

2020 No. 218

SOCIAL SECURITY

**The Personal Independence Payment (Transitional Provisions)
Amendment (Scotland) Regulations 2020**

Made - - - - at 9.30 a.m. on 17th July 2020

Laid before the Scottish Parliament at 2.30 p.m. on 17th July 2020

Coming into force - - 1st September 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 93 and 94 and schedule 10 of the Welfare Reform Act 2012(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020, and come into force on 1 September 2020.

(2) These Regulations extend to Scotland.

Amendment of the Personal Independence Payment (Transitional Provisions) Regulations 2013

2.—(1) The Personal Independence Payment (Transitional Provisions) Regulations 2013(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 3—

(a) in paragraph (3), after “paragraphs” insert “(3ZA),”

(a) 2012 c.5 (“the WRA 2012”). The functions of making provision in regulations in connection with the transition from Disability Living Allowance to the Personal Independence Payment introduced by Part 4 of the WRA 2012, as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. This is both in terms of regulations 3 and 4 of the Scotland Act 2016 (Transitional) Regulations 2017/444, which provide for functions conferred on the Secretary of State by a pre-commencement enactment that would be within the legislative competence of the Scottish Parliament by virtue of exception 1 in reservation F1 in schedule 5 of the Scotland Act 1998 (c.46) (social security schemes) to transfer to the Scottish Ministers on that date; and section 32 of the Scotland Act 2016 (c.11) which provides the meaning of “pre-commencement enactment” in this context. Under section 172(1) of the Social Security Administration Act 1992 (“the 1992 Act”) the Secretary of State is required to refer regulations to the Social Security Advisory Committee (SSAC) for ‘relevant enactments’, as defined in section 170(5). This includes regulations made under the WRA 2012. However, as a result of section 33(1) of the Scotland Act 2016, the function of the Secretary of State to consult the SSAC has not transferred to Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these regulations.

(b) S.I. 2013/387; relevant amending instruments are S.I. 2013/2231, S.I. 2013/2689 and S.I. 2016/556.

(b) after paragraph (3) insert—

“(3ZA) The Scottish Ministers^(a) must not send a notification under paragraph (1) to a DLA entitled person who—

- (a) reaches the age of 16 on or after 1 September 2020, and
- (b) is resident in Scotland,

until the person reaches the age of 18, after which the Scottish Ministers must send a notification under paragraph (1) to that person as soon as reasonably practicable.”,

(c) in paragraph (4), for “Paragraph (3) does” substitute “Paragraphs (3) and (3ZA) do”,

(d) in paragraph (4A) for “paragraph (3)” in both places where it appears substitute “paragraphs (3) or (3ZA)”.

(3) After regulation 4, insert—

“Claims by persons entitled to disability living allowance for personal independence payment upon becoming resident in Scotland

4A.—(1) Paragraphs (2) to (4) apply where a DLA entitled person who reaches the age of 16 on or after 1 September 2020—

- (a) has been sent a notification under regulation 3(1) whilst resident in England or Wales, and
- (b) becomes resident in Scotland before an assessment determination is made.

(2) From the date on which the person becomes resident in Scotland—

- (a) the notification sent under regulation 3(1) ceases to have effect,
- (b) regulations 8 to 11 are of no effect in respect of that notification,
- (c) regulations 3(3ZA) and 18A apply in respect of the person, and
- (d) for the purposes of regulation 4, the person is treated as though they have not been sent a notification under regulation 3(1).

(3) If the person described in paragraph (1) has made a claim for personal independence payment—

- (a) for the avoidance of doubt, nothing in paragraph (2) affects the validity of a claim for personal independence payment that has been made in pursuance of the notification,
- (b) the claim will continue towards an assessment determination, unless it is withdrawn under regulation 31 (withdrawal of claim) of the Claims and Payments Regulations.

(4) If the person described in paragraph (1) has made a claim for personal independence payment in pursuance of the notification, and then withdraws their claim under regulation 31 (withdrawal of claim) of the Claims and Payments Regulations before an assessment determination is made, regulation 15 does not apply in respect of that withdrawal.”.

(4) In regulation 18(1), for “Where” substitute “Subject to regulation 18A, where”.

(a) The functions conferred on the Secretary of State by the Personal Independence Payment (Transitional Provisions) Regulations 2013 (“the 2013 regulations”), as regards Scotland, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) as amended by section 32 of the Scotland Act 2016 (c.11). This includes the function of sending a notification under regulation 3(1). By virtue of section 117 of the Scotland Act 1998, as read with section 32 of the Scotland Act 2016, references in the 2013 regulations to the Secretary of State are to be read as references to the Scottish Ministers in so far as relating to functions that are exercisable within devolved competence.

(5) After regulation 18, insert—

“Extension of certain fixed term period awards of disability living allowance for persons resident in Scotland reaching 16

18A.—(1) Where there is an award of disability living allowance to a DLA entitled person and—

- (a) the award is of—
 - (i) both components and the award in respect of either or both is for a fixed term period, or
 - (ii) one component only and for a fixed term period,
- (b) the person reaches the age of 16 on or after 1 September 2020,
- (c) the fixed term period will expire in the period starting with the day before the person reaches the age of 16 and ending with the day before the person reaches the age of 18, and
- (d) the person is resident in Scotland,

the fixed term period shall be extended.

(2) A fixed term period extended under paragraph (1) shall expire on the day before the person reaches 18 years and 6 months, or where these Regulations have the effect that the person’s entitlement to disability living allowance terminates on an earlier day, on that day.”.

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew’s House,
Edinburgh
At 9.30 a.m. on 17th July 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Personal Independence Payment (Transitional Provisions) Regulations 2013 (S.I. 2013/387) (“the 2013 Regulations”). In particular, provision is made to insert a new regulation 18A. This makes provision for DLA entitled persons who are in receipt of a fixed term award, reach the age of 16 on or after 1 September 2020, and are resident in Scotland. Where the fixed term period will expire within the period starting with the day before the person reaches the age of 16 and ending with the day before the person reaches the age of 18, the fixed term period is extended and shall instead expire on the day before the person reaches 18 years and 6 months, or where the 2013 Regulations have the effect that the person’s entitlement to disability living allowance terminates on an earlier day, on that day. This extension applies whether the person was resident in Scotland at the time they turned 16 or becomes resident in Scotland after this time.

These Regulations also insert a new paragraph (3ZA) into regulation 3 of the 2013 Regulations. This provides that Scottish Ministers must not send a notification inviting persons entitled to Disability Living Allowance (DLA) and resident in Scotland to apply for Personal Independence Payment (PIP) until they reach the age of 18, after which point the Scottish Ministers must send them a notification inviting them to make a claim for PIP as soon as reasonably practicable. This applies whether or not the person was resident in Scotland at the time they turned 16 or becomes resident in Scotland after this time.

These Regulations insert regulation 4A into the 2013 Regulations, which makes provision for persons entitled to DLA, who have reached the age of 16 on or after 1 September 2020 whilst resident in England and Wales, and have been sent a notification inviting them to claim PIP whilst still resident in England and Wales, before then becoming resident in Scotland in advance of any assessment determination being made. Firstly, regulation 4A provides that from the date on which the person becomes resident in Scotland, the notification they received ceases to have effect, and regulations 8-11 of the 2013 Regulations are of no effect in relation to that notification. Provision is also made to ensure that, like others resident in Scotland, they will receive a new notification inviting them to claim PIP once they reach they age of 18. They are also to be treated, for the purpose of regulation 4 of the 2013 Regulations, as though they have never received any notification inviting them to transfer to PIP. As a result, they may elect to make a voluntary application for PIP in terms of regulation 4.

Provision is also made within regulation 4A for situations where a person who becomes resident in Scotland has already made claim for PIP following notification. Any such claim will continue towards an assessment determination in terms of regulation 4 of the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377), unless the person chooses to withdraw their claim under section 31 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations (S.I. 2013/380) (“the Claims and Payments Regulations”).

If the person does choose to withdraw their claim under section 31 of the Claims and Payments Regulations, then regulation 15 of the 2013 Regulations will not have effect in relation to that withdrawal. As a result, they will continue to be able to receive any payments for DLA to which they are entitled.

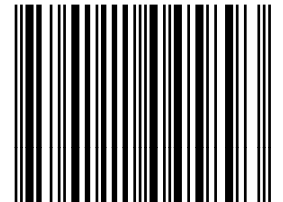
A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government, Directorate for Social Security, Victoria Quay, Edinburgh and online at www.legislation.gov.uk.

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