

# 17-23: 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 2023<sup>1</sup> which came into force on 27.10.23.

[1 SI 2023/1144](#)

2. These amendments<sup>1</sup> 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.

3. These amendments<sup>1</sup> also provide that any payment received from the Victims of Overseas Terrorism Compensation scheme is disregarded as capital.

*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 residence tests and allow for capital disregards as below. Claimants will still need to satisfy 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 to 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) ([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](#)). 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 regulations<sup>1</sup> 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 regulations who apply for a disability and/or carers benefits, will be

exempted from the requirement to satisfy the factual part of the HRT 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**

Yousef and his spouse arrived in the UK from the OPTs on the 19.10.23. They made a claim to UC on 21.10.23.

During the HRT interview they stated that they were resident in the OPTs before 7.10.23 and evidenced that they were fleeing the violence which rapidly escalated in the OPTs and hold Leave to Remain with recourse to public funds as granted by the Home Office.

On 29.10.23 the DM considered available evidence and was satisfied that on the balance of probabilities it could be accepted that Yousef and his spouse were resident in the OPTs at the relevant time and left the OPTs 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**

Jessica arrived in the UK from Israel on 13.10.23 and is able to evidence that she was resident in Israel before 7.10.23 and left in connection with the Hamas terrorist attack in Israel. She made a claim for PIP on 15.10.23.

The DM looked at her claim on 30.10.23 and considered that Jessica 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 27.10.23 which meant that Jessica 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 decided that Jessica is not entitled from the date of claim on 15.10.23 until 26.10.23 as she does not satisfy her HRT and PPT but is entitled from 27.10.23 when the new regulations came into force.

## CAPITAL

14. These regulations<sup>1</sup> provide that compensation payments made by the Victims of Overseas Terrorism Compensation scheme to:

14.1 Victims of terrorist attacks **or**

14.2 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.<sup>1</sup>

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

## CAPITAL DISREGARD

16. These regulations<sup>1</sup> provide that any payment made under the Victims of Overseas Terrorism Compensation scheme is disregarded indefinitely from a person's capital for UC.

*1 SS (HR & PP, & C Dis) (Amdt) Regs 2023, reg 9; UC Regs, reg 76(1A)(f)*

**Note:** While the classification of the Hamas attack on Israel on 7.10.23 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.

## ANNOTATIONS

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

[C1225](#), [C1951](#), [C2026](#), [C2029](#), [C2032](#), [H2051](#)

## 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): October  
2023

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