

Draft regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2022 No.

SOCIAL SECURITY

**The Social Security (Residence Requirements) (Ukraine)
(Scotland) Regulations 2022**

Made - - - - 2022
Coming into force - - 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(a), sections 80 and 113(1) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992(b), sections 64, 70 and 71 of the Social Security Contributions and Benefits Act 1992(c), section 77 of the Welfare Reform Act 2012(d), sections

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- (a) 1988 c.7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c.11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) as read with sections 27 and 32 of the 2016 Act.
- (b) 1992 c.14. Section 80 and paragraph 1 of schedule 2 were amended by paragraph 176 of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39). There are other amendments to section 80 and amendments to section 113(1) that are not relevant to these Regulations. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (c) 1992 c.4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 as read with section 22(2) and section 32 of the 2016 Act. Section 22(2) of the 2016 Act inserted exceptions into the social security reservation in Head F1 of Part 2 of Schedule 5 of the Scotland Act 1998 relating to carers’ and disability benefits. Section 22(2) was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. Section 32 was brought into force on 17 September 2016 by S.I. 2016/759. The transitional arrangements in respect of carers’ benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9) on 3 September 2018 (see S.S.I. 2018/250). The transitional arrangements in respect of disability benefits ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 22(2) and 32 are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State.
- (d) 2012 c.5. The functions of the Secretary of State under sections 77 and 94 of the Welfare Reform Act 2012, as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. Legislative competence for disability benefits was devolved to the Scottish Parliament by section 22(2) of the 2016 Act, which inserted exceptions into the social security reservation in Head F1 of Part 2 of Schedule 5 of the Scotland Act 1998. Section 22(2) of the 2016 Act was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of section 53 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 benefits, including personal independence payments, ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 77 and 94 are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. Under section 172(1) of the Social Security Administration Act 1992, the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the Welfare Reform Act 2012. As a result of section 33(1) of the 2016 Act, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.

28, 31(2) and 32(2) of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022.

(2) Subject to paragraph (3), these Regulations come into force as soon as they are made.

(3) Regulation 10 comes into force on 1 April 2022.

(4) These Regulations extend to Scotland only.

Amendment of disability and carers benefit legislation

2.—(1) The provisions specified in paragraph (4) are amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (d), omit “or”,

(b) after sub-paragraph (e) insert—

“or

(f) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971(b), where the person—

(i) was residing in Ukraine immediately before 1 January 2022, and

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022”.

(3) In paragraph (1A) for “paragraph (1)(c), (d) or (e)” substitute “any sub-paragraph in paragraph (1)”.

(4) The provisions mentioned in paragraph (1) are—

(a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976 (refugees and certain persons with leave to enter and remain in the United Kingdom)(c),

(b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991 (refugees and certain persons with leave to enter and remain in the United Kingdom)(d), and

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

(a) 2018 asp 9. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(c) S.I. 1976/409. Regulation 9C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320.

(d) S.I. 1991/2740. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320.

(e) S.I. 1991/2890. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320.

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

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

(2) In paragraph (1)—

(a) at the end of sub-paragraph (d), omit “or”,

(b) after sub-paragraph (e) insert—

“or

(f) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971(b), where C—

(i) was residing in Ukraine immediately before 1 January 2022, and

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022”,

(c) in paragraph (1A), for “paragraph (1)(c), (d) or (e)” substitute “any sub-paragraph in paragraph (1)”.

Amendment of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018

4.—(1) The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(c) are amended as follows.

(2) In paragraph 4 of schedule 2 (residence requirement – pregnancy and baby grant)—

(a) after sub-paragraph (2)(ab) insert—

“(ac) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(d), or

(ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(e),” and

(b) in paragraph (c) of sub-paragraph (2), omit the words from “where that leave is” to the end of that paragraph.

(3) In paragraph 3 of schedule 3 (residence requirement – early learning grant)—

(a) after sub-paragraph (2)(ab) insert—

“(ac) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(f), or

(ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(g),” and

(b) in paragraph (c) of sub-paragraph (2), omit the words from “where that leave is” to the end of that paragraph.

(a) S.I. 2013/377. Regulation 23A was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320.

(b) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(c) S.S.I. 2018/370.

(d) 1971 c.77.

(e) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(f) 1971 c.77.

(g) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(4) In paragraph 4 of schedule 4 (residence requirement – school-age grant)—

(a) after sub-paragraph (2)(ab) insert—

“(ac) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(a), or

(ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(b),”, and

(b) in paragraph (c) of sub-paragraph (2), omit the words from “where that leave is” to the end of that paragraph.

Amendment of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

5.—(1) Regulation 9 of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (residence requirement)(c) is amended as follows.

(2) After paragraph (2)(ab) insert—

“(ac) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(d), or

(ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(e),”.

(3) In paragraph 2(c), omit the words from “where that leave is” to the end of that paragraph.

Amendment of the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019

6.—(1) Regulation 8 of the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 (conditions relating to residence)(f) is amended as follows.

(2) After paragraph (2)(aa) insert—

“(ab) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971(g), or

(ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act(h),”.

(3) In paragraph (2)(b), omit the words from “where that leave is” to the end of that paragraph.

(a) 1971 c.77.

(b) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(c) S.S.I. 2019/193.

(d) 1971 c.77.

(e) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(f) S.S.I. 2019/324.

(g) 1971 c.77.

(h) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021

7.—(1) Regulation 5 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(a)(residence and presence conditions) is amended as follows.

(2) In paragraph (10A)—

(a) at the end of sub-paragraph (d), omit “or”, and

(b) after sub-paragraph (e) insert—

“or

(f) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971(b), where the individual—

(i) was residing in Ukraine immediately before 1 January 2022, and

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022”.

Amendment of the Disability Assistance for Working Age People (Scotland) Regulations 2022

8.—(1) Regulation 15 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (residence and presence conditions)(c) is amended as follows.

(2) In paragraph (7) —

(a) at the end of sub-paragraph (b), omit “or”, and

(b) after sub-paragraph (c) insert—

“or

(d) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971(d), where the individual—

(i) was residing in Ukraine immediately before 1 January 2022, and

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022”.

Amendment of the Council Tax Reduction (Scotland) Regulations 2012

9. In regulation 16(5) of the Council Tax Reduction (Scotland) Regulations 2012 (persons not entitled to council tax reduction: persons treated as not being in Great Britain)(e)—

(a) in sub-paragraph (e), omit the words from “where that leave is” to the end of that sub-paragraph,

(b) at the end of sub-paragraph (j), omit “or”,

(c) in sub-paragraph (k) for “(e)(iv)” substitute “(e)”,

(d) after sub-paragraph (k) insert—

“(l) a person in Great Britain who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

(a) S.S.I. 2021/174.

(b) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(c) S.S.I. 2022/54.

(d) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

(e) S.S.I. 2012/303, relevantly amended by S.S.I. 2015/46 and S.S.I. 2021/337.

- (i) has been granted leave in accordance with the rules referred to in sub-paragraph (e), or
- (ii) has a right of abode in the United Kingdom, within the meaning of section 2 of the Immigration Act 1971(a) ”.

Amendment of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

10. In regulation 16(5) of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (persons not entitled to council tax reduction: persons treated as not being in Great Britain)(b)—

- (a) in sub-paragraph (e), omit the words from “where that leave is” to the end of that sub-paragraph,
- (b) at the end of sub-paragraph (j), omit “or”,
- (c) in sub-paragraph (k) for “(e)(iv)” substitute “(e)”,
- (d) after sub-paragraph (k) insert—
 - “(l) a person in Great Britain who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—
 - (i) has been granted leave in accordance with the rules referred to in sub-paragraph (e), or
 - (ii) has a right of abode in the United Kingdom, within the meaning of section 2 of the Immigration Act 1971(c) ”.

Amendment of the Council Tax Reduction (Scotland) Regulations 2021

11. In regulation 16(6) of the Council Tax Reduction (Scotland) Regulations 2021 (persons not entitled to council tax reduction: persons treated as not being in Great Britain)(d)—

- (a) in sub-paragraph (f), omit the words from “where that leave is” to the end of that sub-paragraph,
- (b) at the end of sub-paragraph (k), omit “or”,
- (c) in sub-paragraph (l) for “(f)(iv)” substitute “(f)”,
- (d) after sub-paragraph (l) insert—
 - “(m) a person in Great Britain who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—
 - (i) has been granted leave in accordance with the immigration rules, or
 - (ii) has a right of abode in the United Kingdom, within the meaning of section 2 of the Immigration Act 1971(e) ”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,

(a) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.
 (b) S.S.I. 2012/319, relevantly amended by S.S.I. 2015/46 and S.S.I. 2021/337.
 (c) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.
 (d) S.S.I. 2021/249, relevantly amended by S.S.I. 2022/52.
 (e) 1971 c.77. Section 2 was amended by section 39(2) of the British Nationality Act 1981 (c.61) and S.I. 2019/745.

Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ensure the social security assistance entitlement of certain persons arriving in Scotland from Ukraine.

Regulations 2, 3, 7 and 8 amend 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), the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377), the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174) and the Disability Assistance for Working Age People (Scotland) Regulation 2022 (S.S.I. 2022/54) respectively, to insert a new category of person into the list of persons who are exempt from having to satisfy the past presence test and habitual residence test. The new category is a person with leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom, where they were residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion which took place on 24 February 2022. Regulations 2 and 3 also amend the aforementioned legislation, excluding the latter two instruments, to exempt refugees and individuals with humanitarian protection from having to satisfy the habitual residence test.

Regulations 4, 5 and 6 amend the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (S.S.I. 2018/370), the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (S.S.I. 2019/193) and the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 (S.S.I. 2019/324) respectively, to insert a new category of person into the list of persons who are exempt from having to satisfy the habitual residence test. The new category is a person with leave to enter or remain in the United Kingdom granted under or outside the immigration rules, or a right of abode in the United Kingdom, where they were residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion which took place on 24 February 2022. These regulations also make amendments so as to provide that any person who has leave outside the immigration rules is to be treated as exempted from having to satisfy the habitual residence test.

Regulations 9, 10 and 11 amend the Council Tax Reduction (Scotland) Regulations 2012 (“the 2012 Working Age Regulations”), the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (“the Pension Age Regulations”) and the Council Tax Reduction (Scotland) Regulations 2021 (“the 2021 Working Age Regulations”) by extending the classes of persons who do not need to meet residence criteria in the United Kingdom in order to qualify for a council tax reduction.

Regulation 9 inserts new categories into the list of persons who are not to be treated as not being in Great Britain for the purpose of the residence criteria set out in regulation 16 of the 2012 Working Age Regulations. The new categories are certain persons who were residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion which took place on 24 February 2022. The persons must have either been granted leave to remain under the immigration rules made under section 3(2) of the Immigration Act 1971, or have a right of abode in the United Kingdom. The effect of the change at regulation 9(a) is that the general exemption from the need to satisfy the requirement to be in Great Britain will apply to any person who has been granted leave to remain outside the immigration rules, not just people who have been granted such leave in certain specified circumstances. Regulation 9(c) makes a change consequential on the change at regulation 9(a).

Regulation 10 makes similar amendments to regulation 16 of the Pension Age Regulations.

Regulation 11 makes similar amendments to regulation 16 of the 2021 Working Age Regulations.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on business, charities or voluntary bodies is foreseen.