POLICY NOTE

THE SOCIAL SECURITY (RESIDENCE AND PRESENCE REQUIREMENTS) (ISRAEL, THE WEST BANK, THE GAZA STRIP, EAST JERUSALEM AND THE GOLAN HEIGHTS) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

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

- Sections 13 and 15A 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, 71 and 175 of the Social Security Contributions and Benefits Act 1992
- Sections 77 and 94 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 specified classes of people coming to the UK from Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights, the Scottish Government is working in tandem with the Department for Work and Pensions and the Department for Communities (Northern Ireland) by introducing regulations to allow those specified classes of people arriving from Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights to the UK to meet the residency conditions for social security assistance from day one by removing the habitual residence test and the past presence test where they apply to a benefit, meaning they will be eligible subject to all other entitlement conditions being met. The Scottish Government is replicating the legislative changes in Scotland to ensure equivalent treatment in how people returning from these areas are treated in different parts of the UK when accessing benefits. The classes of people specified are UK nationals, Irish nationals and third country nationals who have an immigration status entitling them to access public funds.

The speed of the escalation in violence has forced many people resident in these areas to flee their homes and the country. In order to support specified classes of individuals' arrival in Scotland in such exceptional circumstances, the exemption to the residency tests will assist those who need access to benefits as they settle in Scotland.

This instrument has three 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;

2. To make changes to regulations made under the Social Security (Scotland) Act 2018 and the Social Security Act 1988; and

3. To make changes 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 Sudan regulations in May 2023, Afghanistan regulations in September 2021 and with the emergency Ukraine regulations in March 2022, any legislative changes in relation to benefit entitlement cuts across council tax legislation. To that end, and for completeness in expediting the process, it is considered appropriate to provide the respective legislative changes in one instrument for both social security and council tax.

Policy Objectives

The UK Government intends to have its emergency legislation come into force on 27 October 2023. In order to ensure parity of access to forms of assistance for which Scottish Ministers have responsibility, the Scottish Government intends to follow the coming into force 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 19 October 2023 and its coming into force date is intended to be 27 October 2023.

This instrument will serve as a "catch-all" instrument to make provision for individuals who come to Scotland from Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack, 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
- Carer Support Payment

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;
- With a right of abode in the United Kingdom; or
- Who don't require leave to enter or remain in the United Kingdom,

where they were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before the 7 October 2023, and who left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist

attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack. These individuals will be able to meet the residency conditions for Scottish social security benefits 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 schemes for working age and pension age people. 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 Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before the 7 October 2023, and left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack. This reflects the policy intention to assist those coming to Scotland who have had to flee their homes and country of residence because of the escalating violence in these areas.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

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 been prepared. The Scottish Ministers will respond to that report when it is published in accordance with section 97(10) of that Act. SCoSS has been informed of the extraordinary circumstances resulting from an international emergency, and it is 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 the classes of specified individuals arriving in Scotland, who have had to flee due to the escalating violence in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights.

The impact of us **not** introducing these regulations in tandem with the 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 26 weeks, 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.

This change will likely result in a very small number of people accessing benefits up to 26 weeks earlier than might have been possible otherwise. The associated costs are therefore likely to be minimal in context of overall Scottish social security spending.

The Scottish Fiscal Commission has not had time to review these regulations in detail and will consider the impact of any additional spending as a result of these regulations in its next published forecasts. However, based on an initial review of the information available the Commission has indicated that the effect of the change is likely to fall below the materiality threshold of £5 million in annual expenditure.

Scottish Government
Social Security Directorate
19 October 2023