



Scottish
Commission
on Social
Security

Scottish Commission on Social Security
c/o Secretariat
Area 1C South (Mail Point 6)
Victoria Quay
Edinburgh
EH6 6QQ

info@socialsecuritycommission.scot
<https://socialsecuritycommission.scot/>

20 September 2022

Ben Macpherson MSP
Minister for Social Security and Local Government
Scottish Government

By email only

Dear Mr Macpherson,

Ukraine amendments added to the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022

Thank you for your letter of 6 September 2022 highlighting the need for Scottish Ministers to address an oversight in the Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (the 'Ukraine Regulations').

The oversight in the Ukraine Regulations was brought to the attention of the Scottish Commission on Social Security (SCoSS) on 10 August 2022. Our original intention had been to address it in our scrutiny report on the Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022¹, however formal referral of the amendment was received after this scrutiny report had been submitted. We, therefore, set out our views on the amendments below.

The Ukraine Regulations remove certain residence-based qualifying conditions to allow individuals coming from Ukraine to the UK to access the benefits system immediately upon arrival in the UK. The provisions cover anyone coming from Ukraine granted leave to enter or remain in the UK and those, such as British citizens, who do not require leave to enter but instead have a 'right of abode' in the UK. Unintentionally Irish citizens were missed. Irish citizens do not have a 'right of abode' but neither do they need leave to enter the UK.

To address the oversight, these further amendments to residence rules for Best Start Grants, Young Carer Grant, Child Disability Payment and Adult Disability Payment now specifically refer to the exemption from immigration requirements for Irish

¹ [The Social Security \(Residence Requirements\) \(Ukraine\) \(Scotland\) Regulations 2022: SCoSS scrutiny report](#)

citizens.² This now meets the policy intention in relation to Irish citizens coming to the UK from Ukraine.

Failing to address this issue could have led to the Scottish Government being considered in violation of Article 14 (read in conjunction with Article 1 of Protocol No. 1) of the European Convention on Human Rights on the grounds of nationality/citizenship³. It is outside the competence of the Scottish Government to make Regulations that are incompatible with the Convention rights (Scotland Act 1998 s57(2))⁴.

The Scottish Government has addressed this oversight by inserting amendments in the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022⁵ which SCoSS has already scrutinised⁶. Given the necessity to address this concern quickly, SCoSS supports the approach to include the amendment in these regulations.

The oversight for Irish citizens came to light in relation to Irish citizens from Northern Ireland who do not also hold British citizenship. People from Northern Ireland have the right to choose Irish or British citizenship or both.⁷ The Ukraine Regulations as laid cover those with British citizenship and those who hold both Irish and British citizenships but not those from Northern Ireland holding just Irish citizenship. However, prompted by SCoSS in initial discussions with officials, the policy intention was clarified that all Irish citizens should be covered not only those from Northern Ireland. This is consistent with the approach in social security residence tests more generally.⁸

We hope you find this letter helpful and we welcome your feedback.

Yours sincerely,



Dr Mark Simpson
Acting Co-Chair
Scottish Commission on Social Security



Judith Paterson
Acting Co-Chair
Scottish Commission on Social Security

CC: Cabinet Secretary for Social Justice, Housing and Local Government

² [Immigration Act 1971](#)

³ [European Convention on Human Rights](#)

⁴ [Scotland Act 1998](#)

⁵ [Extracted Ukraine amendments to be accommodated into the Social Security \(Miscellaneous Amendment\) \(Scotland\) Regulations 2022](#)

⁶ [Best Start Foods, Best Start Grants and Scottish Child Payment \(Miscellaneous Amendments\) Regulations 2022: SCoSS scrutiny report](#)

⁷ By virtue of the [Belfast Agreement 1998](#)

⁸ For example, Irish citizens have a 'right to reside' satisfying a common test in social security benefits.