POLICY NOTE

THE SOCIAL SECURITY (RESIDENCE AND PRESENCE REQUIREMENTS) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/139

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988, sections 64(1), 70(4), 71(6), 113(1)(a) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992, sections 4(5), 77(3) and 94(2) of the Welfare Reform Act 2012 and sections 28(2), 31(2) and 32(2) of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Summary Box

The purpose of these regulations is to provide a long-term solution for overseas crises to allow people who have had to flee emergencies abroad to access benefits quickly on arrival in Scotland, and to allow payments to continue to individuals who have been stranded abroad due to a crisis.

These regulations will exempt specific individuals from the habitual residence and past presence tests for benefits where those apply, and amend temporary absence rules to allow a longer period of absence for individuals who have been stranded abroad because of a crisis.

Additionally, the Best Start Grant regulations are being amended to allow all individuals who have escaped a crisis, or have been granted leave for humanitarian reasons, to access the higher rate of Pregnancy and Baby Payment for second or subsequent children if their older child was born before the individual arrived in the UK.

Policy Objectives

In recent years, the Scottish Government has used emergency legislation to respond to several crises overseas to give people access to benefits when they arrive in Scotland. This was first done following the evacuation of Afghanistan in 2021, followed by the Russian invasion of Ukraine in 2022, the escalation of the civil war in Sudan in April 2023, the escalating violence resulting from the Hamas attacks in Israel in October 2023 and, most recently, in September 2025 following the violence that escalated between Israel and Iran.

The Scottish Government has put in place exemptions to residence and presence tests to allow potentially vulnerable individuals to gain access to benefits as soon as they arrive in Scotland. If there are no exemptions for individuals returning to the UK as a result of a crisis or evacuation, they would need to meet the usual residence and presence criteria. This would include being ordinarily resident in Scotland, habitually resident in the Common Travel Area (CTA), and for disability benefits and Carer Support, being present in the CTA, and meeting the past presence test.

We have previously used emergency regulations to amend the residence and presence conditions for all relevant benefits to remove the requirement to be habitually resident, and the past presence requirement for British and Irish citizens and individuals who have leave to enter or remain in the UK, allowing them to access Social Security Scotland benefits on

arrival to the UK. Regulations for Ukraine and Afghanistan also covered individuals who were granted leave under the specific schemes for people escaping those countries.

The primary aim of the policy behind these general regulations is to provide a long-term solution for overseas crises to allow people who have had to flee emergencies abroad to access benefits quickly on arrival in Scotland, and to allow payments to continue to individuals who have been stranded abroad due to a crisis. This is intended to remove the need to lay further emergency regulations every time a crisis meeting the agreed criteria occurs.

We are amending legislation to give people access to disability and carers benefits, Best Start Grants and Best Start Foods upon arrival in Scotland in certain situations (provided that they meet the other relevant entitlement conditions) by disapplying the habitual residence and the past presence test to those persons, where:

a) the UK Government has provided public information to advise British nationals to leave a country immediately (sometimes called "leave now" guidance) or has arranged the evacuation of British nationals from that country; or
b) a person has been granted leave under immigration provisions which have been sanctioned by the UK Government for humanitarian reasons.

The exemptions apply to:

- persons who are not subject to immigration control and
  a) have fled a country from which the UK Government has evacuated UK nationals; or
  b) have fled a country the UK Government has advised UK nationals to leave; and
- persons who hold an immigration status granted by the Home Office under a 'safe and legal humanitarian route' to the UK.

A person who has fled a country from which the UK Government has advised UK nationals to leave, or has evacuated UK nationals, must have arrived in the UK within 26 weeks of the advice first being made or when evacuations began (whichever is earlier). The exemption will apply for 52 weeks (39 weeks for persons under 6 months) from the day on which the public information is issued, or the evacuation started. This means that anyone who arrives up to 26 weeks after the start of a crisis can continue to benefit from the exemption until they satisfy the normal requirements for past presence test.

There is no time limit on the provisions covering individuals who hold an immigration status granted by the Home Office under a 'safe and legal humanitarian route'.

We are also amending the temporary absence provisions for disability benefits and Carer Support to allow a longer period of absence for individuals who have been stranded abroad because of a crisis. The provisions apply to people stranded in a country that the UK Government has either advised people to leave, or from which the UK Government has arranged the evacuation of UK nationals. Instead of the current 13-week temporary absence limit for any reason, a 26-week limit applies.

This change has been made as in some rare scenarios, individuals may become stranded and be unable to return to the UK because an escalating crisis has caused the closure of commercial transport options, or because attempt to access such transport routes would pose significant risk of serious harm to the individual. Normally, benefit entitlement would end, and payments would stop if the client did not return within the permitted temporary absence period. However, allowing this to happen in these exceptional cases could cause significant disruption to the client through no fault of their own, and we want to extend the temporary absence to 6 months in these circumstances.

Finally, we are amending the Best Start Grant regulations to allow individuals who have escaped a crisis and individuals who have been granted leave for humanitarian reasons to access the higher rate of the Pregnancy and Baby Payment, if they have an older child who were born outside the UK.

Normally, the higher rate payment is only available for a first child. The lower rate payment is for any child that comes after the first, unless in specific circumstances where it's likely that the individual receiving the payment has been forced to abandon previously purchased baby items through no fault of their own.

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 2026 is 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 on 8 October in compliance with section 97(2). SCoSS published its scrutiny report on 19 November with one recommendation to monitor the impact of the regulations, which has been accepted.

Impact Assessments

A Child Rights and Wellbeing Impact Assessment and Equalities Impact Assessment have been published.

Introducing these regulations will have a positive impact on the classes of specified individuals arriving in Scotland, who have had to flee due to an overseas crisis.

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
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 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

January 2026