POLICY NOTE

THE SOCIAL SECURITY (RESIDENCE AND PRESENCE REQUIREMENTS) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by:

- Section 13 of the Social Security Act 1988
- Section 175(3) of the Social Security Contributions and Benefits Act 1992
- Sections 28(2), 31(2) and 32(2) of the Social Security (Scotland) Act 2018

The instrument is subject to affirmative procedure.

Summary Box

Following an escalation in violence between Israel and Iran, which began on 13 June 2025, the UK Government evacuated individuals from Israel, the Occupied Palestinian Territories (the West Bank including East Jerusalem, and Gaza) and the occupied Golan Heights. The UK Government also intends to receive individuals who have been medically evacuated from Gaza for medical treatment in the UK . The individuals from Gaza will be granted leave to enter outside the immigration rules on discretionary compassionate grounds. The Scottish Government is introducing regulations which will allow these specified classes of people to meet the residency conditions for social security assistance from day one, if they are eligible.

These regulations remove the habitual residence test and the past presence test where they apply to a benefit, meaning eligible individuals will be eligible as soon as they arrive in the United Kingdom subject to all other entitlement conditions being met. The Scottish Government is making 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, as the DWP has also legislated to exempt these individuals from residency tests. The classes of people in respect of those specified are UK nationals, Irish nationals and third country nationals who have an immigration status entitling them to access public funds., and individuals who have been granted leave to remain in the UK outside the Immigration Rules.

In response to the crisis and the medical evacuation scheme, the exemptions to the residency tests will assist those who need access to benefits as they arrive in Scotland.

Policy Objectives

The UK Government brought forward their general crisis exemption legislation on 18 July 2025. However, due to the Scottish Parliament being in recess, this instrument will come into force at the earliest opportunity, 11 September 2025.

This is emergency legislation in response to an escalation of violence between Israel and Iran which started on 13 June 2025 and the scheme to medically evacuate individuals from Gaza to come to the UK for medical treatment, thus requiring an expedited parliamentary process. To that end, the laying date for this instrument is 3 September 2025 and its coming into force date is intended to be 11 September 2025.

This instrument will serve as a "catch-all" instrument to make provision for individuals who come to Scotland in connection with the escalation of violence between Israel and Iran from 13 June 2025 and before 13 December 2025, or who have been given leave to enter or remain outside the immigration rules, in respect of the following benefits. It therefore avoids the need for individual instruments for each respective benefit.

- Child Disability Payment
- Adult Disability Payment
- Pension Age Disability Payment
- Scottish Adult Disability Living Allowance
- 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 Occupied Palestinian Territories or the occupied Golan Heights immediately before the escalating violence in the region and who left in connection with the violence.

This instrument will also add a general exemption from the habitual and past presence tests in Child Disability Payment, Adult Disability Payment, Pension Age Disability Payment, Scottish Adult Disability Living Allowance and Carer Support Payment where individuals have been granted, or deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971. This will provide an exemption for those who come to the UK for medical treatment. Such an exemption already exists within Best Start Grants, Best Start Foods and Young Carer Grant.

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.

For the geographical area-specific exemptions to apply, individuals will need to have been resident in Israel, the Occupied Palestinian Territories or the occupied Golan Heights, prior to the escalation of violence which began on 13 June 2025, and left as a result of the conflict. They must arrive in the UK before 13 December 2025. 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.

The general exemption for individuals who have been granted leave outside the rules will not have a time limit.

The description of the territories in this regulation are in accordance with the Foreign, Commonwealth and Development Office (FCDO) travel advice as at 23 July 2025 - https://www.gov.uk/foreign-travel-advice/israel.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Social Security (Residence and Presence Requirements) (Miscellaneous Amendment) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

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 in accordance with 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. SCoSS has been informed of the extraordinary circumstances resulting from an international emergency, and it is content to scrutinise the regulations both before and after the regulations are laid in draft.

Impact Assessments
A Child Rights and Wellbeing Impact Assessment has been published, and an Equalities Impact Assessment is being prepared.

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.

The impact of not introducing these regulations 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.

Scottish Government
Social Security Directorate

3 September 2025