

PARLIAMENTARY BUREAU: APPROVAL OF AFFIRMATIVE SCOTTISH STATUTORY INSTRUMENTS

Background

1. As was highlighted in the SSI paper within the Bureau papers issued on Thursday 17 March, as part of its response to supporting those arriving in Scotland from Ukraine, the Scottish Government has laid two affirmative SSIs which it proposes come into force this week.
2. This paper contains details of these instruments, and the proposed process for these instruments.

The Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (SSI 2022/draft)

3. These Regulations were laid today (Monday 21 March) and the Scottish Government has requested that they come into force tomorrow evening (Tuesday 22 March). In a letter from the Minister for Social Security and Local Government to the Convener of the Social Justice and Social Security Committee (see Annex), Mr Macpherson wrote that the instrument is to ensure parity of access in Scotland to “mirror UK Government arrangements to ensure certain categories of people coming to the UK from Ukraine can be in receipt of social security assistance upon arrival in the UK.”
4. The Delegated Powers and Law Reform Committee will consider the instrument at its meeting on Tuesday 22 March.
5. The Social Justice and Social Security Committee is content, given the urgent nature of the SSI, for the Bureau to recommend that the SSI go straight to the Chamber before it can be considered by the Committee.

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (SSI 2022/draft)

6. Two SSIs have recently been laid in connection with the “Homes for Ukraine” scheme which the UK Government announced for those fleeing the war in Ukraine. There is a negative instrument, to be considered by the Education, Children and Young People Committee, to make provision for enhanced disclosures for those seeking to provide accommodation to a Ukrainian national who has left Ukraine in connection with the Russian invasion. The above affirmative instrument, which would ordinarily be considered by the Criminal Justice Committee, requires any applicant to self-disclose spent convictions. The Scottish Government has requested that this has a coming into force date of 24 March.
7. The Delegated Powers and Law Reform Committee will also consider this instrument at its meeting on Tuesday 22 March.

8. The Criminal Justice Committee is content, given the urgent nature of the SSI, for the Bureau to recommend that the SSI go straight to the Chamber before it can be considered by the Committee.

Decision

9. In order for the intended timescales to be met, the Bureau is invited to consider recommending to the Parliament that—

- the instruments be referred to the Parliament;
- that business on Tuesday 22 March be revised to insert an item on Approval of SSIs before Decision Time.

10. The Bureau is invited to approve of this expedited process for these SSIs.

Parliamentary Business Team March 2022

Annex: Letter from Minister for Social Security and Local Government to Social Justice and Social Security Committee

Dear Elena,

Social Security Scotland emergency regulations in respect of Ukraine

I write to advise on urgent work being taken forward to mirror UK Government arrangements to ensure certain categories of people coming to the UK from Ukraine can be in receipt of social security assistance upon arrival in the UK.

The Department for Work and Pensions (DWP) intends to lay emergency legislation in the coming days to support the [Home Office announcement](#) of support for the families of UK citizens affected by the situation in Ukraine, and also to support those coming to the UK under the [Homes for Ukraine scheme](#) (also known as the Sponsorship Scheme). The Home Office intention is to set out additional safe routes and visa waivers for people seeking safe passage to the UK under their Ukraine Schemes.

For Social Security interests, the DWP intend to remove certain residence-based qualifying conditions to allow individuals coming from Ukraine to the UK to access the benefits system immediately upon arrival in the UK. These urgent legislative amendments allow individuals with leave to enter or remain in the UK granted under or outside the Immigration Rules, or a right of abode in the UK, who were residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion on 24 February 2022, to be exempt from having to satisfy the Habitual Residence and Past Presence Tests. These amendments therefore enable them to access benefits upon arrival in the UK¹.

¹ For example, habitual residence test requiring 1-3 months living here and the past presence test requiring the client to have spent 26 of the last 52 weeks residing in the Common Travel Area

The Scottish Social Security Benefits system contains similar residence requirements across various executively devolved and new Scottish benefits, which will also need to be amended to achieve parity of access for Ukraine citizens to devolved benefits.

In line with relevant Agency Agreements, and in order to ensure individuals arriving in Scotland can also receive devolved assistance, Scottish Ministers propose to make mirroring modifications to social security legislation. These amendments are being made to both UK benefits delivered under Agency Agreement in Scotland and to regulations made under Social Security (Scotland) Act 2018 and Social Security Act 1988 in relation to benefits administered by Social Security Scotland.

The benefits which are affected and require to be changed as part of our Agency Agreement with DWP are:

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carers Allowance

The benefits administered by Social Security Scotland which require to be changed are:

- Child Disability Payment
- Adult Disability Payment
- Best Start Grants
- Best Start Foods
- Young Carer Grant

We are aware that families are already coming to the UK, and DWP intends for its draft regulations to come into force on Tuesday 22 March. To ensure parity for clients in accessing benefits in Scotland for which Scottish Ministers have responsibility, we must work towards the same commencement date for the amendments to Scottish legislation.

I am sure you will appreciate that these are exceptional circumstances outwith our control due to the international situation in Ukraine and that we must act quickly.

In line with the requirements of section 97(9)(b) of the 2018 Act I consider that it is necessary for these regulations to be laid without an accompanying report from the Scottish Commission on Social Security (SCoSS). Given the pace at which the legislation was introduced at Westminster, it has not been possible to await the SCoSS report before laying the regulations. The time required for SCoSS to do its work would have had the effect of delaying implementation of the changes, which could have had the effect of slower access to support for affected individuals in Scotland when compared to others elsewhere in the UK.

The Chair of SCoSS has received an initial briefing from officials and has kindly agreed to SCoSS scrutinising the regulations retrospectively, for which I am very grateful. It is important of course that the Commission completes its scrutiny and produces its report in due course. I will therefore respond to SCoSS' report following its publication,

including to bring forward further provision in response to its recommendations where that may be appropriate.

I can also confirm that a copy of the regulations have now been passed to SCoSS in accordance with section 97(2)(a) of the 2018 Act.

I would be grateful for the Committee's agreement to bring these regulations forward for consideration under expedited emergency procedures, given the urgency and fast-moving situation in Ukraine.

I have copied this letter to Stuart McMillan MSP, Convener of the Delegated Powers and Law Reform Committee for completeness.

Best regards,

BEN MACPHERSON