

## Social Justice and Social Security Committee

Thursday 05 February 2026

5<sup>th</sup> Meeting, 2026 (Session 6)

# Residence and Presence Regulations

The Committee will hear from:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Scottish Government officials

## Introduction

The [Social Security \(Residence and Presence Requirements\) \(Miscellaneous Amendment\) \(Scotland\) Regulations](#) were laid in the Parliament on 14 January.

The following provides a short overview of the regulations and scrutiny by the Scottish Commission on Social Security, before suggesting issues to raise with the Cabinet Secretary.

## Background

### Why the regulations are needed

The Scottish Government has previously used emergency regulations to respond to specific international crises in, for example Afghanistan, Ukraine, Sudan and Gaza. These regulations exempted certain individuals from the normal residence requirements for devolved benefits so that they could access support on arrival. The UK Government has had similar regulations for their social security benefits.

These regulations create a general provision, so that separate emergency regulations would not be required in future crises.

The Westminster Parliament [passed equivalent legislation for DWP social security benefits](#) in July 2025. The explanatory note to those regulations expanded on the need to legislate:

“The need for generalised legislation to respond to future emergencies is supported by evidence in the National Risk Register 2025<sup>16</sup>. The Register assesses that in the next five years there is a 5-25% likelihood of a crisis overseas necessitating the arrival and reception of a large number of destitute or vulnerable British nationals, and a higher likelihood of lower impact emergencies. This generalised legislation improves on the Department’s previous approach by enabling it to provide additional support to affected

persons more quickly than is possible using crisis legislation following each crisis.”

The EQIA describes the policy intent:

“The primary aim of the policy is to provide a long-term solution for overseas crises to allow people who have had to flee emergencies abroad to access benefits quickly on arrival in Scotland, and to allow payments to continue to individuals who have been stranded abroad due to a crisis. This is intended to remove the need to lay further emergency regulations every time a crisis meeting the agreed criteria occurs.”

## **What the regulation do**

The regulations will:

- allow people fleeing international crises to access devolved benefits more quickly by removing requirements for habitual residence or past presence.
- allow people eligible for Best Start Grant under these regulations to get the higher rate pregnancy and baby payment for second or subsequent children if their older children were born before they arrived in or returned to the UK.
- extend the permitted ‘temporary absence’ period from 13 weeks to 26 weeks for UK nations stranded abroad in an international crisis

The regulations apply to those:

- arriving from, or stranded in, a country from which the UK Government has advised UK nationals to leave or has ordered an evacuation
- who have immigration status granted under a ‘safe and legal humanitarian safe route’

The legislation does not enable persons who are in the UK illegally or whose immigration status prohibits recourse to public funds to access benefits.

## **Impact assessments**

The regulations were published with a [Child Rights and Wellbeing Assessment](#) (CRWIA) and an [Equalities Impact Assessment](#) (EQIA).

The EQIA states that:

“the impacts of the policy will be monitored, with feedback sought from operational teams following future overseas emergencies to assess whether the legislation achieves its intended outcomes and whether refinements are needed.”

It also states that information is not available on those who have benefited from the existing regulations:

“There is no specific information available on clients who have arrived in the UK as a result of a crisis and who have benefited from previous crisis-specific exemptions from residency tests. Social Security Scotland does not hold data on how many individuals have been exempt from residence tests previously.” (EQIA p.6)

Neither the EQIA nor the CRWIA find any negative impacts from the regulations. The EQIA states that: “the policy contributes to advancing equality of opportunity and fostering good relations among communities.” The CRWIA states that the regulations have the potential to impact positively on children’s rights set out in the UN Convention on the Rights of the Child including article 18 (parental responsibilities), article 32 (best interests of the child), article 24 (provision of adequate nutritious foods), article 26 (social security), article 27 (adequate standard of living) and article 31 (leisure, play and culture).

The EQIA concludes that the regulations will have a positive impact for people in Scotland. It states that the Scottish Government is:

“aware that groups who share protected characteristics may face difficulties in accessing or understanding their entitlements due to language or other communication barriers. Scottish Ministers are committed to mitigating these barriers both within Social Security Scotland and by ensuring that the independent advocacy service will be available to signpost people to third sector organisations where necessary. Interpreter services and assistance to complete application forms will be available.” (EQIA p,15)

## **Scottish Commission on Social Security and Scottish Government Response**

SCOSS reported on 19 November 2025, welcoming the policy, saying:

“Consolidating this approach into one set of general crisis exemption regulations is welcome as it avoids having to bring forward emergency regulations each time these circumstances arise and the potential for delay this could cause.”

SCOSS made one recommendation to which the [Scottish Government replied on 14 January](#), when the regulations were laid in Parliament. The recommendation and response are set out below in full.

Recommendation 1: To inform the development of guidance, and improvement of local delivery services, we recommend that Social Security Scotland and the Scottish Government collect and analyse data on exemptions made under these regulations and monitor their impact.

Accept. We will monitor how the guidance and operational processes work with any future crises by collecting feedback from client advisors, Local Delivery and Decision Support Team. At the moment, there is no detailed management information available about clients exempted from residency tests due to escaping a crisis, as the Social Security Scotland systems are still developing. However, we will aim to collect data on residency exemptions in

the event of any future crises, depending on the scale and the number of people impacted.

## **Suggested themes for discussion**

**Members may wish to discuss:**

- 1. The same policy exists for DWP benefits. Will the UK and Scottish Governments work together on monitoring the impact of this policy?**
- 2. The reply to the Scottish Commission on Social Security said that the Scottish Government would: “aim to collect data on residency exemptions in the event of any future crises”. Will the Scottish Government ensure that the systems and processes needed to collect that data are established now, so that they are in place in the event of a future crisis?**
- 3. People benefiting from these regulations may be more likely to have language barriers to claiming benefits. What will the Scottish Government do to ensure that people who might benefit from these regulations are aware of the support they might be eligible for?**

**Camilla Kidner, Senior Researcher, SPICe**

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