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6 September 2022

Dear Chair,

Ukraine amendment added to the Social Security (Miscellaneous Amendment) (Scotland) Regulations 2022

I understand the Board of the Scottish Commission on Social Security (SCoSS) have been in dialogue with my officials regarding the need for Scottish Ministers to address an oversight in the [Social Security \(Residence Requirements\) \(Ukraine\) \(Scotland\) Regulations 2022](#) (the 'Ukraine Regulations'). As this change is to correct an oversight, officials indicated in discussions with the Board that in order to address the issue as quickly and efficiently as possible, the changes would be included in the Social Security ([Miscellaneous Amendment](#)) (Scotland) Regulations. These regulations are still in process and were submitted to the Commission for scrutiny in April. I am very grateful for the willingness that the Commission Members have shown to work with us in addressing this matter expeditiously.

As you are aware, the Ukraine Regulations saw Scottish Ministers work with the Department for Work and Pensions and the Social Security Agency in Northern Ireland to create legislation under expedited procedures 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 allowed 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 enabled these people to have immediate access to public funds upon arrival in the UK. As you are aware, these emergency regulations were created at pace to ensure Scotland aligned with the rest of the UK.

An oversight has been identified which means the Ukraine Regulations are not consistent with the policy intention in relation to the position of Irish nationals coming to the UK from Ukraine. Irish nationals are normally exempt from being required to have leave to enter or remain in the UK and are not covered by the right of abode provision, and are therefore not covered by the exemption inserted by the Ukraine Regulations.

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The policy intention was not to exclude Irish nationals from this exemption, and without the proposed change, incoming Irish citizens would still be required to meet the Habitual Residence and (where relevant) Past Presence tests before being able to access benefits or services.

The same error appears in the equivalent Ukraine Regulations in England and Wales and Northern Ireland, and those administrations are taking forward similar amendments.

Making the changes to regulations made under the Social Security (Scotland) Act 2018 (the '2018 Act'), the Social Security Act 1988, the Social Security Contributions and Benefits Act 1992, and the Welfare Reform Act 2012 will ensure consistency across the benefits being delivered in the UK, including by the Department for Work and Pensions under Agency Agreement in Scotland.

I would hereby like to formally submit to SCoSS the relevant excerpt of the draft regulations specific to the Ukraine changes under [section 97\(2\) of the 2018 Act](#).

Please note this is an excerpt of the changes which will be incorporated into the Social Security ([Miscellaneous Amendment](#)) (Scotland) Regulations and which are due to be laid 12 September 2022.

The benefits which require changes to Regulations in respect of the 2018 Act are:

- Child Disability Payment;
- Adult Disability Payment;
- Best Start Grants; and
- Young Carer Grant.

As you are aware, only the amendment regulations in relation to those under the 2018 Act require scrutiny from the Commission. For completeness, please note below the full suite of benefits which are affected, the first four of which require changes to Regulations in relation to our Agency Agreements with the Department for Work and Pensions:

- Disability Living Allowance;
- Personal Independence Payment;
- Attendance Allowance;
- Carers Allowance; and
- Best Start Foods.

I am advised the Commission has already engaged with officials and received a verbal briefing; has offered in principle support for the need to effect the change; and has agreed to include your scrutiny of this amendment to your forthcoming report on the Ukraine Regulations. I am very grateful to SCoSS members for the helpful and constructive way in which you have engaged with officials on this matter, and for your willingness to scrutinise these amendment regulations outwith normal procedures.

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Please find the excerpt of the draft amendment regulations relating to Ukraine attached. I understand that submitting these additional amendment regulations to you for scrutiny today is at odds with normal procedures, please accept my thanks to you and to fellow Commission members for your continued cooperation and understanding in this matter.

Best regards,

A handwritten signature in black ink that reads "Ben Macpherson". The signature is fluid and cursive, with a long horizontal stroke at the end.

BEN MACPHERSON

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