

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (HABITUAL RESIDENCE AND PAST PRESENCE)**  
**(AMENDMENT)**  
**REGULATIONS (NORTHERN IRELAND) 2021**

**S.R. 2021 No. 269**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland (NI) Assembly.
- 1.2 The Statutory Rule is made under sections 64(1), 70(4), 71(6), 122(1)(a) and (d), 133(2)(a) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Article 36(2)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995, sections 1(5)(a) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002, section 25(2) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and Articles 9(5), 48(1) and (2)(a), 82(3), 97(1) and 99(1)(a) of the Welfare Reform (Northern Ireland) Order 2015 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1 The proposed legislation, with effect from 25th September 2021, inserts a category into the list of persons who are exempted from having to satisfy the habitual residence test (HRT) and the past presence test (PPT) for the listed benefits. For the HRT the additional category exempts persons who have come to the UK from Afghanistan under one of the listed Home Office (HO) resettlement schemes (see 3.4 for a list of the schemes), and those who are not covered by one of the listed schemes but who have left Afghanistan in connection with the collapse of the Afghan government on 15th August 2021. For the PPT the additional category exempts persons who have come to the UK from Afghanistan under one of the listed HO resettlement schemes.

### 3. Background

3.1 This Rule makes amendments to the following regulations:

Income-related benefits (IRBs):

- Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)
- Jobseeker's Allowance Regulations (Northern Ireland) 1996 (S.R. 1996 No. 198)
- State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No. 28)
- Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)
- Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280)
- Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216)

Disability and carer benefits:

- Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976 (S.R. 1976 No. 99)
- Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 20)
- Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 32)
- Personal Independence Payment Regulations (Northern Ireland) 2016 (S.R. 2016 No. 217)

3.2 The HRT was introduced into income-related benefit regulations by the Income-Related Benefits (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 1994 (S.R. 1994 No. 266). There have been a number of modifications to the test over time.

3.3 The PPT, in addition to the HRT, is part of the eligibility criteria for claiming disability and carer benefits but has been amended over time.

3.4 The UK Government has established three schemes to relocate and resettle those living in Afghanistan to the UK:

a) The Afghan Relocations and Assistance Policy. This scheme was set up to assist Afghan citizens who worked with British forces, and their family members.

b) The Afghan Citizens Resettlement Scheme (ACRS). This scheme was set up for those considered particularly vulnerable. The government has announced that the scheme will resettle 20,000 individuals over 5 years, with a focus on women, girls and minority groups.

c) The previous scheme for locally employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme). This scheme was announced in December 2012 and was set up to support locally employed staff who have worked for the British forces. This scheme is set to close in November 2022.

- 3.5 The HO has announced that those arriving in the UK under resettlement schemes will be granted Indefinite Leave to Remain (ILR), with the exception of initial arrivals under the ACRS who have been initially granted 6 months Leave Outside the Rules ahead of being granted ILR. Granting ILR provides certainty and stability to those resettling in the UK. It provides the right to work and recourse to public funds, including social security benefits.
- 3.6 Those granted ILR, however, still need to meet the HRT, and where appropriate the PPT, before they can access IRBs, and disability and carer benefits. These tests also apply to UK nationals who have recently returned to the UK.
- 3.7 To ensure those arriving from Afghanistan are able to meet the residency conditions for benefits from day one, and based on similar regulations brought forward in 2006 in response to the situation in Lebanon at that time (S.R. 2006 No. 320), these Regulations will exempt those arriving from Afghanistan under the listed HO resettlement schemes, and those arriving in connection with the collapse of the Afghan government on 15th August 2021, from the HRT. This means that they will meet the residency conditions for IRBs from day one, and will be eligible subject to all other entitlement conditions.
- 3.8 Provisions have also been included to exempt those arriving from Afghanistan under one of the listed HO resettlement schemes from the PPT, in addition to the HRT. This will mean they will meet the residency conditions for disability and carer benefits from day one, and will be eligible subject to all other entitlement conditions.
- 3.9 A claimant is required to meet the HRT to be eligible for IRBs including universal credit and housing benefit. Its purpose is to ensure that IRBs are paid to people with reasonably close ties to the UK and an intention to settle here. The test also provides that no person shall be treated as habitually resident in the UK if he or she does not have a right to reside there.
- 3.10 “Habitual residence” is not defined in any of the regulations but case law has established that, to be habitually resident, a claimant must (i) have a settled intention to reside, and (ii) have been resident for an “appreciable period of time”. It is a factual assessment on a case-by-case basis and on the balance of probabilities. For a person who has never previously lived in the UK, it can commonly take up to three months to establish factual habitual residence.
- 3.11 For disability and carer benefits, a claimant will, in addition to being considered habitually resident, need to meet the PPT to be able to access the relevant benefits. The claimant must have been present in Northern Ireland for a specified number of weeks over a reference period. For disability benefits, the number of weeks depends upon the age of the disabled person.

3.12 The Westminster government has set out its intention to ensure that those arriving from Afghanistan under the relocation and resettlement schemes receive the support they need to rebuild their lives in the UK, integrate into their local communities and find work. These Regulations will align the position with this policy intention by ensuring those arriving under the Afghan relocation and resettlement schemes are able to meet the residency conditions from day one for relevant social security benefits.

3.13 The provisions will also ensure that those not covered under the scheme and returning to the UK in exceptional circumstances, including UK nationals returning from Afghanistan, in connection with the collapse of the Afghan government, will meet the residency conditions for IRBs from day one, to help with immediate needs.

#### **4. Consultation**

4.1 There is no requirement to consult on these Regulations.

#### **5. Equality Impact**

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations and has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

#### **6. Regulatory Impact**

6.1 These Regulations do not require a Regulatory Impact Assessment as there is no significant impact on costs on business, charities or voluntary bodies.

#### **7. Financial Implications**

7.1 There are no significant financial implications for the Department.

#### **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations—

(a) are not incompatible with any of the Convention rights,

(b) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(c) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1 Not applicable.

## **10. Parity or Replicatory Measure**

10.1 The Great Britain Regulations are the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 (S.I. 2021/1034), which come into force on 15th September 2021.

## **11. Additional Information**

11.1 Not applicable.