POLICY NOTE

THE SOCIAL SECURITY (RESIDENCE REQUIREMENTS) (AFGHANISTAN) (SCOTLAND) REGULATIONS 2021

SSI 2021/XXX

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

- Section 13 of the Social Security Act 1988
- Sections 64, 70, 71 of the Social Security Contributions and Benefits Act 1992
- Section 77 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 people evacuated to the UK from Afghanistan, the UK Government introduced relocation and resettlement schemes, including the Afghan Relocations and Assistance Policy (ARAP), the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme). Under these two schemes the Home Office grants individuals leave to enter or remain in the United Kingdom under the immigration rules made under section 3(2) of the Immigration Act 1971. Both of these two schemes are defined in legislation at Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2. There is also a third scheme called the Afghan Citizens' Resettlement Scheme, announced by the UKG on 18 August 2021.

The Department for Work and Pensions is introducing regulations to allow those evacuated from Afghanistan to have immediate access to social security assistance where they enter the UK under the UK Government's relocation and resettlement schemes detailed above.

The UK Government's changes impact Scottish benefits and entitlement conditions, and this instrument has two aims: firstly to ensure the modification of social security legislation for benefits delivered by the Department of Work and Pensions under Agency Agreement in Scotland and secondly, to make changes to regulations made under Social Security (Scotland) Act 2018 and the Social Security Act 1988. Doing so will ensure parity of access to benefits for which Scottish Ministers have responsibility.

Policy Objectives

UK Government intend to have their emergency legislation enacted week commencing 13 September. In order to ensure parity of access to benefits for which Scottish Ministers have responsibility, we aim to mirror the enactment dates for the Scottish benefits affected. To that end our laying date is 13 Sept and our CIF date is 15 Sept.

This instrument will serve as a "catch-all" instrument to cover all individuals entering the UK under the terms of one of the aforementioned resettlement schemes and resident in Scotland.

It therefore avoids individual instruments for each respective benefit. The benefits covered by this instrument are:

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carers Allowance
- Child Disability Payment
- Best Start Grants
- Best Start Foods
- Young Carer Grant

These regulations will exempt persons who have come to the Scotland from Afghanistan under the Home Office resettlement schemes from either the habitual residence test and past presence test or both (as appropriate depending on the form of assistance) This will mean they will be able to access Scottish devolved assistance from day one, subject to them meeting other eligibility requirements.

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 proposals and draft regulations to meet the scrutiny and consultation process.

As the situation requires legislation to be laid immediately, 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 the Commission having yet been prepared. Ministers will respond to that report when it is published including to bring forward further legislation and to explain why they do not accept recommendations as appropriate.

Impact Assessments

Impact Assessments have not yet 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 those vulnerable people who are settling in Scotland.
Those arriving under the schemes are fleeing their home from risk of persecution, and essentially have no choice. The policy intent of these regulations is to ensure access to devolved forms of assistance for people coming from Afghanistan.

As these changes to devolved legislation are being made in response to developments in reserved immigration law, the scope of the changes are limited to the extent that the UK Government alters its immigration legislation.

Given the urgency of laying the instrument, the Scottish Government will undertake the required EQIA, CRWIA and DPIA assessments retrospectively.

Financial Effects

For the reasons set out above, a Business and Regulatory Impact Assessment (BRIA) has not yet 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.

Scottish Government
Social Security Directorate
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