

POLICY NOTE

THE SOCIAL SECURITY (RESIDENCE REQUIREMENTS) (UKRAINE) (SCOTLAND) REGULATIONS 2022

SSI 2022/108

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by:

- Section 13 of the Social Security Act 1988
- Sections 80 and 113(1), and paragraph 1 of schedule 2, of the Local Government Finance Act 1992
- Sections 64, 70 and 71 of the Social Security Contributions and Benefits Act 1992
- Section 77 of the Welfare Reform Act 2012
- Sections 28, 31 and 32 of the Social Security (Scotland) Act 2018

Purpose of this instrument

In order to support people coming to the UK from Ukraine as a result of the Russian invasion, the UK Government introduced a package of humanitarian support for Ukrainians with the Home Office publishing additional information on how this support will work.

The Home Office has announced the “Ukraine Family Scheme” to allow Ukrainian family members (and certain eligible non-Ukrainian family members) of British citizens and persons settled in the UK, to come to the UK. A second scheme, “Homes for Ukraine”, has been announced by the Department for Levelling Up, Housing and Communities (DLUHC). This will allow individuals, charities, community groups and businesses in the UK to “sponsor” an individual in Ukraine to come to the UK by agreeing to provide accommodation for a minimum period of 6 months.

The Home Office announced individuals arriving in the UK from Ukraine under these schemes will be granted ‘Leave to Enter or Remain’ for 36 months, with the exception of those arriving before the Home Office legislation comes into force who will be granted 36 months leave outside the Immigration Rules (on the basis of the Home Office policy for exceptional leave on compelling compassionate grounds). This leave provides the right to work and recourse to public funds, including access to benefits and services.

The Department for Work and Pensions is introducing regulations to allow those arriving from Ukraine to the UK to meet the residency conditions for social security assistance from day one, meaning they will be eligible subject to all other entitlement conditions being met.

The UK Government’s changes impact Scottish benefits and entitlement conditions, and this instrument has two main aims:

1. To ensure the modification of social security legislation for benefits delivered by the Department for Work and Pensions under Agency Agreement in Scotland and;
2. To make changes to regulations made under the Social Security (Scotland) Act 2018 and

the Social Security Act 1988, and in relation to the Council Tax Reduction Scheme in Scotland.

Doing so will ensure parity of access to forms of assistance for which Scottish Ministers have responsibility with those reserved to the UK Government.

As we found with the emergency Afghanistan regulations in September 2021, any legislative changes in relation to benefit entitlement cuts across council tax legislation. To that end, and for completeness in expediting the process, Social Security and Local Government and Communities directorate officials and the appropriate legal officials have been working to provide respective legislative changes in one instrument.

Policy Objectives

The UK Government intends to have its emergency legislation enacted on 22 March 2022. In order to ensure parity of access to forms of assistance for which Scottish Ministers have responsibility, the Scottish Government intends to mirror the enactment date for this instrument.

This is emergency legislation in response to an international emergency, thus requiring an expedited parliamentary process. To that end, the laying date for this instrument is 21 March 2022 and its coming into force date is 22 March 2022.

This instrument will serve as a “catch-all” instrument to make provision for individuals who come to the UK from Ukraine in connection with the Russian invasion, in respect of the following benefits. It therefore avoids the need for individual instruments for each respective benefit.

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carer’s Allowance
- Child Disability Payment
- Adult Disability Payment
- Best Start Grants
- Best Start Foods
- Young Carer Grant

This instrument will exempt from having to satisfy the habitual residence tests and past presence tests in the listed benefits (as applicable) individuals with leave to enter or remain in the United Kingdom granted under or outside the Immigration Rules, or a right of abode in the United Kingdom, where they were residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion which took place on 24 February 2022. This exemption will therefore apply to individuals including those arriving in the UK under the Ukraine Family Scheme and Homes for Ukraine. These individuals will be able to meet the residency conditions for Scottish devolved assistance from day one, meaning they will be eligible subject to all other entitlement conditions being met.

Note: This instrument also covers the Council Tax Reduction scheme. The persons described above will be exempt from the need to satisfy the usual residence requirements for entitlement to reduction in council tax liability.

For the exemptions to apply, individuals will need to have been resident in Ukraine immediately before 1 January 2022. This reflects the policy intention to assist those coming to Scotland who have had to flee their homes and country of residence as a result of the Russian invasion of Ukraine. This may include individuals who left Ukraine prior to the invasion but at a time when rising tensions with Russia were apparent. It may also include individuals who consider their country of residence to be Ukraine, but who were temporarily absent from the country immediately before 1 January 2022.

Consultation

Scottish Commission on Social Security

Section 97(2) of the Social Security (Scotland) Act 2018 requires Scottish Ministers to inform the Scottish Commission on Social Security (SCoSS) of these proposals in the form of draft regulations. The Scottish Ministers provided draft regulations to SCoSS shortly before laying this draft instrument in compliance with section 97(2).

As the exceptional circumstances require this instrument to be laid as a matter of urgency, it has not been possible to meet SCoSS requirements for the necessary time to scrutinise and publish a report on the regulations.

As such we are laying this draft instrument under section 97(9)(b) of the Act without a report from SCoSS having yet been prepared. The Scottish Ministers will respond to that report when it is published in accordance with section 97(10) of that Act. SCoSS have been informed of the extraordinary circumstances resulting from an international emergency, and are content to scrutinise the regulations retrospectively.

Impact Assessments

Impact Assessments have not been prepared for this instrument given the immediate need to make and lay the instrument.

However, introducing these regulations will have a positive impact on individuals settling in Scotland, who have had to flee their homes and country of residence due to the Russian invasion.

The impact of us **not** introducing these regulations in tandem with DWP would create an inequality between people arriving and settling in Scotland and the rest of the UK, where people in Scotland would be required to satisfy habitual residence and past presence tests which can take up to 6 months, whilst those in the rest of the UK would have access to benefits immediately upon arrival.

Financial Effects

For the reasons set out above, a Business and Regulatory Impact Assessment (BRIA) has not been completed. The Scottish Government has no reason to consider that these amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world.

The Scottish Fiscal Commission is responsible for producing a costing to accompany this legislation but given the unprecedented timescales because of the emergency situation, and the lack of data, they have not produced a costing for the regulation on this occasion. The Commission will consider additional spending as a result of these regulations in its next forecasts published in May.

Scottish Government
Social Security Directorate
21 March 2022