EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (HABITUAL RESIDENCE, PAST PRESENCE AND TEMPORARY ABSENCE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2025

S.R. 2025 No. 136

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland (NI) Assembly.

1.2 The Statutory Rule is made under sections 64(1), 70(4), 71(6), 122(1)(a) and (d), 133(2)(a), (b) and (h) and 171(1), (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Article 36(2) and paragraph 11 of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995, sections 1(5), 17(2)(a) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002, section 25(2) and paragraphs 5 and 6 of Schedule 2 to the Welfare Reform Act (Northern Ireland) 2007 and Articles 9(5)(a) and (b), 48(1) and (2), 82(3), 97(1) and 99(1) of the Welfare Reform (Northern Ireland) Order 2015 and is subject to the negative resolution procedure.

2. Purpose

2.1 This Statutory Rule provides for exemptions from the habitual residence and past presence tests for income-related and disability and carer benefits for certain persons who

- have left a country or territory that the United Kingdom (UK) Government has either advised British nationals to leave or has evacuated British nationals from or
- hold an immigration status which enables them to travel to the UK under a safe and legal humanitarian immigration route.

This enables these persons to access income-related, disability, and carer benefits quickly after arriving in Northern Ireland.

2.2 This Rule also extends the permitted period of temporary absence from Northern Ireland for certain benefits to a maximum of 26 weeks (6 months for Universal Credit (UC)) for persons who have travelled to a country or territory that the UK Government has subsequently advised British nationals to leave or from which the Government has arranged the evacuation of British nationals. This enables benefit claimants who are unable to return to Northern Ireland at the time they had planned to retain entitlement for a limited time while they make efforts to return.

3. Background

3.1 In response to a crisis overseas, the UK Government may advise British nationals to leave an affected country or territory, arrange the evacuation of British nationals from that country or territory, grant affected foreign nationals immigration permission under a "safe and legal humanitarian immigration route"([1]), or a combination of these actions. Persons affected by such emergencies may require additional support from the Department as part of the UK Government's broader response. Previously, the Department has laid urgent legislation following each crisis to enable affected persons to access this additional support. This legislation introduces generalised provisions that enable the Department to provide the necessary support swiftly and without further urgent legislation each time a comparable crisis occurs in future.

3.2 These generalised provisions will apply in all future situations that meet the criteria and will ensure that those evacuated from Israel and the Occupied Palestinian Territories[(2)] between 23 and 29 June 2025 by the UK Government can benefit from the provisions, if they are eligible. Additionally the UK Government previously arranged the evacuation of British nationals from Niger on 1 August 2023 following the coup in that country and advised British nationals to leave South Sudan on 27 March 2025 due to armed conflict there. Persons in scope arriving from these countries will also be able to benefit from these generalised provisions.

<u>Exemption from the habitual residence and past presence requirements for persons fleeing to Northern Ireland</u>

3.3 Under the normal rules, a person must be habitually resident in the Common Travel Area before being eligible for income-related benefits such as UC. A person cannot be considered habitually resident until they have resided in the Common Travel Area for an appreciable period of time, normally between one and three months, unless they can resume previous habitual residence. To access disability and carer benefits, a person must additionally have been present in Northern Ireland for a specified number of weeks over a reference period in the recent past. For example, to satisfy the requirements of the past presence test, a person aged 16 or over must have been present in Northen Ireland for a combined total of 104 weeks in the past 156 weeks. These rules apply regardless of a person's nationality.

3.4 These requirements prevent persons from accessing benefits immediately on arrival if they have not lived here recently. It is expected that, in general, persons

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(1) The Government published a list of the current safe and legal humanitarian immigration routes at https://www.gov.uk/government/publications/safe-and-legal-routes/report-on-safe-and-legal-routes-section-61-illegal-migration-act-2023-accessible under the requirements of section 61 of the Illegal Migration Act 2023 (https://www.legislation.gov.uk/ukpga/2023/37/section/61). The Afghanistan resettlement routes have since been streamlined into the Afghan Resettlement Programme (https://www.gov.uk/guidance/afghan-resettlement-programme). It should be noted that the description 'safe and legal humanitarian immigration route' in this context is not intended to describe the basis on which permission to enter or stay in the UK is granted for immigration purposes, which are determined by separate immigration legislation, rules, and policy

(2) Throughout this document the Occupied Palestinian Territories should be read as covering the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights

coming to live in the UK should plan how they will maintain and accommodate themselves and their families without the support of the welfare system.

3.5 However, this rationale does not apply to persons who have fled to Northern Ireland from another country or territory in response to the UK Government's advice to British nationals to leave, arranging the evacuation of British nationals and their families, or granting foreign nationals immigration permission under a safe and legal humanitarian immigration route. Such persons have fled quickly, with little time to plan how they will support themselves on arrival. The experience of past crises and the UK Government's responses provide a clear justification for exempting such persons from the normal habitual residence and past presence requirements, enabling them to access social security benefits quickly on arrival in Northern Ireland.

3.6 This legislation therefore adds two categories to the existing lists of persons who are exempt from the habitual residence and past presence requirements for income-related, disability, and carer benefits. First, it adds persons who have fled a country or territory following the UK Government advising British nationals to leave or arranging the evacuation of British nationals and second, foreign nationals who hold an immigration status under a safe and legal humanitarian immigration route.

3.7 These exemptions enable persons in scope to access benefits more quickly than under the normal rules provided they meet all the other entitlement conditions, including not being a person subject to immigration control. As a result, a person can only benefit from the exemptions if they are British, Irish, or a person with a valid UK immigration status that permits recourse to public funds. The legislation does **not** enable persons who are in the UK illegally or whose immigration status prohibits recourse to public funds to access benefits.

3.8 These exemptions to the habitual residence requirements will assist persons in scope who arrive in Northern Ireland within the period of six months of advice being given by the UK Government to leave a country or territory or arranging evacuation proceedings from that country or territory. They are designed to continue until such persons can satisfy the normal requirements for the relevant benefit without the aid of an exemption. This means a person does **not** need to make a benefit claim within six months of either of the activation criteria. A person aged 16 or over arriving in Northern Ireland may need to be present here for up to 104 weeks before they satisfy the past presence requirements for disability and carer benefits. Therefore, the equivalent exemption from the past presence requirements will remain in place for 130 weeks after either of the activation criteria is met.

3.9 The exemption from the habitual residence and past presence requirements for persons who are granted leave under immigration provisions as part of a safe and legal humanitarian immigration route depends on that status and so will end when their status expires, if it is time limited. This is consistent with existing exemptions linked to certain types of immigration status, such as refugee status.

Extension of the permitted period of temporary absence from Northern Ireland for persons unable to return swiftly

3.10 Under the normal benefit rules, a person must be in Northern Ireland to be entitled to certain social security benefits but regulations enable claimants to maintain entitlement during certain periods of temporary absence. The standard permitted absence period is 4 weeks in income-related benefits (1 month for UC) and 13 weeks in disability benefits, but longer periods apply in special circumstances set out in regulations. If a benefit claimant remains outside Northern Ireland for longer than the permitted temporary absence period, their entitlement to the benefit ends.

3.11 Claimants from Northern Ireland may be temporarily visiting another country or territory when the UK Government advises British nationals to leave that country or territory or arranges the evacuation of British nationals. However, they may be unable to return to their home in Northern Ireland quickly because the crisis has caused a reduction in transport capacity out of the country or territory or made it difficult for the claimant to reach an evacuation point. Under the normal rules the claimant's benefit entitlement would end if they could not return to Northern Ireland within the permitted temporary absence period as planned.

3.12 This legislation therefore introduces provisions to extend the permitted absence period up to 26 weeks (6 months for UC) if a claimant is unable to return to Northern Ireland following advice from the UK Government to leave a country or territory or the evacuation of British nationals from that country or territory is arranged. This reduces the risk of a claimant's entitlement ending at a time when they already face the exceptional and difficult circumstances that would cause the UK Government to issue this advice or to arrange evacuations. Limiting the maximum extended permitted absence period in these circumstances to 26 weeks (6 months for UC) provides claimants with additional time to leave a country or territory affected by a crisis whilst allowing them to satisfy the normal requirement to be in Northern Ireland.

3.13 A claimant will not be able to benefit from the extended permitted absence period if they travel to a country or territory after the UK Government has advised British nationals to leave it. A claimant can only continue to benefit from the extended permitted absence period if the relevant Decision Maker is satisfied that it would be unreasonable to expect the claimant to return. For example, if a claimant does not return to Northern Ireland when transport routes have reopened, they would no longer be covered by these provisions and their entitlement would end.

3.14 It should be noted that for income-related and contributory benefits, a person cannot be considered temporarily absent unless they were entitled to the relevant benefit before they left Northern Ireland. However, in disability and carer benefits this is not a requirement. This is to enable periods of temporary absence to be considered as periods of presence in Northern Ireland when assessing if a claimant meets the past presence requirements, whether these periods occurred before or after the person started claiming benefit. For this reason, the legislation will affect how the Department assesses new as well as existing disability benefit claims.

3.15 This legislation does not change the temporary absence rules for Carer's Allowance. This is because under existing rules if the claimant is stranded overseas with the person they care for, the benefit would continue, provided that person continues to receive a qualifying disability benefit. Therefore, in this situation the extended permitted periods of temporary absence this legislation introduces for disability benefits would also apply to the Carer's Allowance claimant without any change to the Carer's Allowance regulations. Continuing to pay Carer's Allowance for long periods when the claimant is stranded overseas separately to the person they care for (or the reverse) could undermine the purpose of this benefit and may have a negative effect on the welfare of that person. Therefore for this reason also, this legislation does not introduce any changes to the existing temporary absence rules for Carer's Allowance.

3.16 Since 2021, the Department has made urgent legislation to provide for exemptions from the habitual residence and past presence requirements in response to

- the collapse of the Afghan government which took place on 15 August 2021([3])
- the Russian invasion of Ukraine which took place on 24 February 2022([4])
- the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan([5]) and
- the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon following the attack.([6]).

3.17 In response to each of these emergencies, the UK Government advised British nationals to leave the affected places, arranged the evacuation of British nationals, established humanitarian immigration routes for affected foreign nationals, or took a combination of these actions.

3.18 The legislation in response to the crisis in Afghanistan (2021) exempted persons arriving under the Afghan Citizens Resettlement Scheme[7] and Afghan Relocations and Assistance Policy[8] from the habitual residence and past presence requirements. This ensured such persons could access benefits on the same terms as refugees, who are also exempt from these requirements. That legislation additionally exempted other persons arriving from Afghanistan from the habitual residence requirements only. The legislation in response to the invasion of Ukraine (2022) exempted persons in scope arriving from Ukraine from both the habitual residence and past presence requirements. This ensured parity between arriving British and Irish nationals and foreign nationals arriving under the Ukraine Family Scheme[9] and Homes for Ukraine Sponsorship Scheme[10], which therefore did not need to be covered specifically in the legislation.

(**3**) The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021 No. 269)
(**4**) The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022 No. 149); The Social Security (Habitual Residence and Past Presence) (Amendment No. 2) Regulations (Northen Ireland) 2022 (S.R. 200 No. 230)
(**5**) The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations (Northen Ireland) 2023 (S.R. 2023 No. 80)
(**6**) The Social Security (Habitual Residence, Past Presence, and Capital Disregards) (Amendment) Regulations (Northern Ireland 2023 (S.R. 2023 No. 184)
7 https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme
8 https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance
9 https://assets.publishing.service.gov.uk/media/65ccc3c21d9395001294665e/Ukraine+Family+Scheme+Guidance.pdf
10 https://assets.publishing.service.gov.uk/media/67daee79dd55380604d70ab3/Homes+for+Ukraine+Sponsorship+Scheme__1_.pdf

3.19 In each case, the UK Government advised British nationals to leave a country or territory, arranged the evacuation of British nationals, or established a new humanitarian immigration route. The Department acted quickly to make urgent legislation. These Regulations mitigate the risk the Department will need to make further urgent legislation to respond to similar situations that may arise in the future by generalising the policy approach implemented through individualised legislation in the past.

3.20 Previous legislation providing persons fleeing Israel and the Occupied Palestinian Territories with exemptions from the habitual residence and past presence requirements only covers persons who were residing in Israel and the Occupied Palestinian Territories immediately before 7 October 2023. Therefore, persons arriving in Northern Ireland as a result of the UK Government's evacuation operation from 23 June 2025 would only be covered by existing provisions if they were residing in Israel and the Occupied Palestinian Territories immediately before 7 October 2023. These regulations will ensure that persons evacuated from Israel and the Occupied Palestinian Territories from 23 June 2025 are exempt from the habitual residence and past presence requirements.

3.21 This Rule amends the following regulations to add two categories (set out in paragraph 2.1) to the lists of persons exempt from the habitual residence requirements:

- State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No. 28)
- Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)
- Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216)

The following regulations are amended by this Rule to add the same two categories to the lists of persons exempt from the habitual residence and past presence requirements:

- Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976 (S.R. 1976 No. 99)
- Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 20)
- Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 32)
- Personal Independence Payment Regulations (Northern Ireland) 2016 (S.R. 2016 No. 217)

This Rule also amends the following regulations to add provisions permitting temporary absences of up to 26 weeks (6 months for UC) in specific circumstances (set out in paragraph 2.2):

- Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)

- Jobseekers Allowance Regulations (Northern Ireland) 1996 (S.R. 1996 No. 198)
- State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No. 28)
- Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)
- Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280)
- Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216)
- Jobseekers Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 218)
- Employment and Support Allowance Regulations (Northern Ireland) 2016 (S.R 2016 No. 219)
- Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 20)
- Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 32)
- Personal Independence Payment Regulations (Northern Ireland) 2016 (S.R. 2016 No. 217)

4. Consultation

4.1 There is no requirement to consult on these Regulations.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations and has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 These Regulations do not require a Regulatory Impact Assessment as there is no significant impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 There are no significant financial implications for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department is content that these Regulations comply with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Great Britain Regulations are the Social Security (Habitual Residence, Past Presence and Temporary Absence) (Amendment) Regulations 2025 (S.I. 2025/884), which come into force on 18th July 2025.

11. Additional Information

11.1 Not applicable.