
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Social Security (Personal Independence Payment) Regulations 2013

PART 4

Residence and presence conditions

Conditions relating to residence and presence in Great Britain

16. Subject to the following provisions of this Part, the prescribed conditions for the purposes of section 77(3) of the Act as to residence and presence in Great Britain are that on any day for which C claims personal independence payment C —

- (a) is present in Great Britain;
- (b) has been present in Great Britain 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⁽¹⁾; or
 - (ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000⁽²⁾, section 115 of that Act does not apply for the purpose of personal independence payment.

Absence from Great Britain

17.—(1) Where C is temporarily absent from Great Britain, C is treated as present in Great Britain 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 Great Britain to receive medical treatment

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

- (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 Great Britain; and

(1) 1999 c.33. Section 115 was amended by the Act, Schedule 9, paragraph 44. There are other amendments not relevant to these Regulations.

(2) Regulation 2 was amended by S.I. 2013/XXXX. There are other amendments not relevant to these Regulations.

- (b) the arrangements referred to in paragraph (1)(a) relate to medical treatment –
 - (i) outside Great Britain;
 - (ii) during the period whilst C is temporarily absent from Great Britain; 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 Great Britain in special cases

19.—(1) Where C is absent from Great Britain, C is treated as present in Great Britain 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; or
- (b) C is in employment prescribed for the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(3) in connection with continental shelf operations; or
- (c) C is living with a person mentioned in 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 in 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(4), 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 –

- (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,

(3) 1992 c.4. Section 120(2) was amended by the Social Security Act 1998, section 86(1) and Schedule 7, paragraph 70, the Petroleum Act 1998 (c.17), Schedule 4, paragraph 30 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 26 and Schedule 7, paragraph 8.

(4) 2006 c.52. There are amendments to section 374 not relevant to these Regulations.

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 Great Britain for the purposes of regulation 16(c) where —

- (a) C is resident outside Great Britain in the capacity of 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 Great Britain 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 Great Britain;
- (b) a relevant EU Regulation⁽⁵⁾ applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

Persons residing in an EEA state other than the United Kingdom 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 other than the United Kingdom; 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.

(5) See section 84(2) of the Act for the meaning of 'relevant EU Regulation'.