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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 217**

**The Personal Independence Payment  
Regulations (Northern Ireland) 2016**

**PART 4**

**Residence and presence conditions**

**Conditions relating to residence and presence in Northern Ireland**

**16.** Subject to the following provisions of this Part, the prescribed conditions for the purposes of Article 82(3) as to residence and presence in Northern Ireland are that on any day for which C claims personal independence payment C—

- (a) is present in Northern Ireland;
- (b) has been present in Northern Ireland for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day;
- (c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and
- (d) is a person—
  - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>(1)</sup>, or
  - (ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000<sup>(2)</sup>, section 115 of that Act does not apply for the purpose of personal independence payment.

**Absence from Northern Ireland**

**17.—**(1) Where C is temporarily absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b) for the first 13 weeks of absence.

(2) C is temporarily absent if, at the beginning of the period of absence, C's absence is unlikely to exceed 52 weeks.

**Absence from Northern Ireland to receive medical treatment**

**18.—**(1) Where C is temporarily absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b) for the first 26 weeks of that absence, where—

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(1) 1999 c. 33; section 115 was amended by paragraph 42 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015. There are other amendments not relevant to these Regulations

(2) S.R. 2000 No. 71; regulation 2 was amended by paragraph 1(s) of the Schedule to S.R. 2002 No. 323, regulation 6 of S.R. 2003 No. 421, regulation 23(3) of S.R. 2008 No. 286, regulation 9(2) of S.I. 2008/3108 and regulation 3(5) of S.R. 2010 No. 6 and is amended by regulation 22(3) of S.R. 2016 No. 228

- (a) C's absence is solely in connection with arrangements made for the medical treatment of C for a disease or bodily or mental disablement which commenced before C left Northern Ireland; and
  - (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
    - (i) outside Northern Ireland,
    - (ii) during the period whilst C is temporarily absent from Northern Ireland, and
    - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (2) In this regulation, “temporarily absent” has the same meaning as in regulation 17(2).

### **Absence from Northern Ireland in special cases**

**19.**—(1) Where C is absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b), where—

- (a) C is abroad in the capacity of—
  - (i) a member of Her Majesty's forces,
  - (ii) an aircraft worker, or
  - (iii) a mariner;
- (b) C is in employment prescribed for the purposes of section 120 of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup> (employment at sea (continental shelf operations)) in connection with continental shelf operations; or
- (c) C is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

(2) In this regulation and regulation 20 “a member of Her Majesty's forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006<sup>(4)</sup>, other than a person who is specified in Schedule 2, who is—

- (a) over the age of 16; and
- (b) not absent on desertion.

(3) In this regulation—

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty's forces;

“mariner” means a person who is in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

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(3) 1992 c.4; section 120 was amended by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 26 of Schedule 3 and paragraph 8 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and section 12 of the National Insurance Contributions Act 2014 (c. 7)

(4) 2006 c. 52

- (a) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel; and
  - (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,
- but does not include a person who is in employment as a member of Her Majesty's forces.

#### **Serving members of Her Majesty's forces and their family members – further provision**

**20.** C is treated as habitually resident in Northern Ireland for the purposes of regulation 16(c) where—

- (a) C is resident outside Northern Ireland in the capacity as a member of Her Majesty's forces; or
- (b) C is living with a person mentioned in paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

#### **Terminal illness**

**21.** Where C is terminally ill and makes a claim for personal independence payment expressly on that ground, regulation 16 applies as if paragraph (b) were omitted.

#### **Persons residing in Northern Ireland to whom a relevant EU Regulation applies**

**22.** Regulation 16(b) does not apply in relation to a claim for personal independence payment where on any day—

- (a) C is habitually resident in Northern Ireland;
- (b) a relevant EU Regulation<sup>(5)</sup> applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

#### **Persons residing in an EEA state<sup>F1</sup> ... or in Switzerland to whom a relevant EU Regulation applies**

**23.** Regulation 16(a) to (c) does not apply in relation to entitlement to the daily living component of personal independence payment where on any day—

- (a) C is habitually resident in—
  - (i) an EEA state<sup>F2</sup>..., or
  - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

#### **Textual Amendments**

- F1** Words in [reg. 23](#) heading omitted (31.12.2020) by virtue of [The Social Security \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/129\)](#), [reg. 1\(2\)](#), [Sch. para. 11\(2\)\(a\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

(5) See Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015 for the meaning of "relevant EU Regulation"

- F2** Words in reg. 23(a)(i) omitted (31.12.2020) by virtue of The Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/129), reg. 1(2), **Sch. para. 11(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

### **[<sup>F3</sup>Persons in receipt of an equivalent Scottish benefit who move from Scotland to Northern Ireland**

#### **23ZA.—[**

<sup>F4</sup>(1)] Where regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 36(1) of those Regulations.

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<sup>F5</sup>(2) Where regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 53(1) of those Regulations.]]

#### **Textual Amendments**

- F3** Reg. 23ZA inserted (26.7.2021) by The Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021 (S.I. 2021/804), regs. 1(2), **8(2)**
- F4** Reg. 23ZA(1): reg. 23ZA renumbered as reg. 23ZA(1) (coming into force in accordance with reg. 1(1) of the amending S.I.) by The Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022 (S.I. 2022/335), **reg. 10**
- F5** Reg. 23ZA(2) inserted (coming into force in accordance with reg. 1(1) of the amending S.I.) by The Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022 (S.I. 2022/335), **reg. 10**

### **[<sup>F6</sup><sup>F7</sup>Refugees and certain persons with leave to enter or remain in the United Kingdom]**

**23A.—(1)** Regulation 16(b) does not apply in relation to a claim for personal independence payment where C has—

- (a) been granted refugee status or humanitarian protection under the immigration rules; <sup>F8</sup>...
- (b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

[ leave to enter or remain in the United Kingdom granted under the immigration rules by <sup>F9</sup>(c) virtue of—

- (i) the Afghan Relocations and Assistance Policy; or
- (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);
- (d) been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (c); <sup>F10</sup>...
- (e) leave granted under the Afghan Citizens Resettlement Scheme]; <sup>F11</sup>[<sup>F12</sup>...
- (f) leave to enter or remain in the United Kingdom granted under or outside the immigration rules [<sup>F13</sup>, a right] of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 [<sup>F14</sup>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 Ukraine immediately before 1st January 2022; and

- (ii) left Ukraine in connection with the Russian invasion which took place on 24th February 2022]; [F15F16 ...
- (g) 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 Sudan before 15th April 2023; and
- (ii) left Sudan in connection with the violence which rapidly escalated on 15th April 2023 in Khartoum and across Sudan.]] F17 or
- (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.]
- [
- F18 (1A) Regulation 16(c) shall not apply in relation to a claim for personal independence payment where [F19 any sub-paragraph in paragraph (1)] applies to C.]
- (2) For the purposes of this regulation “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971.]

#### Textual Amendments

- F6** Reg. 23A inserted (16.11.2017) by [The Social Security \(Miscellaneous Amendments No. 2\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/218\)](#), regs. 1(1), **15**
- F7** Reg. 23A heading substituted (25.9.2021) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/269\)](#), regs. 1, **4(2)(4)**
- F8** Word in reg. 23A(1)(a) omitted (25.9.2021) by virtue of [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/269\)](#), regs. 1, **4(3)(a)(4)**
- F9** Reg. 23A(1)(c)-(e) added (25.9.2021) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/269\)](#), regs. 1, **4(3)(b)(4)**
- F10** Word in reg. 23A(1)(d) omitted (24.3.2022) by virtue of [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2022 \(S.R. 2022/149\)](#), regs. 1, **5(2)(a)**
- F11** Word in reg. 23A(1)(e) omitted (18.5.2023) by virtue of [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2023 \(S.R. 2023/80\)](#), regs. 1, **5(a)**
- F12** Reg. 23A(1)(f) and word added (24.3.2022) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2022 \(S.R. 2022/149\)](#), regs. 1, **5(2)(b)**
- F13** Words in reg. 23A(1)(f) substituted (18.10.2022) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment No. 2\) Regulations \(Northern Ireland\) 2022 \(S.R. 2022/230\)](#), regs. 1, **3(1)(a)(2)(d)**
- F14** Words in reg. 23A(1)(f) inserted (18.10.2022) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment No. 2\) Regulations \(Northern Ireland\) 2022 \(S.R. 2022/230\)](#), regs. 1, **3(1)(b)(2)(d)**
- F15** Reg. 23A(1)(g) and word added (18.5.2023) by [The Social Security \(Habitual Residence and Past Presence\) \(Amendment\) Regulations \(Northern Ireland\) 2023 \(S.R. 2023/80\)](#), regs. 1, **5(b)**

- F16** Word in reg. 23A(1)(f) omitted (28.10.2023) by virtue of The Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 (S.R. 2023/184), regs. 1(1), **11(a)**
- F17** Reg. 23A(1)(h) and word inserted (28.10.2023) by The Social Security (Habitual Residence and Past Presence, and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 (S.R. 2023/184), regs. 1(1), **11(b)**
- F18** Reg. 23A(1A) inserted (25.9.2021) by The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021/269), regs. 1, **4(8)**
- F19** Words in reg. 23A(1A) substituted (24.3.2022) by The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/149), regs. 1, **5(3)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Personal Independence Payment Regulations (Northern Ireland) 2016, PART 4.