

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

**The Disability Assistance (Miscellaneous
Amendment) (Scotland) Regulations 2023**

Made - - - - 2023
Coming into force - - 20th November 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 31(2), 52 and 95 of the Social Security (Scotland) Act 2018(1) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

Citation and commencement

1. These Regulations may be cited as the Disability Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 20 November 2023.

Amendment of the Social Security (Invalid Care Allowance) Regulations 1976

2.—(1) The Social Security (Invalid Care Allowance) Regulations 1976(2) are amended in accordance with paragraph (2).

(2) In regulation 9(2)(b) (conditions relating to residence and presence in Great Britain)—

- (a) at the end of head (iia), omit “or”,
- (b) at the end of head (iv), insert—

(1) 2018 asp 9 (“the 2018 Act”). Schedule 5 of the 2018 Act makes provision about the exercise of powers under section 31. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) S.I. 1976/409, amended by S.I. 1996/2744, S.I. 2000/636, S.I. 2002/2497, S.I. 2013/388, S.I. 2013/389, S.I. 2013/591 and S.I. 2017/1015.

- “(v) the care component of child disability payment at the middle or highest rate in accordance with regulation 11 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(3), or
- (vi) the daily living component of adult disability payment at the standard or enhanced rate in accordance with regulation 5 of the Disability Assistance for Working Age People (Scotland) Regulations 2022(4)

Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021

3.—(1) The Disability Assistance for Children and Young People (Scotland) Regulations 2021(5) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2 (interpretation)(6), after the definition of “the 2018 Act” insert—

““the ADP Regulations” means the Disability Assistance for Working Age People (Scotland) Regulations 2022,”.

(3) In regulation 4 (age criteria)(7)—

(a) in paragraph (1), after “(1B)” insert “, (1C)”, and

(b) for paragraph (1B), substitute—

“(1B) Child Disability Payment may continue to be paid in respect of an individual who is over the age of 17 years—

- (a) where they are an individual to whom regulation 15 (entitlement under special rules for terminal illness) applies,
- (b) until the age of 19 years where the individual is a transferring individual in terms of Part 3 of the schedule, and reaches the age of 18 on or before 31 December 2023, except where paragraph (1C) applies,
- (c) until the age of 19 years where they are an individual mentioned in regulation 35 (individuals in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before moving to Scotland) who reaches the age of 18 on or before 31 December 2023, except where paragraph (1C) applies,
- (d) where the individual does not fall within sub-paragraph (a), (b) or (c) and—
 - (i) they are awaiting a determination of their entitlement to Adult Disability Payment, or
 - (ii) a determination has been made that the individual is entitled to Adult Disability Payment but payment has not begun,

until the age of 19 years, or the individual becomes entitled to Adult Disability Payment in accordance with regulation 58(2)(a) of the ADP Regulations, whichever is earlier.

(1C) Where an individual falls within paragraph (1B)(b) or (c) and—

- (a) a determination of their entitlement to Adult Disability Payment is made within the period of 4 weeks before the date on which the individual reaches the age of 19, and

(3) [S.S.I. 2021/174](#), relevantly amended by [S.S.I. 2021/416](#).

(4) [S.S.I. 2022/54](#).

(5) [S.S.I. 2021/174](#).

(6) Regulation 2 was relevantly amended by [S.S.I. 2022/31](#).

(7) Regulation 4 was amended by [S.S.I. 2021/416](#).

(b) that determination is that the individual is entitled to Adult Disability Payment, Child Disability Payment may continue to be paid in respect of the individual after they reach the age of 19 until the day before the day on which the individual becomes entitled to Adult Disability Payment in accordance with regulation 58(2)(a) of the ADP Regulations.”.

(4) After regulation 9 (persons residing outside the United Kingdom to whom a relevant EU Regulation applies) insert—

“No entitlement to care component where UK is not competent state

9A. An individual to whom a relevant EU Regulation applies is not entitled to the care component for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the individual for the purposes of the relevant EU Regulation in question.”.

(5) In regulation 29 (when a decrease in level or cessation of entitlement takes effect), in paragraph (1)(8)—

(a) after sub-paragraph (a), insert—

“(aa) in the case of a determination without application under regulation 31(b), on the date of the individual’s death,”,

(b) after sub-paragraph (b)(i) insert—

“(ia) where the Scottish Ministers make a determination that the individual is entitled to Adult Disability Payment, on the day that the entitlement to Adult Disability Payment begins in terms of regulation 58 of the ADP Regulations,”.

(6) In regulation 34(3)(b) (determination to effect a deduction decision), after “Child Disability” insert “Payment”.

(7) In paragraph 8 of Part 3 of the schedule (notice of intention to transfer to Child Disability Payment)(9), for sub-paragraph (3) substitute—

“(3) Where a notice under sub-paragraph (1) is given—

(a) to a transferring individual who, before a determination is made under paragraph 9(1), ceases to be ordinarily resident in Scotland, or

(b) in error where the individual is neither—

(i) ordinarily resident in Scotland, nor

(ii) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in paragraph 9(1) does not apply.”.

(8) In paragraph 14 of Part 3 of the schedule (appointees)(10), after sub-paragraph (2) insert—

“(3) The duty in sub-paragraph (2) does not apply where the Scottish Ministers have already appointed the person mentioned in sub-paragraph (1) to act on behalf of that transferring individual under section 85A or 85B of the 2018 Act.”.

(8) Regulation 29 was amended by [S.S.I. 2021/416](#).

(9) Paragraph 8 of Part 3 of the schedule was amended by [S.S.I. 2021/416](#).

(10) Paragraph 14 of Part 3 of the schedule was amended by [S.I. 1991/2741](#), [S.I. 2002/2469](#), [S.I. 2003/492](#), [S.I. 2004/696](#), [S.I. 2005/337](#) and [S.I. 2013/235](#).

Amendment of the Disability Assistance for Working Age People (Scotland) Regulations 2022

4.—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022⁽¹¹⁾ are amended in accordance with paragraphs (2) to (7).

(2) After regulation 20, (persons residing outside the United Kingdom to whom a relevant EU Regulation applies) insert—

“No entitlement to daily living component where UK is not competent state

20A. An individual to whom a relevant EU Regulation applies is not entitled to the daily living component for a period during that period the United Kingdom is competent for payment of sickness benefits in cash to the individual for the purposes of the relevant EU Regulation in question.”

(3) In regulation 46 (when a decrease in level or cessation of entitlement takes effect)⁽¹²⁾, after paragraph (1)(a) insert—

“(aa) in the case of a determination without application under regulation 48(b), on the date of the individual’s death,”

(4) In regulation 58 (applications by individuals entitled to Child Disability Payment)⁽¹³⁾—

(a) for paragraph (1), substitute—

“(1) This regulation applies where an individual who is entitled to Child Disability Payment submits the required data in terms of regulation 35(4) on a day on which the individual is still entitled to Child Disability Payment and makes an application for Adult Disability Payment—

- (a) on a day on which the individual is still entitled to Child Disability Payment,
- (b) on a day on which the individual is no longer entitled to Child Disability Payment, where that day falls within the period of 8 weeks starting on the day on which the individual submitted the required data, or
- (c) on a day on which the individual is no longer entitled to Child Disability Payment, where that day is after the expiry of the 8 week period mentioned in sub-paragraph (b) and the Scottish Ministers are satisfied that there is good reason why the application was not made sooner.”

(b) for paragraph (2), substitute—

“(2) Where, on the basis of that application, the Scottish Ministers make a determination of the individual’s entitlement to Adult Disability Payment (“Adult Disability Payment determination”), and on the date of that determination—

- (a) the individual is still entitled to Child Disability Payment, the date on which their entitlement to Adult Disability Payment begins is to be—
 - (i) the day after the first day on which the individual is to be paid Child Disability Payment after the date of the Adult Disability Payment determination in accordance with regulation 25(b)(i) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021, or
 - (ii) 7 days after the first day on which the individual is to be paid Child Disability Payment after the date of the Adult Disability Payment

⁽¹¹⁾ S.S.I. 2022/54.

⁽¹²⁾ Regulation 46 was amended by S.S.I. 2022/217.

⁽¹³⁾ Regulation 58 was amended by S.S.I. 2022/217.

determination in accordance with regulation 25(b)(ii) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,

- (b) the individual is no longer entitled to Child Disability Payment, the date on which their entitlement to Adult Disability Payment begins is to be the date on which the Scottish Ministers make the Adult Disability Payment determination.”.

(5) In paragraph 8 of Part 3 of schedule 2 (notice of intention to transfer to Adult Disability Payment), for sub-paragraph (3) substitute—

“(3) Where a notice under sub-paragraph (1) is given—

- (a) to a transferring individual who, before a determination is made under paragraph 9(1), ceases to be ordinarily resident in Scotland, or
- (b) in error where the individual is neither—
 - (i) ordinarily resident in Scotland, nor
 - (ii) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in paragraph 9(1) does not apply.”.

(6) In paragraph 12 of Part 3 of schedule 2 (change of circumstances)(14), for sub-paragraph (1) substitute—

“(1) The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment (the “review determination”), without receiving an application, where—

- (a) the individual, before a determination under paragraph 9(1) (the “transfer determination”) is made, reported a change of circumstances to the Secretary of State for Work and Pensions, which had not been taken into account for the individual’s entitlement to Personal Independence Payment,
- (b) the Scottish Ministers have made a transfer determination, and
- (c) the individual has not requested a re-determination under section 41 of the 2018 Act, or appealed under section 46 of the 2018 Act, in relation to the transfer determination.”.

(7) In paragraph 15 of Part 3 of schedule 2 (appointees)(15), after sub-paragraph (2) insert—

“(3) The duty in sub-paragraph (2) does not apply where the Scottish Ministers have already appointed the person mentioned in sub-paragraph (1) to act on behalf of that transferring individual under section 85B of the 2018 Act.”.

Amendment of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

5.—(1) The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022(16) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 3 (notice of intention to transfer to Adult Disability Payment), for paragraph (3) substitute—

“(3) Where a notice under paragraph (1) is given—

(14) Paragraph 12 of Part 3 of schedule 2 was amended by [S.S.I. 2022/217](#).

(15) Paragraph 15 of Part 3 of schedule 2 was amended by [S.I. 2021/804](#).

(16) [S.S.I. 2022/217](#).

- (a) to a transferring individual who, before a transfer determination is made ceases to be ordinarily resident in Scotland, or
- (b) in error where the individual is neither—
 - (i) ordinarily resident in Scotland, nor
 - (ii) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in regulation 4(1) does not apply.”.

(3) In regulation 10 (modification of the ADP Regulations: transferring individuals), omit paragraphs (f) and (g).

(4) In regulation 11 (appointees)(17), after paragraph (2) insert—

“(3) The duty in paragraph (2) does not apply where the Scottish Ministers have already appointed the person mentioned in paragraph (1) to act on behalf of that transferring individual under section 85B of the 2018 Act.”.

(5) For regulation 14 (change of circumstances), substitute—

“Change of circumstances

14. Where the Scottish Ministers are making a review determination of an individual’s entitlement to Adult Disability Payment, where the individual, before a transfer determination is made, reported a change of circumstances to the Secretary of State for Work and Pensions which had not been taken into account for the individual’s entitlement to Disability Living Allowance, the change of circumstances—

- (a) is not to be regarded as relating to the individual’s entitlement to Disability Living Allowance, and
- (b) is to be taken into consideration by the Scottish Minister in making the review determination.”.

(6) In regulation 15 (when an increase in level of entitlement takes effect), after paragraph (2), insert—

“(3) Where paragraph (1) applies, regulation 45 of the ADP Regulations does not apply.”.

(7) For regulation 16 (when a decrease in level or cessation of entitlement takes effect), substitute—

“When a decrease in level or cessation of entitlement takes effect

16.—(1) Where an individual’s entitlement to Adult Disability Payment is determined in the review determination to be at a lower rate than, or the same rate as awarded by, the transfer determination, entitlement under the review determination will take effect on the day that the Scottish Ministers make the review determination.

(2) Where paragraph (1) applies, regulation 46 of the ADP Regulations does not apply.”.

(17) Regulation 11 was amended by S.I. 1991/2741, S.I. 1999/2572, S.I. 2002/2441, S.I. 2003/492, S.I. 2005/337, S.I. 2007/2470, S.I. 2013/458 and S.I. 2021/804.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to the Social Security (Invalid Care Allowance) Regulations 1976, the Disability Assistance for Children and Young People (Scotland) Regulations 2021, the Disability Assistance for Working Age People (Scotland) Regulations 2022 and the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022.

Regulation 2 amends the Social Security (Invalid Care Allowance) Regulations 1976 to include reference to child disability payment and adult disability payment.

Regulation 3 amends the Disability Assistance for Children and Young People (Scotland) Regulations 2021 to make provision in relation to the payment of child disability payment to individuals who have reached the age of 18 (paragraphs (2) and (3)). Paragraph (4) makes clear that payment of the care component to individuals to whom a relevant EU Regulation applies is where the United Kingdom is the competent state for the payment of sickness benefits in cash. Paragraph (6) corrects a typographical error. Paragraph (7) amends paragraph 8 of Part 3 of the schedule to provide for when the Scottish Ministers have the power to stop the transfer to Child Disability Payment in respect of an individual who was ordinarily resident in Scotland at the time the notice of intention to transfer was issued, and subsequently moves elsewhere in the UK before the transfer determination takes place. Paragraph (8) amends paragraph 14 of Part 3 of the schedule to provide that the duty in sub-paragraph (2) does not apply where an appointment has already been made by virtue of section 85A or 85B of the 2018 Act.

Regulation 4 amends the Disability Assistance for Working Age People (Scotland) Regulations 2022. Paragraph (2) makes clear that payment of the daily living component to individuals to whom a relevant EU Regulation applies is where the United Kingdom is the competent state for the payment of sickness benefits in cash. Paragraph (4) amends regulation 58 to provide for the alignment of payment cycles for individuals who had been entitled to Child Disability Payment and are now entitled to Adult Disability Payment. Paragraph (5) amends paragraph 8 of Part 3 of schedule 2 to provide for when the Scottish Ministers have the power to stop the transfer to Adult Disability Payment in respect of an individual who was ordinarily resident in Scotland at the time the notice of intention to transfer was issued, and subsequently moves elsewhere in the UK before the transfer determination takes place. Paragraph (6) amends paragraph 12 of Part 3 of schedule 2 to provide for when the Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment without receiving an application. Paragraph (7) amends paragraph 15 of Part 3 of schedule 2 to provide that the duty in sub-paragraph (2) does not apply where an appointment has already been made by virtue of section 85B of the 2018 Act.

Regulation 5 amends the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 to clarify how the modifications of the Disability Assistance for Working Age People (Scotland) Regulations 2022 apply to individuals who have transferred from working age Disability Living Allowance to Adult Disability Payment.

A Business and Regulatory Impact Assessment has been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. Copies are available on line at www.legislation.gov.uk.