

11-23: Israel, OPTs and Lebanon HRT & PPT Exemption, and Capital Disregards

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INTRODUCTION

1. This Memo provides guidance on the Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations 2023¹ which come into force on 27.10.23.

1. These amendments ensure that residence tests for benefit entitlement are met shortly after arrival for certain persons arriving from Israel, the Occupied Palestinian Territories (OPTs), or Lebanon in connection with the Hamas terrorist attack in Israel on 7.10.23 or the violence which rapidly escalated in the region following the attack.

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023

3. These amendments¹ also provide that any payment received from the Victims of Overseas Terrorism Compensation scheme is disregarded.

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023

Note: For the purposes of this memo, the OPTs are the West Bank, the Gaza Strip, East Jerusalem, and the Golan Heights.

4. The regulations only exempt individuals from the residency tests and allow for capital disregards as below. Claimants will still need to satisfy the other benefit entitlement conditions and have recourse to public funds.

CHANGES

5. New categories were added to the list of persons who are exempted from having to satisfy:
 1. the factual part of the Habitual Residence Test (HRT) for the income-related benefits,
 2. the Past Presence Test (PPT), in addition to the factual part of the HRT, for disability and carers benefits.
6. These regulations also add the Victims of Overseas Terrorism Compensation scheme to the list of compensation schemes and funds from which payments are disregarded as capital when calculating entitlement for income-related benefits.
7. These regulations should be applied to any decision made from the 27.10.23, including where the claim was received before 27.10.23. Applications made, and decided, before 27.10.23 should be considered in accordance with the relevant benefit legislation as it stood prior to the coming in force of these regulations.

HRT & PPT

8. 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](#)). The persons covered by these regulations will be exempt from:

8.1 the factual part of the HRT for income-related benefits;

8.2 the factual part of the HRT and the PPT for disability and carers benefits.

Individuals will still need to evidence that they are not a person subject to immigration control (PSIC) to be entitled to these benefits.

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

9.1 Those with pre-existing right of abode in the UK (including British nationals),

9.2 Those not required to hold leave to enter or remain in the UK (Irish nationals),

9.3 Those granted leave under the Immigration Rules (as long as they have recourse to public funds) **and**

9.4 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:

- a. they were residing in Israel, the OPTs, or Lebanon immediately before 7.10.23; **and**
- b. they left Israel, the OPTs, or Lebanon in connection with the Hamas terrorist attack on 7.10.23 or the violence which rapidly escalated in the region following the attack.

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

10. Persons covered by these regulations¹ 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).

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023, reg 2

11. The relevant income-related benefits are:

1. UC
2. ESA(IR)
3. JSA(IB)
4. IS

5. SPC
6. HB
7. Pension age HB

DISABILITY AND CARERS BENEFITS

12. Persons covered by these regulations¹ who apply for a disability and/or carers 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).

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023, reg 10 & 11

13. The relevant disability and carers benefits are:

1. AA
2. DLA
3. PIP
4. CA

EXAMPLES

Example One

Raafa arrived in the UK from Lebanon on 17.10.23 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 18.10.23.

The DM looked at the daughter's claim on 22.10.23 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 16.11.23 he submitted a new claim to DLA as new regulations came into force which apply to Raafa'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 16.11.23.

Example Two

Fatima arrived in the UK from the OPTs on 14.10.23 and holds Leave to Enter with recourse to public funds. She made an application to AA on 20.10.23. The DM has not yet determined her claim. On 27.10.23 new legislation came into force that applies to Fatima.

When looking at her claim, the DM needs to look at whether she satisfies the HRT and PPT conditions for the period prior to 27.10.23, as well as look at whether the new regulations assist her by excepting her from the HRT requirement from 27.10.23. It may be that Fatima is not entitled until 27.10.23.

CAPITAL

14. These regulations¹ provide that compensation payments made by the Victims of Overseas Terrorism Compensation scheme to:

1. Victims of terrorist attacks **or**
2. Their next of kin

do not affect recipient's entitlement to means-tested benefits.

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023

DEFINITIONS

15. In these regulations, "Victims of Overseas Terrorism Compensation scheme" means the scheme of that name established by the Ministry of Justice in 2012 under section 47 (introductory) of the Crime and Security Act 2010.¹

1 Crime & Security Act 2010, s. 47(1)

QUALIFYING PERSON

16. In the definition of qualifying person, a Victims of Overseas Terrorism Compensation Scheme payment is inserted into relevant legislation¹. This means prescribed persons that receive a payment from these schemes is added to the definition of a qualifying person.

*1 IS (Gen) Regs 1987, reg 2(1); JSA Regs 1996, reg 1(6);
SPC Regs 2002, reg 1(2); ESA Regs 2008, reg 2(1)*

CAPITAL DISREGARDS

17. These regulations¹ provide that any payment made under the Victims of Overseas Terrorism Compensation scheme is disregarded indefinitely from a person's capital for:

1. ESA(IR)²
2. JSA(IB)³
3. IS⁴
4. SPC⁵

1 SS (HR & PP, & C Dis) (Amdt) Regs 2023, regs 3-8; 2 ESA Regs 2008, Sch 9, para 27;

3 JSA Regs 1996, Sch 8, para 27; 4 IS (Gen) Regs 1987, Sch 10, para 22

5 SPC Regs 2002, Sch 5, para 15

Note: While the classification of the Hamas attack on Israel on 7 October 2023 has raised the need to disregard payments under the Victims of Overseas Terrorism Compensation scheme as capital, the regulations will cover any and all payments made under the scheme. There is no intention to differentiate between compensation payments made to victims of different terrorism attacks which are recognised under the compensation scheme.

NOTIONAL CAPITAL

18. For IS¹, JSA(IB)², and ESA(IR)³, any payment made under the Victims of Overseas Terrorism Compensation Scheme paid to

18.1 a third party for the claimant or their partner or

18.2 the claimant or their partner for a third party

is not to be treated as notional capital.

1 IS (Gen) Regs 1987, reg 51(3A)(a); 2 JSA Regs 1996, reg 113(3A)(a);

3 ESA Regs 2008, reg 115(5)(a)

INCOME TREATED AS CAPITAL

19. For IS, JSA(IB), and ESA(IR), payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded as income treated as capital.¹

1 IS (Gen) Regs, reg 48(10); JSA Regs, reg 110; ESA Regs, reg 112(8)(a)

HOUSING COSTS

20. For SPC payments made under the Victims of Overseas Terrorism Compensation scheme are to be disregarded from a non-dependants' gross weekly income for the purposes of calculating deductions for allowable housing costs¹

1 **SPC Regs, Sch 2, para 14(8)(bd)**

ANNOTATIONS

The number of this memo should be annotated against the following paragraphs of the DMG:

071707, 071715, 071930, 072770, 072986, 072990, 073707, 29446, 52447, 84475

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): October
2023

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