

**2023 No. 1144**

**SOCIAL SECURITY**

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

*Made* - - - - at 11.34 a.m. on 26th October 2023

*Laid before Parliament* at 12.45 p.m. on 26th October 2023

*Coming into force* 27th October 2023

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 64(1), 70(4), 71(6), 123(1)(a) and (d), 130A(2), 135(1), 136(3) and (5), 136A(3), 137(2)(a) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 4(5), 12(1) and (4) and 36(2) of, and paragraph 11(2) of Schedule 1 to the Jobseekers Act 1995(b), sections 1(5)(a), 15(3) and (6) and 19(1) of the State Pension Credit Act 2002(c), sections 17(1) and (3) and 25(2) and (3) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act 2007(d) and sections 4(5)(a), 42(1) to (3), 77(3), 92(1) and 94(2) and (3)(a) of, and paragraph 4(1) and (3) of Schedule 1 to, the Welfare Reform Act 2012(e).

In accordance with section 173(1)(a) of the Social Security Administration Act 1992(f), it appears to the Secretary of State that by reason of the urgency of this matter it is inexpedient to refer the proposals in respect of these Regulations to the Social Security Advisory Committee.

In accordance with section 176(2)(a) of that Act, it appears to the Secretary of State that by reason of the urgency of this matter it is inexpedient for the Secretary of State to consult with bodies representative of the authorities concerned.

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- (a) 1992 c. 4 (“the Contributions and Benefits Act”). Section 130A is inserted by section 30(2) of the Welfare Reform Act 2007 (c. 5). Section 136A is inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act 2002 (c. 16). See section 137(1) for the meaning given to “prescribed”.
- (b) 1995 c. 18. See section 35(1) for the meanings given to “prescribed” and “regulations”.
- (c) 2002 c. 16. Section 175(3) and (4) of the Contributions and Benefits Act is applied by section 19(1). See section 17(1) for the meaning given to “prescribed”.
- (d) 2007 c. 5. See section 24(1) for the meaning given to “regulations”.
- (e) 2012 c. 5 (“the 2012 Act”). See sections 40 and 95 for the meaning given to “prescribed”.
- (f) 1992 c. 5.

# 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(a).

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

## PART 2

### AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES AND SCOTLAND

#### Amendment of the habitual residence test in income-related benefits

2.—(1) In the provisions specified in paragraph (2), after sub-paragraph (zzd) insert—

“(zze)a person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7th October 2023, who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(c);
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(d); or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act(e);”.

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- (a) 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.
  - (b) 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).
  - (c) 1971 c. 77.
  - (d) Section 2 is substituted by section 39(2) of the British Nationality Act 1981 (c. 61) and amended by S.I. 2019/745.
  - (e) Section 3ZA is inserted by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

(2) Those provisions are—

- (a) regulation 21AA(4) of the Income Support (General) Regulations 1987 (special cases: supplemental – persons from abroad)(a);
- (b) regulation 85A(4) of the Jobseeker’s Allowance Regulations 1996 (special cases: supplemental — persons from abroad)(b);
- (c) regulation 2(4) of the State Pension Credit Regulations 2002 (persons not in Great Britain)(c);
- (d) regulation 10(3B) of the Housing Benefit Regulations 2006 (persons from abroad)(d);
- (e) regulation 10(4A) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (persons from abroad)(e); and
- (f) regulation 70(4) of the Employment and Support Allowance Regulations 2008 (special cases: supplemental — persons from abroad)(f).

(3) In the Universal Credit Regulations 2013(g), in regulation 9(4) (persons treated as not being in Great Britain), after sub-paragraph (zd) insert—

“(ze) a person who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7th October 2023, who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971;
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act; or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act;”.

### **Amendment of the Income Support (General) Regulations 1987**

**3.—(1)** The Income Support (General) Regulations 1987(h) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—

““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010(i);”.

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- (a) S.I. 1987/1967. Regulation 21AA is inserted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (b) S.I. 1996/207. Regulation 85A is inserted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (c) S.I. 2002/1792. Regulation 2 is substituted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (d) S.I. 2006/213. Relevant amendments are made by S.I. 2006/1026 and 2528, 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (e) S.I. 2006/214. Relevant amendments are made by S.I. 2006/1026 and 2528, 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (f) S.I. 2008/794. Relevant amendments are made by S.I. 2009/362, 2013/2536, 2014/902, 2019/872, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (g) S.I. 2013/376. Relevant amendments are made by S.I. 2013/1508, 2020/683 and 1309, 2021/1034, 2022/344 and 990 and 2023/532.
  - (h) Relevant amending instruments are S.I. 1988/663, 999 and 2022, 1990/127 and 1549, 1991/1175, 1992/1101, 1993/963 and 1249, 1995/1613, 1998/2117 and 2231, 2004/1141 and 2308, 2005/3391, 2008/2767, 2010/641, 2011/2425, 2017/329 and 689, 2020/618, 2021/1405 and 2023/640.
  - (i) 2010 c. 17.

(3) In each of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) regulation 48(10)(c) (income treated as capital);
- (b) regulation 51(3A)(a) (notional capital);
- (c) paragraphs 22(1) and (7) of Schedule 10 (capital to be disregarded).

#### **Amendment of the Jobseeker’s Allowance Regulations 1996**

**4.**—(1) The Jobseeker’s Allowance Regulations 1996(a) are amended as follows.

(2) In regulation 1(3) (interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—  
““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010;”.

(3) In each of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) regulation 110(10)(c) (income treated as capital);
- (b) regulation 113(3A)(a) (notional capital);
- (c) paragraph 27(1) of Schedule 8 (capital to be disregarded).

#### **Amendment of the State Pension Credit Regulations 2002**

**5.**—(1) The State Pension Credit Regulations 2002(b) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—  
““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010;”.

(3) In both of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) paragraph 14(8)(b) of Schedule 2 (housing costs);
- (b) paragraph 15(1) and (7) of Schedule 5 (income from capital).

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(a) Relevant amending instruments are S.I. 1998/2117, 2004/1141 and 2308, 2005/3391, 2008/2767, 2010/641, 2011/2425, 2017/329 and 689, 2020/618, 2021/2405 and 2023/640.

(b) Relevant amending instruments are S.I. 2004/1141, 2005/3391, 2008/2767, 2010/641, 2011/2425, 2017/329 and 2023/640.

### **Amendment of the Housing Benefit Regulations 2006**

**6.**—(1) The Housing Benefit Regulations 2006(a) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—  
““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010;”.

(3) In each of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) regulation 46(6) (income treated as capital);
- (b) regulation 49(4)(a) (notional capital);
- (c) regulation 74(9)(b) (non-dependant deductions);
- (d) paragraph 24(1) and (7) of Schedule 6 (capital to be disregarded).

### **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.**

**7.**—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(b) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—  
““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010;”.

(3) In both of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) regulation 55(10)(b) (non-dependant deductions);
- (b) paragraph 16(1)(a) of Schedule 6 (capital to be disregarded generally).

### **Amendment of Employment and Support Allowance Regulations 2008**

**8.**—(1) The Employment and Support Allowance Regulations 2008(c) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition of “qualifying person” after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”;
- (b) after the definition of “vaccine damage payment” insert—  
““the Victims of Overseas Terrorism Compensation Scheme” means the scheme of that name established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010;”.

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(a) Relevant amending instruments are S.I. 2007/2868, 2008/2767 and 3157, 2010/641, 2011/2425, 2017/329 and 689, 2020/618, 2021/1405 and 2023/640.

(b) Relevant amending instruments are S.I. 2007/2869, 2008/1042 and 2767, 2010/641, 2011/2425, 2017/329, 2017/689, 2020/618, 2021/188 and 1405 and 2023/640.

(c) Relevant amending instruments are S.I. 2008/2428, 2010/641, 2011/2425, 2017/329, 2020/618, 2021/1405 and 2023/640.

(3) In each of the following provisions, after “the National Emergencies Trust” insert “, the Victims of Overseas Terrorism Compensation Scheme”—

- (a) regulation 112(8)(a) (income treated as capital);
- (b) regulation 115(5)(a) (notional capital);
- (c) paragraph 27(1) and (7) of Schedule 9 (capital to be disregarded).

### **Amendment of the Universal Credit Regulations 2013**

**9.**—(1) Regulation 76 of the Universal Credit Regulations 2013 (special schemes for compensation etc)(a) is amended as follows.

(2) In paragraph (1A)—

- (a) at the end of sub-paragraph (d) omit “or”;
- (b) at the end of sub-paragraph (e) omit the full stop and insert “; or”;
- (c) after sub-paragraph (e) insert—

“(f) the Victims of Overseas Terrorism Compensation Scheme established by the Ministry of Justice in 2012 under section 47 of the Crime and Security Act 2010.”.

## **PART 3**

### **AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES ONLY**

#### **Amendment of disability and carer’s benefit legislation**

**10.**—(1) In the provisions specified in paragraph (2)—

- (a) at the end of sub-paragraph (f) omit “or”;
- (b) at the end of sub-paragraph (g) omit the full stop and insert “; or”;
- (c) after sub-paragraph (g) insert—

“(h) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the person—

- (i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7th October 2023; and
- (ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack.”.

(2) Those provisions are—

- (a) regulation 9C(1) of the Social Security (Invalid Care Allowance) Regulations 1976 (refugees and certain persons with leave to enter and remain in the United Kingdom)(b);
- (b) regulation 2C(1) of the Social Security (Attendance Allowance) Regulations 1991 (refugees and certain persons with leave to enter and remain in the United Kingdom)(c);

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(a) Relevant amendments are made by S.I. 2017/689, 2020/618, 2021/1405 and 2023/640.

(b) S.I. 1976/409. Regulation 9C is inserted by S.I. 2017/1015. Relevant amendments are made by S.I. 2021/1034, 2022/344 and 990 and 2023/532.

(c) S.I. 1991/2740. Regulation 2C is inserted by S.I. 2017/1015. Relevant amendments are made by S.I. 2021/1034, 2022/344 and 990 and 2023/532.

- (c) regulation 2C(1) of the Social Security (Disability Living Allowance) Regulations 1991 (refugees and certain persons with leave to enter and remain in the United Kingdom)(a).

### **Amendment of the Social Security (Personal Independence Payment) Regulations 2013**

**11.**—(1) Regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013 (refugees and certain persons with leave to enter and remain in the United Kingdom)(b) is amended as follows.

(2) In paragraph (1)—

- (a) at the end of sub-paragraph (f) omit “or”;
- (b) at the end of sub-paragraph (g) omit the full stop and insert “; or”;
- (c) after sub-paragraph (g) insert—

“(h) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where C—

- (i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7th October 2023; and
- (ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack.”.

Signed by authority of the Secretary of State for Work and Pensions

*Younger*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

At 11.34 a.m. on 26th October 2023

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2 of these Regulations enables certain persons to access income-related benefits upon arrival in Great Britain from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon provided they meet the other relevant entitlement conditions.

Part 2 also provides that any payments from the Victims of Overseas Terrorism Compensation Scheme (“the Scheme”) established by the Ministry of Justice in 2012 are to be disregarded for certain social security purposes.

That Part amends the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and the Universal Credit Regulations 2013 (S.I. 2013/376) (“the income-related benefit regulations”).

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(a) S.I. 1991/2890. Regulation 2C is inserted by S.I. 2017/1015. Relevant amendments are made by S.I. 2021/1034, 2022/344 and 990 and 2023/532.

(b) S.I. 2013/377. Regulation 23A is inserted by S.I. 2017/1015. Relevant amendments are made by S.I. 2021/1034, 2022/344 and 990 and 2023/532.

The income-related benefit regulations provide that a person is ineligible for benefit where they are a “person from abroad”, “a person not in Great Britain” (for the purposes of the State Pension Credit Regulations 2002) or “a person treated as not being in Great Britain” (for the purposes of the Universal Credit Regulations 2013). That is to say where the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, subject to a list of exemptions.

Regulation 2 inserts a new category into the list of persons who are exempted from having to satisfy the habitual residence test. Those persons are those who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7th October 2023, who left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack and who—

- (a) have been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971 (c. 77);
- (b) have a right of abode in the United Kingdom within the meaning given in section 2 of that Act; or
- (c) do not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.

Regulations 3 to 9 amend the income-related benefit regulations to provide that payments from the Scheme established by the Ministry of Justice in 2012 are not to be taken into account in the calculation of capital.

Part 3 of these Regulations enables certain persons to access disability and carer benefits upon arrival in England and Wales from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon where they were residing and left in accordance with the criteria above, provided they meet the other relevant entitlement conditions.

That Part amends the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409), the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740), the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) and the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377) to exempt the same group of people from the past presence test. This is the test which normally has to be fulfilled in order to claim Carer’s Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment. The past presence test normally requires that an individual has been present in Great Britain for a specified period of time to be eligible for those benefits. The amendments also have the effect of removing the habitual residence requirement for entitlement to disability and carer’s benefits which would otherwise apply to these persons.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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