

PARLIAMENTARY BUREAU: APPROVAL OF SCOTTISH STATUTORY INSTRUMENTS

AFFIRMATIVE INSTRUMENTS

[Deposit and Return Scheme for Scotland \(Miscellaneous Amendment\) Regulations 2023 \(SSI 2023/Draft\)](#)

1. Under Rule 10.6.5, the Bureau is required to lodge the following motion—

George Adam on behalf of the Parliamentary Bureau: That the Parliament agrees that the Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft) be approved.

Purpose

2. To alter the full implementation date for Scotland's Deposit Return Scheme (DRS) from 1 March 2024 to 1 October 2025 (matching the UK Government's planned date for DRS operating across other parts of the UK) and to make other consequential amendments.

Consideration by committee

3. At its meeting on 26 September 2023 the Net Zero, Energy and Transport Committee agreed to recommend that the regulations be approved. The Committee report was published on 5 October 2023.

[Legal Aid and Advice and Assistance \(Miscellaneous Amendment\) \(Scotland\) \(No. 4\) Regulations 2023 \(SSI 2023/Draft\)](#)

4. Under Rule 10.6.5, the Bureau is required to lodge the following motion—

George Adam on behalf of the Parliamentary Bureau: That the Parliament agrees that the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 4) Regulations 2023 (SSI 2023/Draft) be approved.

Purpose

5. The instrument is made under powers in the [Legal Aid \(Scotland\) Act 1986](#) and makes provision for the following changes to the criminal and civil legal aid schemes:

- criminal legal aid is made available to pay for advice and representation by a solicitor for persons arrested and detained under sections of the National Security Act 2023 because they are suspected of being involved in foreign power threat activity;
- social security 'carer support payments' will be disregarded in assessment of eligibility for civil legal aid and children's legal assistance and any liability to repay money to the Legal Aid Fund will not take account of these payments;

- amendments are made to legal aid provision for an increase in Solicitors' and Counsel's fees payable which cover a range of Criminal, Civil and Children's Legal Aid and Assistance Regulations as set out in [the instrument and Policy Note](#).

Consideration by committee

6. At its meeting on 3 October 2023 the Equalities, Human Rights and Civil Justice Committee agreed to recommend that the regulations be approved. The Committee report was published on 4 October 2023.

Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (SSI 2023/Draft)

7. Under Rule 10.6.5, the Bureau is required to lodge the following motion—

George Adam on behalf of the Parliamentary Bureau: That the Parliament agrees that the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (SSI 2023/Draft) be approved.

Purpose

8. To set out the rules and eligibility criteria for Carer Support Payment, a form of assistance to provide support to people providing regular and substantial care to another individual who normally receives a certain rate of disability assistance. This new form of social security assistance will be administered by Social Security Scotland and will replace Carer's Allowance in Scotland.

9. This instrument also includes provision to transfer the benefits of individuals who live in Scotland and receive Carer's Allowance (which is currently administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive Carer Support Payment, to be administered by Social Security Scotland on behalf of the Scottish Ministers.

Consideration by committee

10. At its meeting on 28 September 2023 the Social Justice and Social Security Committee agreed to recommend that the regulations be approved. The Committee report will be published by close on 20 October 2023.

Decision

11. **Business Managers are invited note that the above motions will be lodged.**

12. **Business Managers should reserve their position if their party intends to speak against or oppose the motions.**

Emergency SSI

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

13. The above instrument allows access to a number of social security entitlements for those coming to Scotland from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon to escape violence. In order for the legislation to coincide as closely as possible with similar UK Government urgent legislation which is coming into force on 27 October, the Scottish Government is requesting that the instrument be considered under an expedited procedure, with a laying date of 19 October, coming into force on 27 October 2023.

14. The Delegated Powers and Law Reform Committee will consider the instrument on the morning of 24 October. The Clerk will provide an oral update during the Bureau meeting on whether any issues were raised on the instrument. 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.

15. Similar expedited approaches to considering instruments allowing access to social security entitlements for those escaping violence in Ukraine and Sudan were taken in March 2022 and May 2023 respectively.

16. A statement setting out why Scottish Ministers consider it appropriate to lay the draft instrument before the Parliament before the Scottish Commission on Social Security has submitted its report on the proposals for the regulations is attached at Annexe A.

Decision

17. In order for the intended timescales to be met, the Bureau is invited to consider—

- recommending to Parliament that the instrument be referred to the Parliament (a motion to this effect can be taken on Tuesday 24 October).**
- that the SSI be taken in the Chamber on Wednesday 25 October.**

**Parliamentary Business Team
October 2023**

Annexe A

**THE SOCIAL SECURITY (RESIDENCE AND PRESENCE
REQUIREMENTS) (ISRAEL, THE WEST BANK, THE GAZA STRIP, EAST
JERUSALEM, THE GOLAN HEIGHTS AND LEBANON) (SCOTLAND)
REGULATIONS 2023)
SSI 2023/XXX**

Statement made under s97(9)(b) of the Social Security (Scotland) Act 2018

These regulations are being laid without a report from the Scottish Commission on Social Security (the Commission). As such, this statement has been prepared setting out why Scottish Ministers consider it appropriate to lay the draft instrument before the Parliament before the Commission has submitted its report on the proposals for the regulations.

Scottish Ministers consider laying this draft without a Commission report is appropriate.

Given the recent escalation of violence and unrest in Israel, and the Gaza Strip following the Hamas terrorist attack on 7 October 2023, the UK Ministers wish to make changes to social security residence and presence rules for specified individuals who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before the 7 October 2023. Specifically, the UK Government intends to exempt affected arriving individuals from both the Habitual Residence Test and the Past Presence Test for benefits where those tests are applied. The UK Government intends for these changes to come into force on 27 October 2023. The Scottish Government is replicating the legislative changes in Scotland to ensure equivalent treatment in how people returning from these areas are treated in different parts of the UK when accessing benefits. Similar changes are being made to the Regulations governing Council Tax Reduction in Scotland for the same reasons.

It is essential that these regulations enter into force at the same time as the UK regulations. Not legislating in a similar timetable would create disparity within the UK for arriving individuals and go strongly against the Scottish Government's general policy to support individuals who flee violence from around the world as much as possible. The proposed changes give effect to that goal by exempting UK nationals, Irish nationals and third country nationals with certain types of immigration status from the Habitual Residence Test and the Past Presence Test. As such, it was not possible to maintain current legislative timelines and allow the Commission sufficient time to prepare a report, and Scottish Ministers would have similarly had insufficient time to prepare a response.

Officials have discussed the proposals with the Commission and when a report is published by the Commission, Scottish Ministers will respond, including bringing forward further provision where that is necessary to implement recommendations that we accept and to explain why we will not do so where we do not agree with recommendations made.

SCOTTISH GOVERNMENT