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Dear Dr Witcher

Emergency legislation required following the introduction of the UK Government's policies to relocate and resettle people evacuated from Afghanistan.

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

I understand you have been in dialogue with my officials regarding the immediate need for Scottish Ministers to lay emergency legislation to support people evacuated from Afghanistan in line with the introduction of the UK Government's relocation and resettlement schemes. I'm very grateful for the willingness that you and Commission Members have shown to work with us within these difficult circumstances.

As you are aware, the Department for Work and Pensions are creating emergency legislation to allow those evacuated from Afghanistan to have immediate Indefinite Leave to Remain status under the UK Government's relocation and resettlement schemes, including the [Afghan Citizens' Resettlement Scheme](#), [Afghan Relocations and Assistance Policy](#) and [Afghanistan Locally Employed Staff Ex-Gratia Scheme](#).

Although being granted Indefinite Leave to Remain upon arrival, without further legislative change the incoming citizens would still be required to meet the Habitual Residence and (where appropriate) Past Presence tests before being able to access benefits or services. DWP are therefore legislating at speed to allow these citizens to be exempt from these requirements to satisfy the eligibility tests, in order that they can receive access to DWP benefits and services immediately.

In line with relevant Agency Agreements, and in order to ensure individuals arriving in Scotland can also receive devolved assistance, Scottish Ministers propose to make mirroring modifications to social security legislation. These amendments are being made to both UK benefits delivered under Agency Agreement in Scotland and to regulations made under Social Security (Scotland) Act 2018.

DWP intend their draft regulations to come into force on Wednesday 15 September and, to ensure parity for clients in accessing benefits in Scotland for which Scottish Ministers have responsibility, we are working towards the same commencement date for the amendments to Scottish legislation.

I would therefore like to submit draft regulations under section 97(2) of the Social Security (Scotland) Act 2018 ('The Act') which I intend to lay before Parliament on Monday 13 September.

The benefits which are affected and require to be changed as part of our Agency Agreement with DWP are:

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carers Allowance

The benefits which require to be changed in respect of the 2018 Act are:

- [Child Disability Payment](#)
- [Best Start Grants](#)
- [Best Start Foods](#)
- [Young Carer Grant](#)

Please note that Adult Disability Payment (ADP) is not within scope for these regulations. ADP regulations are due to be laid at the end of 2021 and will contain corresponding provisions. A paper apart will be included along with the new draft provisions for ADP so that SCoSS can scrutinise these new provisions alongside the draft ADP regulations.

I understand that submitting the regulations for to you scrutiny today to lay before Parliament on the same day does not provide the Commission with the time you require to undertake your duties to scrutinise and report on the draft regulations before they are laid. I'm sure you will appreciate that these are exceptional circumstances out-with our control due to the international situation in Afghanistan and that we must act quickly.

I am advised that you have already provided an initial assessment based on a briefing from officials which has been very helpful in preparing the regulations. I am grateful to you and to fellow Commission members for having done so. It is important of course that the Commission complete your scrutiny and produce your report in due course.

In laying the regulations and in line with the requirements of the 2018 Act I will set out why I have done so before your report has been published. I will, as discussed with officials, also make clear that I will respond to your report when it is published, including to bring forward further provision where that is necessary to implement recommendations that we accept and to explain why we will not do so where we do not agree with recommendations.

Please find draft regulations attached. I am grateful to SCoSS Members for the helpful and constructive way in which you have engaged with officials, and for your willingness to scrutinise these amendment regulations retrospectively.

OFFICIAL – SENSITIVE

Thank you for your continued co-operation and support.

A handwritten signature in black ink that reads "Ben MacPherson". The signature is written in a cursive style with a long horizontal flourish at the end.

BEN MACPHERSON

OFFICIAL – SENSITIVE