

This Statutory Instrument has been made to correct errors in S.I. 2022/344 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2022 No. 990

SOCIAL SECURITY

The Social Security (Habitual Residence and Past Presence) (Amendment) (No. 2) Regulations 2022

<i>Made</i>	- - - -	<i>23rd September</i> <i>2022</i>
<i>Laid before Parliament</i>		<i>27th September 2022</i>
<i>Coming into force</i>	- -	<i>18th October 2022</i>

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), 137(2)(a) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(1), sections 36(2) and (4)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers Act 1995(2), section 1(5)(a) of the State Pension Credit Act 2002(3), section 25(2), (3) and (5)(a) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act 2007(4) and sections 4(5)(a), 42(2) and (3)(a), 77(3), 92(1) and 94(2) and (3)(a) of the Welfare Reform Act 2012(5).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992(6) (“the Administration Act”), the Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it.

In so far as Part 2 of these Regulations relates to housing benefit, the Secretary of State has consulted, in accordance with section 176(1)(a) of the Administration Act, with organisations appearing to the Secretary of State to be representative of the authorities concerned.

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- (1) 1992 c. 4 (“the Contributions and Benefits Act”). See section 122(1) for the meaning given to “prescribe” and section 137(1) for the meaning given to “prescribed”.
- (2) 1995 c. 18. See section 35(1) for the meaning given to “regulations”.
- (3) 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 meanings given to “prescribed” and “regulations”.
- (4) 2007 c. 5. See section 24(1) for the meaning given to “regulations”.
- (5) 2012 c. 5 (“the 2012 Act”). See sections 40 and 95 for the meaning given to “prescribed”.
- (6) 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) (Amendment) (No. 2) Regulations 2022 and come into force on 18th October 2022.

(2) Part 2 extends to England and Wales and Scotland(7).

(3) Part 3 extends to England and Wales only.

(4) With regard to Part 4, the amendments made by regulation 4 have the same extent as the respective provisions which they amend.

PART 2

AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES AND SCOTLAND

Amendments to income-related benefit legislation

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

(a) at the end of paragraph (i) omit “or”;

(b) at the end of paragraph (ii) insert “or”;

(c) after paragraph (ii) insert—

“(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act(8);”.

(2) Those provisions are—

(a) regulation 21AA(4)(zcc) of the Income Support (General) Regulations 1987(9);

(b) regulation 85A(4)(zcc) of the Jobseeker’s Allowance Regulations 1996(10);

(7) 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. Legislative competence for disability and carers’ benefits were 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 are making parallel regulations (the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022), to these Regulations which will come into force on 14th November 2022.

(8) Section 3ZA is inserted into the Immigration Act 1971 (c. 77) by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

(9) 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 and 2022/344.

(10) 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 and 2022/344.

- (c) regulation 2(4)(zzc) of the State Pension Credit Regulations 2002(11);
- (d) regulation 10(3B)(zzc) of the Housing Benefit Regulations 2006(12);
- (e) regulation 10(4A)(zzc) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(13);
- (f) regulation 70(4)(zzc) of the Employment and Support Allowance Regulations 2008(14); and
- (g) regulation 9(4)(zc) of the Universal Credit Regulations 2013(15).

PART 3

AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES ONLY

Amendments to disability and carers benefit legislation

- 3.—(1) In the provisions specified in paragraph (2)—
- (a) at the end of paragraph (1)(e), for “or” substitute “; or”;
 - (b) in paragraph (1)(f)—
 - (i) for “or a right” substitute “, a right”;
 - (ii) after “1971” insert “or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,”
- (2) Those provisions are—
- (a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976(16);
 - (b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991(17);
 - (c) regulation 2C of the Social Security (Disability Living Allowance) Regulations 1991(18); and
 - (d) regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013(19).

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- (11) 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 and 2022/344.
- (12) 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 and 2022/344.
- (13) 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 and 2022/344.
- (14) 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 and 2022/344.
- (15) S.I. 2013/376. Relevant amendments are made by S.I. 2013/1508, 2020/683 and 1309, 2021/1034 and 2022/344.
- (16) S.I. 1976/409. Regulation 9C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.I. 2022/344.
- (17) S.I. 1991/2740. Regulation 2C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.I. 2022/344.
- (18) S.I. 1991/2890. Regulation 2C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.I. 2022/344.
- (19) S.I. 2013/377. Regulation 23A is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.I. 2022/344.

PART 4

AMENDMENTS TO THE SOCIAL SECURITY (HABITUAL RESIDENCE AND PAST PRESENCE) (AMENDMENT) REGULATIONS 2022

4. In the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022~~(20)~~—

- (a) in regulation 2(2), for “paragraph (zzb)” substitute “sub-paragraph (zzb)”;
- (b) in regulation 3(2), for “paragraph (zb)” substitute “sub-paragraph (zb)”.

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

23rd September 2022

Victoria Prentis
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

Amendments made by the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022 (S.I. 2022/344) (“the principal Regulations”) enable certain persons arriving from the Ukraine to access income-related benefits upon arrival in Great Britain and disability and carers benefits upon arrival in England and Wales, provided they meet the other relevant entitlement conditions.

These Regulations make further amendments so that persons who do not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of the Immigration Act 1971 (c. 77) but who would not fall within the categories already listed in the principal Regulations, notably Irish citizens, may access income-related benefits upon arrival in Great Britain from Ukraine (see Part 2) and disability and carers benefits upon arrival in England and Wales from Ukraine (see Part 3, in particular regulation 3(1)(b) and (2)).

Part 4 makes technical amendments to the principal Regulations and regulation 3(1)(a) makes a technical amendment to the provisions mentioned in regulation 3(2) correcting an error in the principal Regulations.

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.