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21 March 2022

Dear Sally,

Emergency legislation required following the introduction of the UK Government's policies to create visa exemptions for people coming from Ukraine.

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

I understand you have been in dialogue with my officials regarding the immediate need for Scottish Ministers to lay emergency legislation to [support people coming from Ukraine](#) in line with the introduction of the UK Government's schemes. I am very grateful for the willingness that you and Commission Members have shown to work with us within these difficult circumstances.

As you are aware, the Department for Work and Pensions are creating emergency legislation to allow categories of people coming to the UK from Ukraine to have leave to remain for up to 3 years, and during that time, have immediate access to public funds upon arrival in the UK.

Although being granted leave to remain upon arrival, without further legislative change, the incoming citizens would still be required to meet the Habitual Residence and (where relevant) Past Presence tests before being able to access benefits or services. DWP are therefore legislating at speed to allow these citizens to be exempt from these requirements to satisfy the eligibility tests, in order that they can receive access to DWP benefits and services immediately.

In line with relevant Agency Agreements, and in order to ensure individuals arriving in Scotland can also receive devolved assistance, Scottish Ministers propose to make mirroring modifications to social security legislation. These amendments are being made to both UK benefits delivered under Agency Agreement in Scotland and to regulations made under the Social Security (Scotland) Act 2018.

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DWP intend their draft regulations to come into force on Tuesday 22 March and, to ensure parity for clients in accessing benefits in Scotland for which Scottish Ministers have responsibility, we are working towards the same commencement date for the amendments to Scottish legislation.

I would therefore like to submit draft regulations to SCoSS under [section 97\(2\) of the Social Security \(Scotland\) Act 2018](#) which I intend to lay before Parliament on Monday 21 March.

The benefits which are affected and require to be changed as part of our Agency Agreement with DWP are:

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carers Allowance

The benefits which require to be changed in respect of the 2018 Act are:

- Child Disability Payment
- Adult Disability Payment
- Best Start Grants
- Best Start Foods
- Young Carer Grant

I understand that submitting regulations to you for scrutiny today which are to be laid before Parliament on the same day does not provide the Commission any time to undertake its duties to scrutinise and report on the draft regulations before they are laid. I am sure you will appreciate these are exceptional circumstances outwith our control due to the international situation in Ukraine and that we must act quickly.

I am advised that you have already engaged with officials and received a verbal briefing, and I am grateful to you and to fellow Commission members for your cooperation in agreeing to scrutinise the regulations retrospectively. It is important of course that the Commission completes its scrutiny and produce your report in due course.

In laying the regulations and in line with the requirements of the 2018 Act I will set out why I have done so before your report has been published. I will, as discussed with officials, also make clear that I will respond to your report following its publication, including to bring forward further provision where that is necessary to implement recommendations that we accept and to offer an explanation where we do not accept recommendations.

Please find draft regulations attached. I am grateful to SCoSS Members for the helpful and constructive way in which you have engaged with officials, and for your willingness to scrutinise these amendment regulations retrospectively.

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Thank you for your continued co-operation and support.

Best regards,



BEN MACPHERSON

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