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10 May 2023

Dear Judith and Mark

The Social Security (Residence Requirements) (Sudan) (Scotland) Regulations 2023

I am writing to inform SCoSS of an urgent need to implement new, expedited draft regulations to support people from Sudan who are arriving in Scotland as a result of the escalating violence in the country. I understand my officials have already been in contact regarding the immediate need for Scottish Ministers to lay emergency legislation to support people coming from Sudan. I am very grateful for the willingness that you have shown to work with us within these difficult circumstances.

As you are aware, the Department for Work and Pensions are laying emergency legislation to exempt affected arriving individuals from both the Habitual Residence Test and the Past Presence Test for benefits where those tests are applied, in order that they can receive access to DWP benefits and services immediately.

In order to ensure individuals arriving in Scotland can also receive devolved assistance, I 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 devolved legislation including the Social Security (Scotland) Act 2018.

DWP intend their draft regulations to come into force on Monday 15 May. To ensure as close parity as possible for clients in accessing benefits in Scotland for which Scottish Ministers have responsibility, I am proposing a commencement date of 17 May.

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 Wednesday 10 May.

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 situation in Sudan and that we must act quickly.

I am grateful to SCoSS 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 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.

The statutory section 97(9)(b) statement is attached to this letter.

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

Thank you for your continued co-operation and support.



SHIRLEY-ANNE SOMERVILLE