



7 most frequently asked questions – refugees from Ukraine in Poland

1. Legalising the stay of Ukrainian citizens in Poland

Under the provisions of the Special Act of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with the Armed Conflict in the Territory of Ukraine (the “Special Act”; Journal of Laws item 583 as amended), the stay in Poland may be legalised by:

- Ukrainian citizens who entered Poland from Ukraine in connection with the military operations in the territory of Ukraine;
- Ukrainian citizens who hold the Polish Charter ('Karta Polaka') and entered Poland with their immediate family due to the ongoing military operations;
- persons who are not Ukrainian citizens but are spouses of Ukrainian citizens, provided they entered Poland from Ukraine in connection with the military operations in the territory of Ukraine.

If these persons legally entered Poland on 24 February 2022 or later and declared their intention to stay in Poland, their stay will be considered legal for 18 months as of 24 February 2022.

The above provisions do not apply to those Ukrainian citizens who hold:

- a permanent residence permit
- an EU long-term residence permit
- a temporary residence permit
- refugee status
- subsidiary protection
- a tolerated stay permit

and to those who:

- have submitted an application for international protection in Poland (or such an application has been submitted on their behalf),
- have declared an intention to submit an application for international protection in Poland or those to whom such declarations of intention apply.

Once a Ukrainian citizen withdraws his or her application for international protection or a declaration of intention to submit such an application, the provisions laid out in the Special Act, including the provision allowing a legal stay in Poland for 18 months as of 24 February 2022, shall apply.

Ukrainian citizens whose entry into Poland has not been registered by the Commander of the Polish Border Guard need to submit an application for a PESEL identification number at a relevant unit of any municipal office in Poland. On this basis, their entry into Poland will be registered by the Commander of the Polish Border Guard. Such applications should be filed within 60 days from the date of entry into Poland.

Extending the stay in Poland

If Ukrainian citizens to whom the provisions of the Special Act apply wish to extend their legal stay in Poland for longer than 18 months, starting from 24 February 2022, they ought to submit an application for a temporary stay of 3 years. Such an application can be filed not sooner than 9 months after their entry into Poland, but not later than within 18 months starting from 24 February 2022. The applications should be filed with the provincial governor (voivod) in the province where the applicant is residing at the moment of submitting the application.

Any travel of Ukrainian citizens out of Poland for longer than 1 month will deprive them of the right to a legal stay in Poland for a period of 18 months, as of 24 February 2022.

Ukrainian citizens not covered by the provisions of the Special Act should follow the general regulations concerning e.g. temporary residence permits.

2. Access to health care and education

The health care system

The Special Act introduces arrangements concerning the provision of medical services to Ukrainian citizens who came to Poland in connection with the military operations in their home country.

Ukrainian citizens whose stay in Poland is considered legal under the provisions of the Special Act are entitled to medical care within the territory of the Republic of Poland. Such care includes the provision of health care services on the same terms as those granted to persons covered by mandatory or voluntary health insurance under the Act of 27 August 2004 on Health Care Services Funded from the Public Budget. This means that the rules governing the provision of medical services and their funding are in principle identical as those applying to Polish patients.

The exemptions introduced by the Act include:

- treatment at health resorts
- rehabilitation at health resorts
- provision of medical products issued to patients under special health policy programmes of the Health Minister.

These exemptions are regulated in Art. 37 (1) of the Special Act.

The costs of medical services will be covered by the National Health Fund (NFZ) from the state budget. Such services will be provided under contracts with the NFZ concluded by individual health providers, and under prescription contracts in the case of pharmacies. This means that the provisions of the Special Act apply to those providers who have signed contracts with the NFZ.

Importantly, under Art. 99 of the Special Act these regulations will apply retroactively, i.e. starting from 24 February 2022.

Access to education

Ukrainian citizens who arrive in Poland due to the military operations in their home country can enrol their children in public schools, where they will receive instruction and care on the same terms as Polish citizens. The rules governing foreigners' right to school education were laid down earlier, among others, in the Act of 16 December 2016 – the Law on Education. These provisions also apply to individuals who arrive in Poland from Ukraine.

Education at public schools is free for children aged 7-18. To enrol, a relevant application needs to be submitted at a given school. The fact that a child does not speak Polish does not affect his or her the right to receive education. Additional free lessons of Polish can also be arranged. Ukrainian citizens who attend public schools

and preschools also have access to additional compensatory classes. The organisation of such classes rests with the governing authority in charge of a given school or preschool. The governing authority can also set up preparatory classes for foreign pupils at a given school.

The Special Act also provides that in order to provide care for children who are Ukrainian citizens aged 0-3, the heads of municipalities can set up nurseries or clubs for small children without having to fulfil the sanitary and housing requirements laid down in the Act of 4 February 2011 on the Care of Children Aged 0-3. Other simplified procedures have also been put in place, which stipulate for example the use of other premises for conducting teaching, educational and care activities whose organisation rests with schools or preschools (Art. 51 (1) of the Special Act) or arranging free transportation to venues where education or care is provided (Art. 52 of the Special Act).

To facilitate the fulfilment of tasks related to education and care, the new regulations stipulate additional educational subsidies to be provided to local governments from the state budget.

3. Taking up employment after arriving in the Republic of Poland

The Special Act introduces simplified procedures for employing Ukrainian citizens. Under the Special Act, Ukrainian citizens can take up work in Poland during their legal stay if:

- their stay in the territory of the Republic of Poland is considered legal under Art. 2 (1) of the Special Act, or
 - they are Ukrainian citizens legally residing in the territory of the Republic of Poland (under the previous general regulations).
- if the new employer notifies the county labour office competent for his principal place of business or address of residence of employing a Ukrainian citizen within 14 days from starting work (Art. 22 of the Act).

Duties of employers

To employ a Ukrainian citizen who is legally residing in Poland, it is sufficient to notify the county labour office. The employer makes the notification via the praca.gov.pl system within 14 days after a Ukrainian citizen takes up employment.

The notification includes detailed information about the employer and the particulars of the Ukrainian citizen concerned. It also specifies the type of contract concluded between the employer and the Ukrainian citizen and the position or the type of work being performed.

Failure to fulfil these requirements means that no work can be performed without a work permit.

Other arrangements

Ukrainian citizens can also start and pursue business activity in Poland on the same terms as Polish citizens, provided they obtain a PESEL identification number (Art. 23 of the Special Act).

Under the Special Act, Ukrainian citizens can also register as unemployed or as persons seeking employment within the meaning of the Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions (Art. 22 (6) of the Special Act).

Ukrainian citizens who have been granted a temporary residence permit under Art. 38 (1) of the Special Act (the application for which can only be submitted after a 9-month stay in Poland) may work in Poland with no work permit required.

4. Is it more favourable for Ukrainian citizens to seek refugee status under the Act on the Provision of Protection to Foreigners in the Territory of the Republic of Poland or under the Special Act of 12 March 2022?

The scope of the requirements to be fulfilled in order to be granted refugee status under the Act on the Provision of Protection to Foreigners in the Territory of the Republic of Poland is much broader and subject to assessment if the prerequisites for granting such status have been met; also, the procedure itself is much more complicated. Processing a case for granting refugee status or subsidiary protection can take up to 6 months. Foreigners who are granted refugee status receive a travel document stipulated in the Geneva Convention¹, which is valid for 2 years from its date of issue, and a residence card valid for 3 years from its date of issue. The procedure also states the circumstances in which such status can be revoked.

In contrast, obtaining a legal status under the Special Act of 12 March 2022 is much easier: it is sufficient to be a Ukrainian citizen who has made a lawful entry into Poland directly from Ukraine (in connection with the ongoing military operations) on or after 24 February 2022 until the date to be specified in a regulation. The stay in the territory of the Republic of Poland is deemed legal for a period of 18 months, as of 24 February 2022. After 9 months those Ukrainian citizens whose stay is considered legal can seek a temporary residence permit for a 3-year period.

Please note that these provisions do not apply to those Ukrainian citizens who hold:

¹ Ibidem.

- a permanent residence permit
- an EU long-term residence permit
- a temporary residence permit
- refugee status
- subsidiary protection
- a tolerated stay permit

and to those who:

- have submitted an application for international protection in Poland (or such an application has been submitted on their behalf),
- have declared an intention to submit an application for international protection in Poland or those to whom such declarations of intention apply.

Under the provisions of the Special Act, Ukrainian citizens who have applied for refugee status or declared they wish to apply may withdraw their applications or declarations. If they do so, the provisions of the Special Act will apply to them.

The benefits which Ukrainian citizens are entitled to under the Special Act of 12 March 2022 include among others: a one-time cash benefit (an optional benefit stipulated in the Act on the Provision of Protection to Foreigners), free psychological support, food aid, measures addressed to Ukrainian citizens with disabilities, medical care, school-based child care, granting a conditional right to practise as a medical doctor or a conditional right to practise as a dentist, nurse or midwife, assigning a PESEL identification number or creating a Trusted Profile.

As we can see, the Special Act offers some forms of assistance introduced earlier, e.g. psychological support, provided for in the Act on the Provision of Protection to Foreigners. However, the scope of assistance has been considerably extended and new benefits have been added.

5. Social assistance for Ukrainian citizens

Ukrainian citizens residing in Poland, whose stay is considered legal under the Special Act, are entitled to receive:

- family benefits (family allowance with supplements; attendance benefits, i.e. nursing allowance, special care allowance, nursing benefit, special assistance grant disbursed by municipal authorities, one-time grant upon childbirth, parental benefits);
- child-raising benefit, if they are residing in Poland together with their child or children;
- benefits from the “Good Start” programme, if they are residing in Poland together with their child or children;

- family care capital, if they are residing in Poland together with their child or children;
- subsidising reduced parent fees for the child's stay at a nursery, club for small children or at a day carer's, if they are residing in Poland together with their child or children.

The conditions for granting the benefits are as follows:

- The benefits will be granted in accordance with the procedures laid down in the relevant acts of parliament governing the award of specific benefits (excluding the condition to hold a residence card with the annotation 'labour market access').
- In determining the right to income-dependent family benefits, the family member(s) not residing in Poland will not be included in the calculation of the family's income per capita;
- Ukrainian citizens will be entitled to the benefits starting from the month when the application is filed, but not earlier than from the month when they are registered in the PESEL system. Child benefits will be due starting from the month the child is registered in the PESEL system;
- Temporary guardians will also be entitled to receive child benefits;
- A relevant application must be submitted, stating: the PESEL identification number; the type, series and number of the document which provided the basis for crossing the border (if available); the child's PESEL identification number and the type, series and number of the document which provided the basis for the child's crossing the border (if available).

Ukrainian citizens whose stay is considered legal in light of the Special Act and who have been registered in the PESEL system are entitled to a one-time cash benefit of PLN 300 per person.

The cash benefit can be spent on living expenses, in particular on the purchase of food, clothing, footwear, personal care products or rent.

How to apply for the cash benefit?

To receive the cash benefit, an application must be submitted, stating:

- full name;
- date of birth;
- nationality;
- gender;
- type, series and number of the document which provided the basis for crossing the border;
- date of the entry into Poland;
- address of residence;
- contact details, including telephone number or email (if available);
- PESEL identification number.

Applications should be filed with the head of the municipality or mayor of the city where the Ukrainian citizen is residing.

Applications for the one-time cash benefit can be submitted by: the entitled person, statutory representative of the entitled person, temporary guardian or person having actual custody of the child.

Significant for the efficiency of the process is the fact that awarding a one-time cash benefit does not require a decision by the head of the municipality or mayor of the city. Conversely, a decision must be issued when such benefit is refused.

Ukrainian citizens whose stay is considered legal in light of the Act and who have been registered in the PESEL system are entitled to cash and non-cash benefits granted under the Social Assistance Act.

This basically means that:

- a Ukrainian citizen claiming social assistance benefits will be required to make a statement on his or her personal, family, income and asset situation;
- no family welfare interview will be conducted during the proceedings for granting benefits unless doubts arise as to the veracity of the statement;
- benefits will be provided by the authorities of the municipality where the claimant is residing.

6. Establishing companies and partnerships by Ukrainian citizens

Ukrainian citizens with a lawful status in Poland can start and pursue business activity on the same terms as Polish citizens. This means that they can engage in all forms of business activities permitted by Polish law

7. Tax implications of aid provided to victims of war

Considering the tax optimisation of the aid activities provided to victims of the military operations in the territory of Ukraine, including e.g. earmarking the profit from the entrepreneur's business activity to such aid, the following scenarios have been analysed:

a) Non-cash gifts in the form of goods or services

VAT implications

Gifts donated between 5 March and 30 June 2022

Pursuant to the Regulation of the Finance Minister dated 3 March 2022 (Journal of Laws of 2022 item 531), in the period from 5 March until 30 June 2022 a 0% VAT rate will apply to the gifts of goods on which taxpayers can deduct VAT, and to the provision

of free services involving aid to victims of the military operations in the territory of Ukraine.

The preferential rate can only be applied for the delivery of goods or the provision of services under a written contract for:

- the Governmental Strategic Reserves Agency,
- health care providers within the meaning of Art. 4 (1) of the Act of 15 April 2011 on Health Care Services,
- local government units.

The contract must also make clear that the delivered goods or provided services will be used to support the victims of the military operations in the territory of Ukraine.

Gifts donated between 24 February and 4 March 2022

The reduced 0% VAT rate can also be applied for the delivery of goods or provision of services in the period from 24 February until 4 March 2022, provided such delivery or provision has been confirmed in writing.

PIT/CIT implications

Pursuant to the provisions of the Special Act, humanitarian aid received in the period from 24 February 2022 until 31 December 2022 by taxpayers who are Ukrainian citizens and arrived in Poland from Ukraine due to the military operations in their home country, is exempt from personal income tax (PIT).

This means that businesses which donate such non-cash gifts will not have to issue PIT-11 tax returns to persons who have received humanitarian aid.

The issue whether such gifts can be regarded as tax deductible expenses is regulated as follows: the manufacturing costs or the acquisition price of objects or rights can be counted as tax deductible expenses, provided such objects or rights are donated as gifts in the period from 24 February 2022 until 31 December 2022 to address the consequences of the military operations in the territory of Ukraine:

- to organisations referred to in Art. 3 (2) and (3) of the Act of 24 April 2003 on Public Benefit and Volunteer Work or equivalent organisations stipulated in the regulations governing public benefit activities in the territory of Ukraine;
- local government units;
- the Governmental Strategic Reserves Agency;
- providers of medical services or medical rescue services in the territory of the Republic of Poland or in Ukraine;
- provided the manufacturing costs or the acquisition price have not been counted as tax deductible expenses, also including depreciation expenses.

In addition, tax deductible expenses can include the costs incurred in connection with a free service or performance aimed to address the consequences of the military operations in the territory of Ukraine provided in the period from 24 February 2022 until 31 December 2022 for the entities listed above, if such expenses have not been counted as tax deductible expenses, also including depreciation expenses.

Such costs will not be taken into account in the calculation of losses/the share of net income in the gross income for the purposes of the minimum income tax.

b) Cash gifts

VAT implications

Pursuant to the provisions of the Act on the Tax on Goods and Services, cash does not fulfil the definition of 'goods', which leads to the conclusion that cash gifts are not subject to VAT.

PIT/CIT implications

Similarly to non-cash gifts, cash gifts donated with the aim of addressing the consequences of the military operations in the territory of Ukraine in the period from 24 February 2022 until 31 December 2022 for the entities listed above, can be reflected in the tax result by their inclusion in tax deductible expenses.

c) Sale at a reduced price

A scenario could be considered whereby goods would be sold at a reduced price, provided the client allocates the amount equal to the value of the granted discount to the support to victims of the military operations in the territory of Ukraine.

This would mean that a client who plans to buy some goods e.g. at a price of PLN 100 gross, would pay PLN 50 for the purposes mentioned above (provided he or she can produce proof of such payment) and would be entitled to purchase these goods at a reduced price – in this particular case, at PLN 50 gross.

VAT/PIT/CIT implications

It should be noted that such a sale would be made with a price discount, which would reduce the tax basis and directly decrease the entrepreneur's tax liabilities. Reducing VAT liabilities would be neutral for the taxpayer, but income tax liabilities would be quite significantly decreased.

In addition, transactions made on the above terms would have to be concluded between unaffiliated entities in order to prevent the consequences of such transactions should they be considered as made on non-market terms.

How can we help?

Contact us: ukraina@gww.pl

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