

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

The Social Security (Residence and Presence Requirements)
(Israel, the West Bank, the Gaza Strip, East Jerusalem and the
Golan Heights) (Scotland) Regulations 2023

Made - - - - 2023

*Coming into force in accordance with regulation 1(2) and
1(3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13 and 15A of the Social Security Act 1988(a), sections 80 and 113(1) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992(b), sections 64, 70, 71 and 175 of the Social Security Contributions and Benefits Act 1992(c), sections 77 and 94 of the Welfare Reform Act 2012(d), sections 28(2), 31(2) and 32(2) of the Social Security (Scotland) Act 2018(e) (“the 2018 Act”) and all other powers enabling them to do so.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers(f).

In accordance with section 96(2) of the 2018 Act, 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 2018 Act, 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.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem and the Golan Heights) (Scotland) Regulations 2023.

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- (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”). Section 15A was inserted by the Social Security (Consequential Provisions) Act 1992 (c. 6). Sections 13 and 15A of that Act read together with section 175 of the Social Security Contributions and Benefits Act 1992 (c. 4) provide powers for different provision to be made for different cases or classes of cases. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) (“the Scotland Act”) as read with sections 27 and 32 of the 2016 Act.
- (b) 1992 c. 14. Section 80 and paragraph 1 of schedule 2 were amended by paragraph 176 of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c. 39). There are other amendments to sections 80 and 113(1) not relevant to these Regulations. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (c) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer’s benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act as read with sections 22(2) and 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 relating to carer’s and disability benefits. Accordingly, in so far as the functions under the Social Security Contributions and Benefits Act 1992 (c. 4) are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. Under section 172(1) of the Social Security Administration Act 1992 (c. 5), 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 the provisions of the Social Security Contributions and Benefits Act 1992. As a result of section 33(1) of the 2016 Act, 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) 2012 c. 5 (“the 2012 Act”). The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act as read with section 22(2) of the 2016 Act. Section 22(2) inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the Scotland Act. Section 32 of the 2016 Act provides the meaning of “pre-commencement enactment” in this context. 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 SSAC proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the 2012 Act. As a result of section 33(1) of the 2016 Act, 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.
- (e) 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.
- (f) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of schedule 11 of that Act.

(2) Subject to paragraph (3), these Regulations come into force as soon as they are made.

(3) Regulation 11 comes into force on 19 November 2023 immediately after the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023^(a).

(4) These Regulations extend to Scotland only.

Amendment of disability and carer's benefit legislation

2.—(1) The provisions specified in paragraph (3) are amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (f), omit “or”, and

(b) after sub-paragraph (g), insert—

“, or

(h) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the person—

(i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and

(ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack”.

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

(a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976^(b) (refugees and certain persons with leave to enter and remain in the United Kingdom),

(b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991^(c) (refugees and certain persons with leave to enter and remain in the United Kingdom),

(c) regulation 2C of the Social Security (Disability Living Allowance) Regulations 1991^(d) (refugees and certain persons with leave to enter and remain in the United Kingdom).

Amendment of the Social Security (Personal Independence Payment) Regulations 2013

3.—(1) Regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013^(e) (refugees and certain persons with leave to enter and remain in the United Kingdom) is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (f), omit “or”, and

(b) after sub-paragraph (g), insert—

“, or

(h) leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning

(a) S.S.I. 2023/XXX.

(b) S.I. 1976/409. Regulation 9C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(c) S.I. 1991/2740. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(d) S.I. 1991/2890. Regulation 2C was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(e) S.I. 2013/377. Regulation 23A was inserted by S.I. 2017/1015 and relevantly amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where C—

- (i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and
- (ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack”.

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

4.—(1) The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(a) are amended as follows.

(2) In paragraph 4 of schedule 2 (residence requirement – pregnancy and baby grant), after sub-paragraph (2)(ad), insert—

“(ae) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”.

(3) In paragraph 3 of schedule 3 (residence requirement – early learning grant), after sub-paragraph (2)(ad), insert—

“(ae) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”.

(4) In paragraph 4 of schedule 4 (residence requirement – school-age grant), after sub-paragraph (2)(ad), insert—

“(ae) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

(a) S.S.I. 2018/370, relevantly amended by S.S.I. 2019/110; S.S.I. 2019/157, S.S.I. 2020/399, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”

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

5.—(1) Regulation 9 of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019(a) (residence requirement) is amended as follows.

(2) After paragraph (2)(ad), insert—

“(ae) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”

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

6.—(1) Regulation 8 of the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019(b) (conditions relating to residence) is amended as follows.

(2) After paragraph (2)(ac), insert—

“(ad) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
- (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”

(a) S.S.I. 2019/193, relevantly amended by S.S.I. 2020/399; S.S.I. 2020/475, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(b) S.S.I. 2019/324, amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

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

7.—(1) Regulation 5 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**(a)** (residence and presence conditions) is amended as follows.

(2) In paragraph (10A)—

(a) at the end of sub-paragraph (f), omit “or”, and

(b) after sub-paragraph (g), insert—

“, or

(h) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—

(i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and

(ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack”.

Amendment of the Disability Assistance for Working Age People (Scotland) Regulations 2022

8.—(1) Regulation 15 of the Disability Assistance for Working Age People (Scotland) Regulations 2022**(b)** (residence and presence conditions) is amended as follows.

(2) In paragraph (7)—

(a) at the end of sub-paragraph (d), omit “or”, and

(b) after sub-paragraph (e), insert—

“, or

(f) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—

(i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and

(ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack”.

(a) S.S.I. 2021/174, amended by S.S.I. 2021/320, S.S.I. 2021/416, S.S.I. 2022/41, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(b) S.S.I. 2022/54, amended by S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

Amendment of the Council Tax Reduction (Scotland) Regulations 2021

9.—(1) Regulation 16 of the Council Tax Reduction (Scotland) Regulations 2021(**a**) (persons not entitled to council tax reduction: persons treated as not being in Great Britain) is amended as follows.

(2) In paragraph (6)—

(a) at the end of sub-paragraph (m), omit “or”, and

(b) after sub-paragraph (n), insert—

“, or

(o) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

(i) has been granted leave in accordance with the rules referred to in sub-paragraph (f), or

(ii) has a right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

Amendment of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

10.—(1) Regulation 16 of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012(**b**) (persons not entitled to council tax reduction: persons treated as not being in Great Britain) is amended as follows.

(2) In paragraph (5)—

(a) at the end of sub-paragraph (l), omit “or”, and

(b) after sub-paragraph (m), insert—

“, or

(n) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack and—

(i) has been granted leave in accordance with the rules referred to in sub-paragraph (e), or

(ii) has a right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

(a) S.S.I. 2021/249, relevantly amended by S.S.I. 2022/52, S.S.I. 2023/38, S.S.I. 2023/149 and to be further amended by S.S.I. 2023/268.

(b) S.S.I. 2012/319, relevantly amended by S.S.I. 2015/46, S.S.I. 2021/337, S.S.I. 2022/108, S.S.I. 2023/38, S.S.I. 2023/149 and to be further amended by S.S.I. 2023/268.

Amendment of the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023

11.—(1) Regulation 6 of the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023(a) (residence and presence conditions) is amended as follows.

(2) In paragraph (8)—

(a) at the end of sub-paragraph (f), omit “or”, and

(b) after sub-paragraph (g), insert—

“, or

(h) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—

(i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and

(ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and Gaza Strip following the attack”.

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of the social security assistance entitlement of certain persons arriving in Scotland from Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights.

Regulations 2, 3, 7 and 8 amend the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Attendance Allowance) Regulations 1991, the Social Security (Disability Living Allowance) Regulations 1991, the Social Security (Personal Independence Payment) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Disability Assistance for Working Age People (Scotland) Regulations 2022 to insert a new category of person into the list of persons who are exempt from having to satisfy the past presence test and habitual residence test.

Regulations 4, 5, 6 and 11 amend the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018, the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019, the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 and the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 respectively to insert a new category of person into the list of persons who are exempt from having to satisfy the habitual residence test.

The new category inserted by regulations 2 to 8 is a person with leave to enter or remain in the United Kingdom granted under or outside the immigration rules, a right of abode in the UK or an Irish citizen who does not require leave to enter or remain in the UK, where that person was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and left those territories in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack.

These Regulations also amend the Council Tax Reduction (Scotland) Regulations 2021 ("the Working Age Regulations") and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 ("the Pension Age Regulations") by extending the categories of persons who do not need to meet residence criteria in the UK in order to qualify for a council tax reduction. The Working Age Regulations concern council tax reduction for those who have not attained pensionable age or who meet other specified criteria while the Pension Age Regulations concern council tax reduction for those who have reached the qualifying age for state pension credit.

Regulation 9 inserts new categories into the list of persons who are not to be treated as not being in Great Britain for the purpose of the residence criteria set out in regulation 16 of the Working Age Regulations. The new categories are certain persons who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and left those territories in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack. They must have been granted leave to remain under the immigration rules made under section 3(2) of the Immigration Act 1971, have a right of abode in the UK or be an Irish citizen who does not require leave to enter or remain in the UK.

Regulation 11 amends regulation 6 of the Carer's Assistance (Carer Support Payment) Regulations 2023. The new categories of persons not subject to the habitual residence condition and past presence condition are certain persons who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights immediately before 7 October 2023, and left those territories in connection with the Hamas terrorist attack in Israel on 7 October 2023 and the violence which rapidly escalated in Israel and the Gaza Strip following the attack. They must have been granted leave to remain under the immigration rules made under section 3(2) of the Immigration Act 1971, have a right of abode in the UK or be an Irish citizen who does not require leave to enter or remain in the UK.

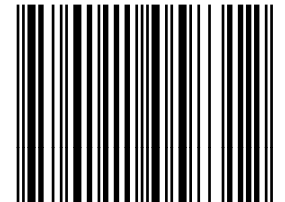
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