

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

**1.**—(1) The Disability Assistance for Children and Young People (Scotland) Regulations 2021(1) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 5 (residence and presence conditions)—

(a) for paragraph (10) substitute—

“(10) The past presence condition in paragraph (1)(e) does not apply where an individual—

(a) has a terminal illness within the meaning of regulation 15, or

(b) is an individual described in paragraph (7).”

(b) after paragraph (10) insert—

“(10A) The habitual residence condition in paragraph (1)(b) and the past presence condition in paragraph (1)(e) does not apply where an individual has—

(a) been granted refugee status or humanitarian protection under the immigration rules, or

(b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.”

(c) in paragraph (11) for “(10)(b)” substitute “(10A)”.

(3) In regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) omit paragraph (2)(a)(iii).

### **Explanation**

The above draft regulations set out the amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021. Regulation 5 is to be updated to exempt refugees from the habitual residence test found in regulation 5(1)(b), as well as the past presence condition under regulation 5(1)(e) which they were already stipulated to be exempt from. Regulation 24(2)(a) of the 2022 Regulations will no longer include regulation 10 (entitlement to other benefits). It is likely that these provisions will be added to the draft regulations amending those regulations to add provision for suspensions.

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

**2.**—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022(2) are amended in accordance with paragraphs (2) and (3).

(2) For regulation 21 (refugees) substitute—

### **“Refugees**

**21.**—(1) The residence and presence conditions set out in regulations 15(1)(b) and (e) do not apply where an individual has—

(a) been granted refugee status or humanitarian protection under the immigration rules, or

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(1) S.S.I. 2021/174, amended by S.S.I. 2021/???.

(2) S.S.I. 2022/X

(b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

(2) For the purposes of this regulation, “immigration rules” means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971.”

(3) In regulation 35 (when an application is to be treated as made and beginning of entitlement to assistance) for paragraph (2) substitute—

“(2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—

(a) would not satisfy a requirement in—

(i) regulation 5 (daily living component),

(ii) regulation 6 (mobility component),

(iii) regulation 11 (required period condition: daily living component), or

(iv) regulation 12 (required period condition: mobility component),

(v) part 5 (residence and presence conditions), or

(vi) regulation 22 (age criteria),

if the application were treated as made on the day it was received, and

(b) would likely be entitled to receive Adult Disability Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,

the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as made.”

### **Explanation**

The above draft regulation indicates the provisions which will now be included within the Disability Assistance for Working Age People (Scotland) Regulations 2022. Regulation 21 is to be updated to exempt refugees from the habitual residence test found in regulation 15(1)(b), as well as the past presence condition under regulation 15(1)(e) which they were already stipulated to be exempt from. Regulation 35(2)(a) of the 2022 Regulations will no longer include regulation 4 (entitlement to other benefits). Those Regulations are still in draft and have not yet been laid in the Scottish Parliament. The substitutions in regulation 2(2) and 3(2) will be included in the draft Regulations when they are laid.

### **Amendment of the Scottish Child Payment Regulations 2020**

(1) In paragraph 16(2) of the schedule (duty to re-determine and period allowed)—

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

(b) at the end of sub-paragraph (b) insert—

“, or

(c) in a case where the Scottish Ministers have informed the individual of their decision that the request for a re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-Tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.”.

### **Explanation**

The above draft regulation is to clarify when the 16 working day period for carrying out a re-determination begins when the First-tier Tribunal overturn a decision by the Scottish Ministers that a request was not made in the correct form.