

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2023 No. 346**

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

**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<sup>(1)</sup> are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2 (interpretation)<sup>(2)</sup>, 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)<sup>(3)</sup>—

(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—

---

<sup>(1)</sup> [S.S.I. 2021/174](#).

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

<sup>(3)</sup> Regulation 4 was amended by [S.S.I. 2021/416](#).

- (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
  - (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)(4)—

- (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)(5), 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)(6), 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.”.

---

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

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

(6) 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](#).

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---