

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

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

Made - - - - *2023*

Coming into force in accordance with regulation 1(1)

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, 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) (“the Scotland Act”) 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.
- (c) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer’s benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 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 relating to carer’s 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 carer’s 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 Ministers 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. Section 22(2) of the 2016 Act was brought into force 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. Section 32 of the 2016 Act 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(2), 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) (Sudan) (Scotland) Regulations 2023 and come into force as soon as they are made.

(2) These Regulations extend to Scotland only.

Amendment of disability and carer’s benefit legislation

2.—(1) The provisions specified in paragraph (3) are amended as follows.

(2) In paragraph (1)—

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

(b) after sub-paragraph (f) insert—

“, or

(g) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the person—

(i) was residing in Sudan before 15 April 2023, and

(ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan”.

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

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

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

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

(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) S.I. 1976/409. Regulation 9C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

(c) S.I. 1991/2740. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

(d) S.I. 1991/2890. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

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

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

(2) In paragraph (1)—

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

(b) after sub-paragraph (f) insert—

“, or

(g) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where C—

(i) was residing in Sudan before 15 April 2023, and

(ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan”.

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

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

(2) In paragraph 4 of schedule 2 (residence requirement – pregnancy and baby grant) after sub-paragraph (2)(ac) insert—

“(ad) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

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

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

(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

(3) In paragraph 3 of schedule 3 (residence requirement – early learning grant) after sub-paragraph (2)(ac) insert—

“(ad) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

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

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

(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

(4) In paragraph 4 of schedule 4 (residence requirement – school-age grant) after sub-paragraph (2)(ac) insert—

(a) S.I. 2013/377. Regulation 23A was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

(b) S.S.I. 2018/370, relevantly amended by S.S.I. 2019/110, S.S.I. 2020/399, S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

“(ad) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

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(a) (residence requirement) is amended as follows.

(2) After paragraph (2)(ac) insert—

“(ad) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

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(b) (conditions relating to residence) is amended as follows.

(2) After paragraph (2)(ab) insert—

“(ac) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

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(c) (residence and presence conditions) is amended as follows.

(2) In paragraph (10A)—

- (a) at the end of sub-paragraph (e) omit “or”, and
- (b) after sub-paragraph (f) insert—

(a) S.S.I. 2019/193, amended by S.S.I. 2020/399, S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

(b) S.S.I. 2019/324, amended by S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/336.

(c) S.S.I. 2021/174, amended by S.S.I. 2021/320, S.S.I. 2021/416, S.S.I. 2022/41, S.S.I. 2022/108 and S.S.I. 2022/336.

“, or

- (g) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan”.

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(a) (residence and presence conditions) is amended as follows.

(2) In paragraph (7)—

- (a) at the end of sub-paragraph (c) omit “or”, and
- (b) after sub-paragraph (d) insert—

“, or

- (e) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan”.

Amendment of the Council Tax Reduction (Scotland) Regulations 2021

9.—(1) Regulation 16 of the Council Tax Reduction (Scotland) Regulations 2021(b) (persons not entitled to council tax reduction: persons treated as not being in Great Britain) is amended as follows.

(2) In paragraph (6)—

- (a) at the end of sub-paragraph (l) omit “or”, and
- (b) after sub-paragraph (m) insert—

“, or

- (n) a person in Great Britain who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—
 - (i) has been granted leave in accordance with the rules referred to in sub-paragraph (f), or
 - (ii) has a right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

(a) S.S.I. 2022/54, amended by S.S.I. 2022/108 and S.S.I. 2022/336.

(b) S.S.I. 2021/249, relevantly amended by S.S.I. 2022/52 and S.S.I. 2023/38.

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

10.—(1) Regulation 16 of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012(a) (persons not entitled to council tax reduction: persons treated as not being in Great Britain) is amended as follows.

(2) In paragraph (5)—

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

(b) after sub-paragraph (l) insert—

“, or

(m) a person in Great Britain who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan 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 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh

Date

(a) S.S.I. 2012/319, relevantly amended by S.S.I. 2015/46, S.S.I. 2021/337, S.S.I. 2022/108 and S.S.I. 2023/38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of the social security assistance entitlement of certain persons arriving in Scotland from Sudan.

Regulations 2, 3, 7 and 8 amend the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Attendance Allowance) Regulations 1991, the Social Security (Disability Living Allowance) Regulations 1991, the Social Security (Personal Independence Payment) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Disability Assistance for Working Age People (Scotland) Regulations 2022 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.

Regulations 4, 5 and 6 amend the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018, the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 and the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 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 inserted by regulations 2 to 8 is a person with leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom or an Irish citizen who does not require leave to enter or remain in the United Kingdom, where they were residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.

These Regulations also amend the Council Tax Reduction (Scotland) Regulations 2021 ("the Working Age Regulations") and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 ("the Pension Age Regulations") by extending the categories of persons who do not need to meet residence criteria in the United Kingdom in order to qualify for a council tax reduction. The Working Age Regulations concern council tax reduction for those who have not attained pensionable age or who meet other specified criteria while the Pension Age regulations concern council tax reduction for those who have reached the qualifying age for state pension credit.

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 Working Age Regulations. The new categories are certain persons who were residing in Sudan before 15 April 2023 and left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan. The persons must have been granted leave to remain under the immigration rules made under section 3(2) of the Immigration Act 1971, have a right of abode in the United Kingdom or be an Irish citizen who does not require leave to enter or remain in the United Kingdom.

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