

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2021 No. 320**

**SOCIAL SECURITY**

**The Social Security (Residence Requirements)  
(Afghanistan) (Scotland) Regulations 2021**

*Made* - - - - *14th September 2021*

*Coming into force* - - *15th September 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 13 of the Social Security Act 1988(1), sections 64, 70, and 71 of the Social Security Contributions and Benefits Act 1992(2), section 77 of the Welfare Reform Act 2012(3), sections 28, 31(2) and 32(2) of the Social Security (Scotland) Act 2018(4), and all other powers enabling them to do so.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

- 
- (1) 1988 c. 7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c. 11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with sections 27 and 32 of the 2016 Act.
- (2) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 as read with section 22(2) and section 32 of the 2016 Act. Section 22(2) of the 2016 Act inserted exceptions into the social security reservation in Head F1 of Part 2 of Schedule 5 of the Scotland Act 1998 relating to carers’ and disability benefits. Section 22(2) was brought into force on 17 May 2017 by [S.I. 2017/455](#), subject to transitional arrangements set out in [S.I. 2017/444](#) which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. Section 32 was brought into force on 17 September 2016 by [S.I. 2016/759](#). The transitional arrangements in respect of carers’ benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 ([asp 9](#)) on 3 September 2018 (see [S.S.I. 2018/250](#)). The transitional arrangements in respect of disability benefits ended on 31 March 2020 (see regulation 4 of [S.I. 2017/444](#)). Accordingly, in so far as the functions under sections 22(2) and 32 are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State.
- (3) 2012 c. 5. The functions of the Secretary of State under sections 77 and 94 of the Welfare Reform Act 2012, as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. Legislative competence for disability benefits was devolved to the Scottish Parliament by section 22(2) of the Scotland Act 2016, which inserted exceptions into paragraph F1 of schedule 5 of the Scotland Act 1998. Section 22(2) of the Scotland Act 2016 was brought into force on 17 May 2017 by [S.I. 2017/455](#), subject to transitional arrangements set out in [S.I. 2017/444](#) which modified the operation of section 53 of the Scotland Act 1998. Section 32 of the Scotland Act 2016 provides the meaning of “pre-commencement enactment” in this context. The transitional arrangements in respect of disability benefits, including personal independence payments, ended on 31 March 2020 (see regulation 4 of [S.I. 2017/444](#)). Accordingly, in so far as the functions under sections 77 and 94 are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. Under section 172(1) of the Social Security Administration Act 1992, the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the Welfare Reform Act 2012. As a result of section 33(1) of the Scotland Act 2016, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.
- (4) 2018 [asp 9](#). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

In accordance with section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the National Assembly for Wales.