
STATUTORY INSTRUMENTS

2021 No. 1034

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

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⁽¹⁾.

(3) Part 3 extends to England and Wales only⁽²⁾.

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- (1) 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.
- (2) 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.