

David Rutley MP
Minister for Welfare Delivery
Department for Work and Pensions
Caxton House
6-12 Tothill Street
London
SW1H 9NA

26 May 2022

Dear David,

The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022

The above regulations were presented to the Social Security Advisory Committee for statutory scrutiny at our meeting yesterday. These regulations pave the way for Ukrainian nationals and returning UK nationals who are fleeing Ukraine following the Russian invasion to receive income-related benefits and disability benefits from day one of their arrival in the UK through the removal of the Habitual Residence Test and Past Presence Test.

The regulations came into force on 22 March, following the Secretary of State's decision to invoke the urgency provision¹ to enable the government to respond to the urgent humanitarian crisis developing in Ukraine. I have previously written to you acknowledging the compelling case for the use of the urgency provision for these regulations, and endorsing the steps you have taken to ensure that those arriving in this country from Ukraine can have welcome clarity and reassurance about the support available to them from the UK.

This letter confirms that the Committee has decided that, under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it does not wish to take these regulations on formal reference.

I want to take this opportunity to place on record the Committee's thanks to the team of officials who presented these regulations to us. They provided candid explanations of the purpose and practicalities of these regulations, which cover a complex area of policy and law with considerable interplay between Home Office immigration rules and

¹ Section 173(1)(a) of the Social Security Administration Act 1992)

the social security system. It was a credit to those officials that they were able to explain such detailed issues clearly and provide well thought-through and clear answers to our questions, providing considerable assurance to Committee members.

We were delighted to hear that, following the scrutiny of similar regulations brought forward following the rapid change of administration in Afghanistan in November 2021, our concerns about the inconsistent treatment of Afghan nationals and returning UK nationals have been taken on board for these regulations.²

The Committee was informed that a drafting error had crept into the formulation of these regulations which has resulted in an inappropriate distinction between UK and Irish nationals. We are satisfied that steps are being taken to address that.

It is understandable that, in developing legislation at pace to respond to developing human crises of the magnitude of those seen in Afghanistan and Ukraine, oversights of the nature I have outlined above will occur. We are reassured that the Department is ensuring that lessons are being learned, and successive legislation strengthened accordingly. However, the Committee is of the view that there may be merit in developing a standard framework on which future urgent regulations of this nature can draw. A framework of drafting instructions and processes ensures that corporate memory can be retained and made available to those who may find themselves facing the challenge of developing proposals to respond at short notice to similar designated crises. The Committee would be very happy to support the Department in developing such a framework if that would be helpful.

A copy of this letter goes to the Secretary of State, Lady Stedman-Scott and Jonathan Mills.



Stephen Brien
SSAC Chair

² [SSAC to Minister for Welfare Delivery: The Social Security \(Habitual Residence and Past Presence\) Amendment Regulations 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/ssac-to-minister-for-welfare-delivery-the-social-security-habitual-residence-and-past-presence-amendment-regulations-2021)