
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

**The Disability Assistance for Working
Age People (Scotland) Regulations 2022**

PART 5

Residence and Presence Conditions

Serving members of Her Majesty’s forces, civil servants and their family members

17.—(1) A relevant individual is treated as meeting the residence and presence conditions set out in regulations 15(1)(a), (b) and (d) where on any day that individual is outside the common travel area—

- (a) by reason of their capacity mentioned in paragraph (3)(a) provided that the individual satisfied the residence and presence conditions set out in regulation 15(1)(a), (b) and (d) immediately prior to the start of their employment mentioned in paragraph (3)(a), or
- (b) by reason of being a person mentioned in paragraph (3)(b) living with an individual to whom paragraph (3)(a) applies.

(2) The past presence condition set out in regulation 15(1)(e) does not apply to a relevant individual.

(3) A “relevant individual” in paragraph (1) and (2) means an individual who is—

- (a) outside of the common travel area in their capacity as a—
 - (i) serving member of Her Majesty’s forces, or
 - (ii) civil servant, or
- (b) living with a person mentioned in sub-paragraph (a) and—
 - (i) is the child, step-child or child in care of that person,
 - (ii) is the parent, step-parent or parent-in-law of that person, or
 - (iii) is married to or in a civil partnership with that person, or is living together with that person as if they were married or in a civil partnership.

(4) In this regulation—

“child in care” means—

- (a) under the law of Scotland, a child in respect of whom a relevant individual listed in paragraph (3)(a)—
 - (i) is a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009⁽¹⁾,
 - (ii) is a kinship carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,

- (iii) has a kinship care order within the meaning of section 72 of the Children and Young People (Scotland) Act 2014⁽²⁾, or
- (b) under the law of England and Wales and Northern Ireland, a child in respect of whom a person listed in paragraph (3)(a) has a relationship equivalent to those listed under the law of Scotland,

“civil partnership” is to be read as including a reference to marriage of a same sex couple and a reference to civil partners or to a person who is in a civil partnership is to be construed accordingly,

“civil servant” has the meaning given by section 1(4) of the Constitutional Reform and Governance Act 2010⁽³⁾,

“person who is living with another person as if they were in a civil partnership” is to be read as including a reference to a person who is living with another person of the same sex as if they were married, and

“serving member of Her Majesty’s forces” means a member of a regular force or a reserve force (“M”) as defined, in each case, by section 374 (definitions applying for purposes of the whole Act) of the Armed Forces Act 2006⁽⁴⁾, unless—

- (a) M is under the age of 16,
- (b) M is committing an offence under section 8 of the Armed Forces Act 2006 (desertion),
- (c) the force concerned is one of Her Majesty’s naval forces which M locally entered at an overseas base without—
 - (i) previously being an insured person under the National Insurance Act 1965⁽⁵⁾, or
 - (ii) paying or having previously paid one or more of the following classes of contributions under the Social Security Act 1975⁽⁶⁾ or the Social Security Contributions and Benefits Act 1992⁽⁷⁾—
 - (aa) primary Class 1,
 - (bb) Class 2, or
 - (cc) Class 3, or
- (d) the force concerned is one of Her Majesty’s military forces or Her Majesty’s air forces which M entered, or was recruited for, outside the United Kingdom and—
 - (i) where that force is one of Her Majesty’s military forces, the depot for M’s unit is outside the United Kingdom, or
 - (ii) where that force is one of Her Majesty’s air forces, M is liable under the terms of M’s engagement to serve only in a specified area outside the United Kingdom.

(2) 2014 asp 8.

(3) 2010 c. 25.

(4) 2006 c. 52. Section 374 was relevantly amended by section 44(3) of the Defence Reform Act 2014 (c. 20).

(5) 1965 c. 51.

(6) 1975 c. 14.

(7) 1992 c. 4.