

T: 0300 244 4000
E: scottish.ministers@gov.scot

Judith Paterson and Dr Mark Simpson
Scottish Commission on Social Security
c/o Secretariat
Victoria Quay
The Shore
Edinburgh
EH6 6QQ

By email to: info@socialsecuritycommission.scot

18 October 2023

Dear Judith and Mark

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

I am writing to inform the Commission of an urgent need to implement new, expedited draft regulations to support people arriving in Scotland from 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. I understand my officials have already been in contact regarding the immediate need for Scottish Ministers to lay emergency legislation to support these people, and I am very grateful for the willingness that you have shown to work with us within these difficult circumstances.

As you are aware, the Department for Work and Pensions is laying emergency legislation to exempt affected arriving individuals from both the Habitual Residence Test and the Past Presence Test for benefits where those tests are applied, in order that they can receive access to DWP benefits and services immediately.

In order to ensure such individuals arriving in Scotland can also receive devolved assistance, I 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 devolved legislation, including the Social Security (Scotland) Act 2018.

The DWP intends for its draft regulations to come into force on Friday 27 October. To ensure parity for clients in accessing benefits in Scotland for which Scottish Ministers have responsibility, I am proposing the same commencement date for these regulations.

I would therefore like to submit draft regulations to the Commission under section 97(2) of the Social Security (Scotland) Act 2018, which I intend to lay before Parliament on Thursday 19 October.

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 which require to be changed in respect of the 2018 Act are:

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

I understand that submitting regulations to you for scrutiny today which are to be laid before Parliament on the next day does not provide the Commission any time to undertake its duties to scrutinise and report on the draft regulations before they are laid. I am sure you will appreciate these are exceptional circumstances outwith our control due to the situation in in Israel, the West Bank, the Gaza Strip, East Jerusalem and the Golan Heights, and that we must act quickly.

I am grateful to the Commission for your cooperation in agreeing to consider the regulations retrospectively. I note that the Commission chose not to prepare a scrutiny report with the recent regulations on people returning from Sudan, but it is important of course that the Commission completes its scrutiny and, if you choose to do so, produce your report in due course.

In laying the regulations and in line with the requirements of the 2018 Act I will set out why I have done so before your report has been published. I will also make clear that I will respond to your report following its publication, if one is produced, including to bring forward further provision where that is necessary to implement recommendations that we accept and to offer an explanation where we do not accept recommendations.

The statutory section 97(9)(b) statement is attached to this letter.

Please find draft regulations attached. Given the imminent timescales involved, further minor changes may be made to the draft regulations before they are laid before the Scottish Parliament on 19 October 2023. I am grateful to you for the helpful and constructive way in which you have engaged with officials, and for your willingness to scrutinise these amendment regulations retrospectively.

Thank you for your continued co-operation and support.



SHIRLEY-ANNE SOMERVILLE