Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2021 No.

SOCIAL SECURITY

The Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021

Made - - - -	*2021*
Coming into force - -	*15th September 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 13 of the Social Security Act 1988(**a**), sections 64, 70, and 71 of the Social Security Contributions and Benefits Act 1992(**b**), section 77 of the Welfare Reform Act 2012(**c**), sections 28, 31(2) and 32(2) of the Social Security (Scotland) Act 2018(**d**), and all other powers enabling them to do so.

(**a**) 1988 c. 7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c. 11) ("the 2016 Act"). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with sections 27 and 32 of the 2016 Act.

(**b**) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 as read with section 22(2) and section 32 of the 2016 Act. Section 22(2) of the 2016 Act inserted exceptions into the social security reservation in Head F1 of Part 2 of Schedule 5 of the Scotland Act 1998 relating to carers' and disability benefits. Section 22(2) was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. Section 32 was brought into force on 17 September 2016 by S.I. 2016/759. The transitional arrangements in respect of carers' benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9) on 3 September 2018 (see S.S.I. 2018/250). The transitional arrangements in respect of disability benefits ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 22(2) and 32 are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State.

(**c**) 2012 c. 5. The functions of the Secretary of State under sections 77 and 94 of the Welfare Reform Act 2012, as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. Legislative competence for disability benefits was devolved to the Scottish Parliament by section 22(2) of the Scotland Act 2016, which inserted exceptions into paragraph F1 of schedule 5 of the Scotland Act 1998. Section 22(2) of the Scotland Act 2016 was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of section 53 of the Scotland Act 1998. Section 32 of the Scotland Act 2016 provides the meaning of "pre-commencement enactment" in this context. The transitional arrangements in respect of disability benefits, including personal independence payments, ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 77 and 94 are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. Under section 172(1) of the Social Security Administration Act 1992, the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under "relevant enactments", as defined in section 170(5) of that Act. This includes regulations under Part 4 of the Welfare Reform Act 2012. As a result of section 33(1) of the Scotland Act 2016, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.

(**d**) 2018 asp 9. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the National Assembly for Wales.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021 and come into force on 15 September 2021.

(2) These Regulations extend to Scotland only.

Amendment of disability and carers benefit legislation

2.—(1) The provisions specified in paragraph (5) are amended in accordance with paragraphs (2), (3), (4), (6), (7), (8) and (9).

(2) For the heading substitute "Refugees and certain persons with leave to enter and 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) For paragraph (2) substitute—

"(2) For the purposes of this regulation—

(a) "immigration rules" means the rules laid before Parliament under section 3(2) of the Immigration Act 1971(**a**),

(b) "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**b**).".

(5) The provisions mentioned in paragraph (1) are—

(a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976(**c**) ("the CA Regulations"),

(b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991(**d**) ("the AA Regulations"),

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(**a**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.
(**b**) https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**c**) S.I. 1976/409. Regulation 9C is inserted by S.I. 2017/1015.
(**d**) S.I. 1991/2740. Regulation 9C is inserted by S.I. 2017/1015.

(c) regulation 2C of the Social Security (Disability Living Allowance) Regulations 1991(**a**) ("the DLA Regulations"), and

(d) regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013(**b**) ("the PIP Regulations").

(6) 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.".

(7) 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.".

(8) 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.".

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

"(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.".

Amendment of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018

3.—(1) The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(**c**) are amended in accordance with paragraphs (2) to (4).

(2) In paragraph 4 of schedule 2—

(a) after paragraph 4(2)(aa) insert—

"(ab) a person who—

(i) leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(**d**), by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

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

(ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

(iii) has leave granted under the Afghan Citizens Resettlement Scheme.",

(b) after paragraph 4(2) insert—

"(3) In this paragraph, "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**e**).".

(3) In paragraph 3 of schedule 3—

(a) after paragraph 3(2)(aa) insert—

"(ab) a person who—

(i) has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(**f**), by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

(**a**) S.I. 1991/2890. Regulation 2C is inserted by S.I. 2017/1015.
(**b**) S.I. 2013/377. Regulation 23A is inserted by S.I. 2017/1015.
(**c**) S.S.I. 2018/370.
(**d**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.
(**e**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**f**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.

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

(ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

(iii) has leave granted under the Afghan Citizens Resettlement Scheme.",

(b) after paragraph 3(2) insert—

"(3) In this paragraph "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**a**).".

(4) In paragraph 4 of schedule 4—

(a) after paragraph 4(2)(aa) insert—

"(ab) a person who—

(i) has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(**b**), by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

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

(ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

(iii) has leave granted under the Afghan Citizens Resettlement Scheme(**c**).",

(b) after paragraph 4(2) insert—

"(3) In this paragraph "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**d**).".

Amendment of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

4.—(1) Regulation 9 of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019(**e**) is amended in accordance with paragraphs (2) and (3).

(2) After regulation 9(2)(a) insert—

"(ab) a person who—

(i) has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(**f**), by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

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

(ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

(iii) has leave granted under the Afghan Citizens Resettlement Scheme.".

(3) After regulation 9(2)insert—

"(3) In this regulation "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**g**).".

(**a**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**b**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.
(**c**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**d**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**e**) S.S.I. 2019/193.
(**f**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.
(**g**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.

Amendment of the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019

5.—(1) Regulation 8 of the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019(**a**) is amended in accordance with paragraphs (2) and (3).

(2) After regulation 8(2)(a) insert—

"(aa) a person who—

(i) has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(**b**), by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

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

(ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

(iii) has leave granted under the Afghan Citizens Resettlement Scheme.".

(3) In paragraph (10)(**c**), before the definition of "EEA State", insert—

""the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**d**).".

Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021

6.—(1) Regulation 5 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(**e**) is amended in accordance with paragraphs (2) and (3).

(2) After paragraph (10) insert—

"(10A) The habitual residence condition in paragraph (1)(b) and the past presence condition in paragraph (1)(e) do not apply where an individual—

(a) has 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),

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

(c) has leave granted under the Afghan Citizens Resettlement Scheme(**f**).".

(3) For paragraph (11) substitute—

"(11) For the purposes of paragraphs (10) and (10A)—

(a) "immigration rules" means the rules laid before Parliament under section 3(2) of the Immigration Act 1971(**g**),

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(**a**) S.S.I. 2019/324.
(**b**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.
(**c**) Paragraph (10) of regulation 8 was inserted by S.S.I. 2020/475.
(**d**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**e**) S.S.I. 2021/174.
(**f**) Published at https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.
(**g**) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.

(b) "the Afghan Citizens Resettlement Scheme" means the scheme announced by the United Kingdom Government on 18 August 2021(**a**).".

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(**a**) https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ensure the social security assistance entitlement of certain persons arriving in Scotland from Afghanistan.

These Regulations amend the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409), the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890), the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740), the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377), the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (S.S.I. 2018/370), the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (S.S.I. 2019/193), the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 (S.S.I. 2019/324), and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174).

The aforementioned list of legislation imposes requirements relating to habitual residence, and in some cases also past presence, for applicants to satisfy before they are entitled to social security assistance. These Regulations exempt from those requirements a cohort of people resident in Scotland who have entered the United Kingdom by virtue of the Afghan Relocations and Assistance Policy, the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme), or the Afghan Citizens Resettlement Scheme.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on business, charities or voluntary bodies is foreseen.

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