POLICY NOTE

THE SOCIAL SECURITY (GENUINE AND SUFFICIENT LINK TO THE UNITED KINGDOM) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

SSI 2024/241

The above instrument was made in exercise of the powers conferred by section sections 64(1), 70(4), 71(6), 138(2), 175(1) and (3) of the Social Security Contributions and Benefits Act 1992 and sections 77(3), 94(1) and (2) of the Welfare Reform Act 2012. The instrument is subject to negative procedure.

Summary Box

These Regulations amend the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Attendance Allowance) Regulations 1991, the Social Security (Disability Living Allowance) Regulations 1991 and the Social Security (Personal Independence Payment) Regulations 2013 in relation to the past presence test ("PPT") and the genuine and sufficient link ("GSL") to the United Kingdom by removing references to "social security system" so that the GSL simply needs to be to the United Kingdom.

In practice these changes have been in force since a Court of Appeal judgement in 2019 which found the previous Genuine and Sufficient Link provisions to be too narrow. This is technical amendment giving legislative effect to the judgment.

Policy Objectives

Usually, those arriving in the UK, including UK nationals, have no access to the relevant benefits until they meet the conditions of the PPT. The PPT for those over the age of sixteen requires a claimant to have been present in Great Britain for 104 out of the 156 weeks immediately before making their claim (children are required to have lived in Great Britain for at least 6 of the last 12 months, if over 3 years old).

For people residing in Great Britain, the GSL to the UK is an exemption to the PPT which applies to claimants covered by the Withdrawal Agreement or a relevant EU regulation to gain access to the relevant benefits. For people covered by the Withdrawal Agreement or a relevant EU regulation residing in an EEA state or in Switzerland, the GSL to the UK test is an exemption from being present in Great Britain, habitually resident in the Common Travel Area, as well as the PPT.

Following the Court of Appeal judgment in *Kavanagh & Anor v The Secretary of State for Work and Pensions* [2019], an individual only needs to demonstrate a GSL to the UK rather than to the "United Kingdom's social security system". These Regulations make the necessary legislative amendments to reflect this case. These are technical amendments bringing the Regulations in line with the DWP's operational guidance since the Kavanagh decision in 2019. It will therefore remove the words 'social security system' following the phrase 'genuine and sufficient link to the United Kingdom' in the legislation which provides for disability and carer's benefits.

As the executive competence for Attendance Allowance, Carers Allowance, Disability Living Allowance and Personal Independence Payment transferred to Scottish Ministers in 2020, and these benefits fall within the devolved competence of the Scottish Parliament under Head F1 of Schedule 5 to the Scotland Act 1998, it is necessary to make the amendments to align the legislation with the caselaw. The Scottish Government needs to make these changes to mirror the amendments being made by the DWP. Devolved Social Security Scotland benefits otherwise delivered under powers within the Social Security (Scotland) Act 2018 already require a GSL to Scotland (only) and make no reference to the Scottish social security system.

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 The Social Security (Genuine and Sufficient Link to the United Kingdom) (Miscellaneous Amendment) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration
This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

It does however relate to the UK's withdrawal from the EU because the relevant EU regulations, 883/2004 and 1408/71, have now been revoked and are only applicable to persons in scope of the EU Withdrawal Agreement, EEA EFTA separation agreement, the Swiss rights agreement, or the UK – Gibraltar agreement 2024.

Consultation
These regulations mirror amendments made by the DWP and are required to ensure Agency Agreements are followed. As such, no formal consultation was undertaken for this Instrument. The changes to the Genuine and Sufficient Link policy have been implemented by the DWP since the judgment in Kavanagh in 2019.

Impact Assessments
A Child's Rights Wellbeing Impact Assessment has been carried out as per the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Financial Effects
No BRIA is necessary because the legislation makes technical changes to existing secondary legislation which has no or no significant impact on the private, voluntary sector or community bodies.

Scottish Government
Social Security Directorate

12 September 2024