

## 11-22: Ukraine HRT & PPT Exemption

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### Introduction

1. This Memo provides guidance on the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022<sup>1</sup>, which ensure 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 2022/344](#)

2. These regulations came into force on 22.3.22 and added new categories to the list of persons who are exempted from having to satisfy:

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

3. Separately to dealing with anyone arriving from Ukraine, the regulations make two further key amendments as follows:

- to exempt any person granted leave outside the Immigration Rules with recourse to public funds from having to satisfy the HRT for income-related benefits; and
- to provide that persons granted refugee status or humanitarian protection under the Immigration

Rules, as well as their dependants, will be exempted from the factual habitual residence test for the disability and carers benefits (these persons are already exempt from the PPT).

4. These regulations should be taken into account for any decision made from 22.3.22, including where the claim was received before 22.3.22. Applications made, and decided, before 22.3.22 should be considered in accordance with the relevant benefit legislation as it stood prior to the coming in force of these regulations.

## **Background**

5. 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).

## **Ukrainian Crisis**

6. These regulations will exempt the following two 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, and
- (ii) Those granted leave under or outside the Immigration Rules (as long as they have recourse to public funds);

providing they meet the following criteria:

- a. they were residing in Ukraine immediately before 1.1.22; and
- b. they left Ukraine in connection with the Russian invasion which took place on 24.2.22.

## **Income-Related Benefits**

7. Persons covered by these regulations who apply for an income-related benefit will be exempted from satisfying the HRT in England, Wales and Scotland.

8. The relevant income-related benefits are:

- Universal Credit,
- Employment and Support Allowance (IR),
- Housing Benefit,
- Housing Benefit (65+)

## Disability and Carers Benefits

9. 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.

10. The relevant disability and carers benefit is:

- Personal Independence Payment

**Note:** the factual habitual residence test and the PPT exemption for PIP claims made in Scotland is mirrored in regulation 3 of the Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022<sup>1</sup>.

[1 SI 2022/108](#)

## Leave Outside The Rules

11. From the coming into force of these regulations, claimants who have been granted any type of leave outside the Rules with recourse to public funds no longer have to satisfy the HRT in relation to income-related benefits. This includes the categories of leave outside the Rules which were previously listed as exempt in income benefit regulations such as discretionary and domestic violence concessionary leave but now also covers other types of leave granted outside of the Rules such as the LOTR leave granted by the Home Office under the Ukraine Scheme which operates on a concessionary basis until the changes are made to the Immigration Rules as relevant.

### Example One

Peeter and his spouse arrived in the UK from Ukraine on the 12.3.22. They made a claim to UC on 20.3.22.

During the HRT interview they stated that they were resident in Ukraine immediately before 1.1.22 and evidenced that they were fleeing the Russian invasion of Ukraine and have been granted Leave Outside the Rules by the Home Office under the Ukraine Scheme.

The DM considered available evidence and was satisfied that on the balance of probabilities it could be accepted that Peeter and his spouse were resident in Ukraine at the relevant time and left Ukraine in connection with the Russian invasion, and therefore are exempt from having to pass the HRT. The DM decided that the couple are entitled to UC from the start of the Assessment Period.

### Example Two

Kate arrived in the UK from Ukraine on 9.3.22, and is able to evidence that she was resident in Ukraine immediately before 1.1.22 and left Ukraine in connection with the Russian invasion. She made a claim to PIP on 15.3.22.

The DM looked at her claim on 25.3.22 and considered that at the date of her claim Kate 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, 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 22.3.22 which meant that Kate became exempt from the requirement to satisfy factual habitual residence test and PPT. The DM has considered the change in legislation and awarded PIP from 22.3.22.

## **Annotations**

The number of this memo should be annotated against the following paragraphs of the ADM: [C1225 \(heading\)](#), [C1951 \(heading\)](#), [C2026](#), [C2029 \(heading\)](#), [C2032 \(heading\)](#).

## **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): April 2022