
STATUTORY INSTRUMENTS

2021 No. 1034

SOCIAL SECURITY

The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021

Made - - - - *13th September 2021*
Laid before Parliament *14th September 2021*
Coming into force - - *15th September 2021*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 64(1), 70(4), 71(6), 123(1)(a) and (d), 137(2)(a) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992⁽¹⁾, section 36(2) and (4)(a) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers Act 1995⁽²⁾, section 1(5)(a) of the State Pension Credit Act 2002⁽³⁾, section 25(2), (3) and (5)(a) of, and paragraph 5 of Schedule 2 to, the Welfare Reform Act 2007⁽⁴⁾ and sections 4(5), 42(2) and (3)(a), 77(3), 92(1) and 94(2) and (3)(a) of the Welfare Reform Act 2012⁽⁵⁾.

In respect of the provisions relating to housing benefit, the Secretary of State has not consulted organisations appearing to be representative of the authorities concerned because it appears to the Secretary of State to be inexpedient to do so by reason of the urgency of the matter⁽⁶⁾.

For the same reason, it appears to the Secretary of State to be inexpedient to refer the proposals to make these Regulations to the Social Security Advisory Committee⁽⁷⁾.

(1) 1992 c. 4 (“the Contributions and Benefits Act”). See section 122(1) for the meaning given to “prescribe” and section 137(1) for the meaning given to “prescribed”.
(2) 1995 c. 18. See section 35(1) for the meaning given to “regulations”.
(3) 2002 c. 16. Section 175(3) and (4) of the Contributions and Benefits Act is applied by section 19(1). See section 17(1) for the meanings given to “prescribed” and “regulations”.
(4) 2007 c. 5. See section 24(1) for the meaning given to “regulations”.
(5) 2012 c. 5 (“the 2012 Act”). See sections 40 and 95 for the meaning given to “prescribed”.
(6) See section 176(2)(a) of the Social Security Administration Act 1992 (c. 5).
(7) See section 173(1)(a) and (2) of the Social Security Administration Act 1992.

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 and come into force on 15th September 2021.

(2) Part 2 extends to England and Wales and Scotland⁽⁸⁾.

(3) Part 3 extends to England and Wales only⁽⁹⁾.

PART 2

AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES AND SCOTLAND

Amendment of income-related benefit legislation

2.—(1) The provisions specified in paragraph (4) are amended as follows.

(2) Before sub-paragraph (za) insert—

“(zza) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971⁽¹⁰⁾, where such leave is granted by virtue of—

(i) the Afghan Relocations and Assistance Policy; or

(ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);

(zzb) a person in Great Britain not coming within sub-paragraph (zza) or (h)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021;”.

(3) In sub-paragraph (h)—

(a) at the end of (ii), omit “or”;

(b) after (iii) insert—

“or

(8) The provisions being amended by Part 3 extend to England and Wales and Scotland. This instrument does not reflect a presumption that amendments will have the same application as the provisions amended because the Secretary of State does not have executive competence to exercise functions, as regards Scotland, in relation to the benefits regulations amended by Part 3. The function of making regulations under sections 64(1), 70(4) and 71(6) of the Contributions and Benefits Act is exercisable by the Secretary of State by virtue of section 175(1) of that Act and the function of making regulations under section 77(3) of the 2012 Act is exercisable by the Secretary of State by virtue of section 94(1) of that Act. The functions of the Secretary of State under those provisions, as regards Scotland, transferred to the Scottish Ministers on 1st April 2020.

(9) Legislative competence for disability and carers benefits were transferred to the Scottish Parliament by sections 22(2) and 23(2) of the Scotland Act 2016 (c. 11) (“the 2016 Act”). Sections 22(2) and 23(2) inserted exceptions into Section F1 of Schedule 5 to the Scotland Act 1998 (c. 46). Sections 22(2) and 23(2) of the 2016 Act were brought into force on 17th May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of the Scotland Act 1998. Section 32 of the 2016 Act provides the meaning of “pre-commencement enactment” in this context. The transitional arrangements in respect of disability and carer’s benefits ended on 31st March 2020 (see regulations 4 and 7 of S.I. 2017/444). Accordingly, in so far as the functions under those sections of the Contributions and Benefits Act and section 77(3) of the 2012 Act are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. To ensure that the provisions introduced by these Regulations operate identically across England and Wales and Scotland, the Scottish Ministers are making parallel regulations, (The Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021), to these Regulations to come into force on 15th September 2021.

(10) 1971 c. 77. See Part 7 of the Immigration Rules. The scheme is contained in Rules 276BA1- 276BS2.

- (iv) granted under the Afghan Citizens Resettlement Scheme(11);”;
- (4) Those provisions are—
- (a) regulation 21AA(4) of the Income Support (General) Regulations 1987(12);
 - (b) regulation 85A(4) of the Jobseeker’s Allowance Regulations 1996(13);
 - (c) regulation 2(4) of the State Pension Credit Regulations 2002(14);
 - (d) regulation 10(3B) of the Housing Benefit Regulations 2006(15);
 - (e) regulation 10(4A) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(16); and
 - (f) regulation 70(4) of the Employment and Support Allowance Regulations 2008(17).

Amendment of the Universal Credit Regulations 2013

- 3.—(1) Regulation 9(4) of the Universal Credit Regulations 2013(18) is amended as follows.
- (2) Before sub-paragraph (a) insert—
- “(za) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971, where such leave is granted by virtue of—
 - (i) the Afghan Relocations and Assistance Policy; or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);
 - (zb) a person in Great Britain not coming within sub-paragraph (za) or (e)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021;”.
- (3) In sub-paragraph (e)—
- (a) at the end of (ii), omit “or”;
 - (b) after (iii) insert—
 - “or
 - (iv) granted under the Afghan Citizens Resettlement Scheme;”;

(11) <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>.

(12) S.I. 1987/1967. Regulation 21AA is inserted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872 and 2020/683 and 1309.

(13) S.I. 1996/207. Regulation 85A is inserted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872 and 2020/6831309.

(14) S.I. 2002/1792. Regulation 2 is substituted by S.I. 2006/1026. Relevant amendments are made by S.I. 2006/2528, 2009/362, 2013/2536, 2014/902, 2019/872 and 2020/683 and 1309.

(15) S.I. 2006/213. Relevant amendments are made by S.I. 2006/1026 and 2528, 2009/362, 2013/2536, 2014/902, 2019/872 and 2020/683 and 1309.

(16) S.I. 2006/214. Relevant amendments are made by S.I. 2006/1026 and 2528, 2009/362, 2013/2536, 2014/902, 2019/872 and 2020/683 and 1309.

(17) S.I. 2008/794. Relevant amendments are made by S.I. 2009/362, 2013/630 and 2536, 2014/902, 2019/872 and 2020/683 and 1309.

(18) S.I. 2013/376. Relevant amendments are made by S.I. 2013/1508 and 2020/683 and 1309.

PART 3

AMENDMENTS TO BENEFIT LEGISLATION EXTENDING TO ENGLAND AND WALES ONLY

Amendment of disability and carers benefit legislation

4.—(1) The provisions specified in paragraph (4) are amended as follows.

(2) For the title substitute “Refugees and certain persons with leave to enter or remain in the United Kingdom”.

(3) In paragraph (1)—

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

(b) after sub-paragraph (b) insert—

“(c) leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—

(i) the Afghan Relocations and Assistance Policy; or

(ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);

(d) been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (c); or

(e) leave granted under the Afghan Citizens Resettlement Scheme.”.

(4) Those provisions are—

(a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976⁽¹⁹⁾ (“the CA Regulations”);

(b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991⁽²⁰⁾ (“the AA Regulations”);

(c) regulation 2C of the Social Security (Disability Living Allowance) Regulations 1991⁽²¹⁾ (“the DLA Regulations”); and

(d) regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013⁽²²⁾ (“the PIP Regulations”).

(5) In regulation 9C of the CA Regulations, after paragraph (1) insert—

“(1A) Regulation 9(1)(a) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.

(6) In regulation 2C of the AA Regulations, after paragraph (1) insert—

“(1A) Regulation 2(1)(a)(i) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.

(7) In regulation 2C of the DLA Regulations, after paragraph (1) insert—

“(1A) Regulation 2(1)(a)(i) shall not apply where paragraph (1)(c), (d) or (e) applies to the person.”.

(8) In regulation 23A of the PIP Regulations, after paragraph (1) insert—

⁽¹⁹⁾ S.I. 1976/409. Regulation 9C is inserted by S.I. 2017/1015.

⁽²⁰⁾ S.I. 1991/2740. Regulation 2C is inserted by S.I. 2017/1015.

⁽²¹⁾ S.I. 1991/2890. Regulation 2C is inserted by S.I. 2017/1015.

⁽²²⁾ S.I. 2013/377. Regulation 23A is inserted by S.I. 2017/1015.

“(1A) Regulation 16(c) does not apply in relation to a claim for personal independence payment where paragraph (1)(c), (d) or (e) applies to C.”.

Signed by authority of the Secretary of State for Work and Pensions

13th September 2021

Will Quince
Parliamentary Under Secretary of State
Department for Work and Pensions

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations enables certain persons to access income-related benefits upon arrival in Great Britain from Afghanistan, provided they meet the other relevant entitlement conditions.

That Part amends the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792) ("the State Pension Credit Regulations"), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) and the Universal Credit Regulations 2013 (S.I. 2013/376) ("the Universal Credit Regulations") ("the income-related benefit regulations").

The income-related benefit regulations provide that a person is ineligible for benefit where he or she is a "person from abroad", "a person not in Great Britain" (for the purposes of the State Pension Credit Regulations) or "a person treated as not being in Great Britain" (for the purposes of the Universal Credit Regulations); that is to say where he or she is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, subject to a list of exceptions. The amendments made by these Regulations insert new categories into the list of persons who are exempted from having to satisfy the habitual residence test. Those persons are those to whom leave is granted under the immigration rules by virtue of the Afghan Relocations and Assistance Policy or the previous scheme for locally-employed staff in Afghanistan (otherwise known as the ex-gratia scheme) or to whom leave is granted under the Afghan Citizens Resettlement Scheme. A further category of persons not coming within the schemes is also inserted, provided they arrived in Great Britain from Afghanistan in connection with the fall of the Afghan government that took place on 15th August 2021.

Part 3 of these Regulations enables certain persons to access disability and carers benefits upon arrival in England and Wales from Afghanistan, provided they meet the other relevant entitlement conditions.

That Part amends the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409), the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740), the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) and the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377) respectively, to exempt the same group of people from the past presence test and the habitual residence test. This is the test which normally has to be fulfilled in order to claim Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment respectively. The past presence test normally requires that an individual has been present in Great Britain for a specified period of time to be eligible for those benefits.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.