

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (HABITUAL RESIDENCE AND PAST PRESENCE)
(AMENDMENT NO. 2) REGULATIONS (NORTHERN IRELAND) 2022

S.R. 2022 No. 230

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)(a) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and Articles 9(5)(a), 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 This Rule, with effect from 18 October, will correct a drafting error in the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022 No. 149) (the “Principal Regulations”). In connection with the Russian invasion of Ukraine, the Principal Regulations inserted a category to the list of persons who are exempted from having to satisfy the Habitual Residence Test and Past Presence Test for the listed benefits. The identified drafting error meant that Irish citizens were not necessarily covered by the exemption which this Rule will correct.
- 2.2 This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for the Principal Regulations.

3. Background

- 3.1 This Rule makes amendments to the following benefit legislation:

Income-related benefits:

- 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)

(the “income-related benefit regulations”)

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)

(the “disability and carer benefit regulations”).

- 3.2 In order to access income-related benefits, as well as meeting the other eligibility conditions, a person must be factually habitually resident and have a legal right to reside in the Common Travel Area. This is commonly referred to as the “Habitual Residence Test”.
- 3.3 To access disability and carer benefits, only the factual element of the Habitual Residence Test applies. The Past Presence Test is also part of the eligibility criteria for claiming disability and carer benefits. The Past Presence Test ordinarily ensures that as well as being present in the UK at the time a claim is made for a benefit, the claimant has also been in the UK for a prescribed period of time before entitlement.
- 3.4 The Principal Regulations added to the income-related benefit regulations an additional category of exempt persons to those listed under the relevant provisions for the purpose of the Habitual Residence Test. The Principal Regulations made the same amendment in respect of the factual element of the Habitual Residence Test, and the Past Presence Test in the disability and carer benefit regulations. This new category was those who have a right of abode or have been granted leave to enter or remain in the UK under the immigration rules, as made under section 3(2) of the Immigration Act 1971 (1971 c. 77), with recourse to public funds and who have left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and who were residing in Ukraine immediately before 1 January 2022. Individuals still need to meet all other benefit specific eligibility requirements. This meant that the exempt groups meet the residency conditions and, subject to all other entitlement conditions being met, are eligible for the listed income-related benefits and disability and carer benefits from day one.
- 3.5 In response to the Russian invasion of Ukraine, the Principal Regulations came into force on 22 March, however following this a technical drafting error was

identified which meant that Irish citizens were not explicitly covered by the exemptions. The exemptions in the Principal Regulations covered those with a right of abode in the UK or who were granted leave in accordance with the immigration rules. As Irish citizens are normally exempt from the requirement to hold leave to enter or remain in the UK, in accordance with section 3ZA of the Immigration Act 1971, and are not covered by the right of abode provision, they were not covered by the exemptions as drafted.

- 3.6 The intention of the Principal Regulations was to provide an exemption to the residency tests for the listed benefits for all those who had fled Ukraine in connection with the Russian invasion on 24 February, who had been residing in Ukraine immediately before 1 January 2022. This exemption was intended to cover all those who had fled Ukraine regardless of nationality. This Rule will correct a deficiency in the drafting of the Principal Regulations, by adding persons who do not require leave to enter or remain in the UK in accordance with section 3ZA of the Immigration Act 1971 to the persons exempt from the residency tests. This will mean that Irish citizens will be covered by the exemption in line with the intention of the legislation and, subject to all other entitlement conditions being met, will be eligible for the listed income-related benefits and disability and carer benefits from day one.

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) (No. 2) Regulations 2022 (S.I. 2022/990), which come into force on 18th October 2022.

11. Additional Information

11.1 Not applicable.