
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 54

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

PART 5

Residence and Presence Conditions

Residence and presence conditions

15.—(1) An individual satisfies the residence and presence conditions where on any day that individual—

- (a) is ordinarily resident in Scotland,
- (b) is habitually resident in the common travel area,
- (c) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999⁽¹⁾,
- (d) is present in the common travel area, and
- (e) has been present in the common travel area for a period of, or for periods amounting in the aggregate to, not less than 26 weeks out of the 52 weeks immediately preceding that day.

(2) In this Part, “common travel area” has the meaning given in section 1(3) of the Immigration Act 1971⁽²⁾.

(3) The residence condition set out in paragraph (1)(a) does not apply in relation to the daily living component where on any day the individual—

- (a) is habitually resident in Ireland,
- (b) has a genuine and sufficient link to Scotland, and
- (c) is an individual—
 - (i) to whom the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019⁽³⁾, as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits.

(4) The reference in paragraph (3)(b) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (3) would be incompatible with the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019.

(1) 1999 c. 33.
(2) 1971 c. 77.
(3) 2019 CP 49.

Status: Point in time view as at 26/10/2023.

Changes to legislation: The Disability Assistance for Working Age People (Scotland) Regulations 2022, Section 15 is up to date with all changes known to be in force on or before 03 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where the person—

- (a) is lawfully working in United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union⁽⁴⁾ which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,
- (b) is a member of the family of, and living with, a person specified in sub-paragraph (a), or
- (c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.

(6) The past presence condition in paragraph (1)(e) does not apply where an individual has a terminal illness within the meaning of regulation 26.

(7) The residence and presence conditions set out in paragraphs (1)(b) and (1)(e) do not apply where an individual is a person who—

- (a) has leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—
 - (i) the Afghan Relocations and Assistance Policy, or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
- (b) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (a),^{F1}...
- (c) has leave granted under the Afghan Citizens Resettlement Scheme,^{F2}^{F3}...
- (d) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, [^{F4}has a right] of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 (1)^{F5} or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act], where the individual—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022 ||^{F6}, ^{F7}...
- (e) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan||^{F8}, or
- (f) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—

(4) OJ C 202, 7.6.2016, p.146.

(1) 1999 c. 33.

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- (i) was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023, and
- (ii) left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack]

(8) For the purposes of paragraph (7), “the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021⁽⁵⁾.

Textual Amendments

- F1** Word in reg. 15(7)(b) omitted (22.3.2022 at 5.40 p.m.) by virtue of The Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (S.S.I. 2022/108), regs. 1(1), **8(2)(a)**
- F2** Word in reg. 15(7)(c) omitted (17.5.2023 at 5.54 p.m.) by virtue of The Social Security (Residence Requirements) (Sudan) (Scotland) Regulations 2023 (S.S.I. 2023/149), regs. 1(1), **8(2)(a)**
- F3** Reg. 15(7)(d) and word inserted (22.3.2022 at 5.40 p.m.) by The Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (S.S.I. 2022/108), regs. 1(1), **8(2)(b)**
- F4** Words in reg. 15(7)(d) substituted (14.11.2022) by The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (S.S.I. 2022/336), regs. 1(1), **9(a)**
- F5** Words in reg. 15(7)(d) inserted (14.11.2022) by The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (S.S.I. 2022/336), regs. 1(1), **9(b)**
- F6** Reg. 15(7)(e) and word inserted (17.5.2023 at 5.54 p.m.) by The Social Security (Residence Requirements) (Sudan) (Scotland) Regulations 2023 (S.S.I. 2023/149), regs. 1(1), **8(2)(b)**
- F7** Word in reg. 15(7)(d) omitted (26.10.2023 at 5.38 p.m.) by virtue of The Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023 (S.S.I. 2023/309), regs. 1(2), **8(2)(a)**
- F8** Reg. 15(7)(f) and word inserted (26.10.2023 at 5.38 p.m.) by The Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023 (S.S.I. 2023/309), regs. 1(2), **8(2)(b)**

Commencement Information

- I1** Reg. 15 in force at 21.3.2022, see **reg. 1**

Status:

Point in time view as at 26/10/2023.

Changes to legislation:

The Disability Assistance for Working Age People (Scotland) Regulations 2022, Section 15 is up to date with all changes known to be in force on or before 03 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.