

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 and Presence Requirements)
(Israel, the West Bank, the Gaza Strip, East Jerusalem
and the Golan Heights) (Scotland) Regulations 2023**

*Made - - - - 2023
Coming into force in accordance with regulation 1(2)
and 1(3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13 and 15A of the Social Security Act 1988(1), sections 80 and 113(1) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992(2), sections 64, 70, 71 and 175 of the Social Security Contributions and Benefits Act 1992(3), sections 77 and 94 of the Welfare Reform Act 2012(4), sections 28(2), 31(2) and 32(2) of the Social Security (Scotland) Act 2018(5) (“the 2018 Act”) and all other powers enabling them to do so.

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- (1) 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”). Section 15A was inserted by the Social Security (Consequential Provisions) Act 1992 (c. 6). Sections 13 and 15A of that Act read together with section 175 of the Social Security Contributions and Benefits Act 1992 (c. 4) provide powers for different provision to be made for different cases or classes of cases. 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.
- (2) 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 sections 80 and 113(1) 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.
- (3) 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 sections 22(2) and 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. Accordingly, in so far as the functions under the Social Security Contributions and Benefits Act 1992 (c. 4) are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. Under section 172(1) of the Social Security Administration Act 1992 (c. 5), 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 the provisions of the Social Security Contributions and Benefits Act 1992. 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.
- (4) 2012 c. 5 (“the 2012 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 as read with section 22(2) of the 2016 Act. Section 22(2) inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the Scotland Act. Section 32 of the 2016 Act provides the meaning of “pre-commencement enactment” in this context. 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 SSAC

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers⁽⁶⁾.

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

In accordance with section 97(2) of the 2018 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.

proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the 2012 Act. 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.

- (5) [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.
- (6) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 ([c. 32](#)) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of schedule 11 of that Act.