
STATUTORY INSTRUMENTS

2023 No. 1144

The Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations 2023

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations 2023 and come into force on 27th October 2023.

(2) Part 2, and this Part in so far as it relates to Part 2, extend to England and Wales and Scotland⁽¹⁾.

(3) Part 3, and this Part in so far as it relates to Part 3, extend to England and Wales only⁽²⁾.

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- (1) The provisions being amended by Part 2 extend to England and Wales and Scotland. This instrument does not reflect the presumption that amendments will have the same extent and application as the provisions amended because the Secretary of State does not have executive competence to exercise functions, as regards Scotland, in relation to the benefits regulations amended by Part 3. The function of making regulations under sections 64(1), 70(4) and 71(6) of the Contributions and Benefits Act is exercisable by the Secretary of State by virtue of section 175(1) of that Act and the function of making regulations under section 77(3) of the 2012 Act is exercisable by the Secretary of State by virtue of section 94(1) of that Act. The functions of the Secretary of State under those provisions, as regards Scotland, transferred to the Scottish Ministers on 1st April 2020.
- (2) Legislative competence for disability and carer's benefits was transferred to the Scottish Parliament by section 22(2) of the Scotland Act 2016 (c. 11). Section 22(2) inserted an exception into reservation F1 of Schedule 5 to the Scotland Act 1998 (c. 46) and was brought into force on 17th May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of the Scotland Act 1998. Section 32 of the Scotland Act 2016 provides the meaning of "pre-commencement enactment" in this context. The transitional arrangements in respect of disability and carer's benefits ended on 31st March 2020 (see regulation 4 of the Scotland Act 2016 (Transitional) Regulations 2017 (S.I. 2017/444)). Accordingly, insofar as the functions under those sections of the Contributions and Benefits Act and section 77(3) of the 2012 Act are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. To ensure that the provisions introduced by these Regulations operate identically across England and Wales and Scotland, the Scottish Ministers intend to make parallel regulations to these Regulations, (and accordingly laid the Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023 before the Scottish Parliament for approval by a resolution of the Scottish Parliament and if so approved to make those Regulations to come into force on 26th October 2023).