

David Rutley MP
Minister for Welfare Delivery
Department for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

8 November 2021

Dear Minister,

The Social Security (Habitual Residence and Past Presence) Amendment Regulations 2021

The above regulations pave the way, following the rapid change of administration in Afghanistan, for certain Afghan nationals who are relocating to the UK and returning UK nationals to receive income-related benefits from day one of their arrival in the UK by removing Habitual Residence Test (HRT). Additionally, the past presence test (PPT) will not be applied to certain disability benefits for Afghan nationals relocating to the UK.

Given the exigent nature of these regulations, the Secretary of State invoked the urgency provision set out in Section 173(1)(a) of the Social Security Administration Act 1992 on the basis that it would be inexpedient to bring them to this Committee for statutory scrutiny before the proposals came into force on 15 September. Your officials kept us informed of developments as they pre-emptively created and finalised the support package for a group of individuals in an extremely vulnerable situation, and we thank you for that thoughtful and courteous approach.

While the regulations were laid under the 'urgency' provision, they remained subject to statutory scrutiny by this Committee, and we completed that process at our meeting this week. Following careful consideration, the Committee has decided it would not take these regulations on formal reference. While we welcome these proposals overall, we identified one area of concern that we wanted to bring to your attention and to seek assurance it was the policy intent.

These regulations result in an inconsistency in treatment between Afghans entering the UK and returning UK nationals, who remain subject to the PPT when making claims for disability benefits. For example, a UK national (who has been absent from the UK for over a year) fleeing Afghanistan would have to wait for two years before they could claim Personal Independence Payment due to the PPT (while being able to claim income-related benefits from day one), whereas certain Afghan nationals arriving in the UK could have immediate eligibility for both types of benefit.

The Committee recognises that the Department had to work at pace to develop and lay these regulations and that, in those circumstances, it was eminently sensible to adopt a framework that already existed within the social security system – namely that the Afghan citizens would be placed into an analogous position of a refugee, and that the returning UK nationals would be placed into the same position as of any other UK national returning to the UK. However, it is our view that there would be merit in reviewing this disparity and developing now a clear policy intent and set of guiding principles in anticipation of potential future similar scenarios. We would welcome an opportunity to discuss with you the broader policy intent and guiding principles so that, should the Department be faced with further similar scenarios that require urgent action, there is a pre-considered consistent approach that can be deployed at pace.

A copy of this letter goes to the Financial Secretary of the Treasury as the same point applies to The Child Benefit (General) (Amendment) Regulations 2021 which we considered alongside DWP's regulations,¹ and to Baroness Stedman-Scott and Jonathan Mills

I would, of course, be very happy to discuss further any of the issues raised in this letter if that would be helpful.



Dr Stephen Brien
SSAC Chair

¹ In accordance with The Memorandum of Understanding between the Social Security Advisory Committee, HM Treasury and HM Revenue and Customs.