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 2023<sup>1</sup>, 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) ([ADM C1225](#)). 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 ([ADM C2021](#)). 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**

Amani and his spouse arrived in the UK from Sudan on the 30.4.23. They made a claim to Universal Credit (UC) on 16.5.23.

During the HRT interview they stated that they were resident in Sudan before 15.4.23 and evidenced that they were fleeing the violence which rapidly escalated on 15 April in Sudan and hold Leave to Remain with recourse to public funds as granted by the Home Office.

On 16.5.23 the DM considered available evidence and was satisfied that on the balance of probabilities it could be accepted that Amani and his spouse were resident in Sudan at the relevant time and left Sudan in connection with the escalation of violence, and therefore are exempt from having to pass the HRT. The DM decided that the couple are entitled to UC from the date of their claim.

### **Example Two**

Susanne arrived in the UK from Sudan on 28.4.23 and is able to evidence that she was resident in Sudan before 15.4.23 and left Sudan in connection with the escalation of violence. She made a claim for Personal Independence Payment (PIP) on 2.5.23.

The DM looked at her claim on 17.5.23 and considered that Susanne did not pass the factual habitual residence test as she had not served an appreciable period of time to show that she was habitually resident in the UK at the time of her claim, and also did not pass the PPT as she had not been present in the UK for 104 out of the last 156 weeks.

However, the new regulations came into force on 15.5.23 which meant that Susanne became exempt from the requirement to satisfy factual habitual residence test and PPT. The DM considered the change in legislation, as well as other conditions of entitlement, and awarded PIP from 15.5.23.

## **Annotations**

The number of this memo should be annotated against the following paragraphs of the ADM: [C1225](#), [C1951](#), [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: May 2023

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