

2023 No. 664

CONSTITUTIONAL LAW

DEVOLUTION

SOCIAL SECURITY

The Scotland Act 2016 (Social Security) (Disability Living Allowance) (Amendment) Regulations 2023

<i>Made</i> - - - -	<i>14th June 2023</i>
<i>Laid before Parliament</i>	<i>16th June 2023</i>
<i>Coming into force</i> - -	<i>7th July 2023</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 71 of the Scotland Act 2016(a).

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Scotland Act 2016 (Social Security) (Disability Living Allowance) (Amendment) Regulations 2023 and come into force on 7th July 2023.

(2) This Part extends to England and Wales, Scotland and Northern Ireland.

(3) Any amendment made by these Regulations has the same extent as the provision amended.

PART 2

Amendment of legislation applying in Great Britain

Amendment of the Social Security (Disability Living Allowance) Regulations 1991

2.—(1) The Social Security (Disability Living Allowance) Regulations 1991(b) are amended as follows.

(a) 2016 c. 11.

(b) S.I. 1991/2890. Regulation 1(5) was inserted by S.I. 2013/389; there are other amendments to regulation 1 but none is relevant. Regulation 2 was amended by S.I. 1993/1939, 1999/2860, 2000/636, 2005/2877, 2006/2378, 2013/389, 2017/1015, 2021/804 and 2022/335.

(2) In regulation 1 (interpretation)—

(a) after the definition of “the NHS (Wales) Act of 2006” insert—

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(a);”;

(b) after the definition of “mobility component” insert—

“the residence change date”, in relation to a person, means the date on which the person becomes permanently resident in Scotland (whether or not the Secretary of State is notified of the move and whether or not any such notification takes place before or after the person moves to Scotland);

“the run-on period” has the meaning given in paragraph (6);”;

(c) after paragraph (5) insert—

“(6) “The run-on period”, in relation to a person, is the period—

(a) beginning with the residence change date, and

(b) ending at the end of the day preceding the pay day which falls immediately after the end of the relevant period.

(7) For the purposes of paragraph (6)—

(a) “pay day” means the day on which a payment of disability living allowance is made in accordance with regulation 25(1) of the Claims and Payments Regulations(b);

(b) “the relevant period” means the period of 13 weeks beginning with the residence change date.”.

(3) After regulation 1 insert—

“Regulations 2 and 2ZA: the status condition and the award condition

1ZA.—(1) For the purposes of regulations 2 and 2ZA, a person satisfies the status condition if—

(a) they were, on the day on which they reached the age of 16, terminally ill and either—

(i) they are terminally ill, or

(ii) following a change in their prognosis, they are a person to whom the Secretary of State is required by regulation 3(5) of the PIP Transitional Regulations to send a PIP notification but to whom such a notification has not yet been sent,

(b) they are an exempt person,

(c) they have ceased to be an exempt person and are a person—

(i) to whom the Secretary of State is required by regulation 3(3) or (5) of the PIP Transitional Regulations(c) to send a PIP notification, but

(ii) to whom such a notification has not yet been sent,

(d) no disability living allowance is payable to them only by virtue of regulation 8, 9 or 12A(d),

(e) they are a notified person but not a transfer claimant, or

(f) they are a transfer claimant and no assessment determination has been made on their claim for personal independence payment.

(a) S.I. 1987/1968.

(b) Regulation 25(1) was amended by S.I. 1991/2741 and 1996/1436.

(c) Paragraphs (3) and (5) of regulation 3 were amended, in relation to England and Wales, by S.I. 2013/2331, 2013/2689 and 2016/556.

(d) Regulation 12A was inserted by S.I. 1996/436, and amended by S.I. 1999/1326, 2000/1401, 2013/389 and 2016/556.

(2) For the purposes of regulations 2 and 2ZA, a person satisfies the award condition if they have an award of disability living allowance for the under 16 age group (whether the award is as originally made, as revised in accordance with section 9 of the 1998 Act or follows a supersession in accordance with section 10 of the 1998 Act).

(3) In this regulation—

- (a) “PIP notification” means a notification under regulation 3(1) of the PIP Transitional Regulations^(a);
- (b) “the PIP Transitional Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations 2013^(b);
- (c) “assessment determination”, “exempt person”, “notified person” and “transfer claimant” have the meanings given in regulation 2(1) of the PIP Transitional Regulations.”.

(4) In regulation 2 (conditions as to residence and presence)—

(a) in paragraph (1)—

(i) in the words before sub-paragraph (a), for “regulations 2A” substitute “regulations 2ZA, 2ZB, 2A”;

(ii) in sub-paragraph (a)(ii), for “Great Britain” substitute “the relevant place”;

(b) after paragraph (1) insert—

“(1ZZA) For the purposes of this regulation, the relevant place is—

(a) if the person is either under the age of 16 or satisfies both the status condition and the award condition, England and Wales;

(b) otherwise, Great Britain.”;

(c) in paragraph (2), in the words before sub-paragraph (a)—

(i) for “Great Britain”, in the second place it occurs, substitute “the relevant area”;

(ii) after “his absence” insert “from Great Britain”;

(d) after paragraph (2) insert—

“(2A) Where a person (“P”) is required for the purposes of paragraph (1)(a)(ii) to be present in England and Wales, even though P is absent from England and Wales on any day, P is to be treated as though P were present in England and Wales on that day if—

(a) P’s absence on that day is by reason only of the fact that P is temporarily absent from England and Wales; and

(b) P is present in Scotland.”;

(e) in paragraph (3B), in the words before sub-paragraph (a), for “Great Britain”, in the second place it occurs, substitute “the relevant area”;

(f) after paragraph (3B) insert—

“(3BA) In paragraphs (2) and (3B), “the relevant area” means—

(a) for the purposes of paragraph (1)(a)(ii), the relevant place;

(b) for the purposes of paragraph (1)(a)(iii), Great Britain.”;

(g) in paragraph (3C), for “if” substitute “only if”.

(5) After regulation 2 insert—

“Persons who are entitled to disability living allowance: effect of move to Scotland

2ZA.—(1) This regulation applies where a relevant DLA entitled person becomes permanently resident in Scotland on or after 7th July 2023.

(a) Regulation 3(1) was amended by S.I. 2013/2231.

(b) S.I. 2013/387. The definition of “exempt person” in regulation 2(1) was inserted by S.I. 2016/556.

(2) In this regulation “relevant DLA entitled person” means a person who, at the end of the day preceding the residence change date—

- (a) is entitled to disability living allowance,
- (b) is, or in accordance with regulation 2(2), (2A) or (3B) is treated for the purposes of regulation 2(1)(a)(ii) as, present in England and Wales, and
- (c) is under the age of 16 or satisfies both the status condition and the award condition.

(3) The relevant DLA entitled person is to be treated as satisfying the condition in regulation 2(1)(a)(ii) for the duration of the run-on period.

(4) If—

- (a) the relevant DLA entitled person has an award of any component of disability living allowance which is for a fixed term period, and
- (b) the fixed term period is due to expire before the end of the run-on period,

the fixed term period is extended so that it expires at the end of the run-on period.

Persons with an ongoing claim for disability living allowance: effect of move to Scotland

2ZB.—(1) This regulation applies where a new DLA claimant has an ongoing claim for disability living allowance on the residence change date.

(2) For the purposes of this regulation—

- (a) “new DLA claimant” means a person who—
 - (i) does not have an award of disability living allowance,
 - (ii) makes a claim for disability living allowance and is under the age of 16 on the date on which they make that claim (“the claim date”),
 - (iii) is, or in accordance with regulation 2(2), (2A) or (3B) is treated for the purposes of regulation 2(1)(a)(ii) as, present in England and Wales on the claim date,
 - (iv) becomes permanently resident in Scotland after the claim date and on or after 7th July 2023, and
 - (v) is, or in accordance with regulation 2(2), (2A) or (3B) is treated for the purposes of regulation 2(1)(a)(ii) as, present in England and Wales at the end of the day preceding the residence change date;
- (b) a new DLA claimant has an ongoing claim for disability living allowance on the residence change date if their claim for disability living allowance has not—
 - (i) been decided by the Secretary of State under section 8 of the 1998 Act before that date,
 - (ii) been withdrawn in accordance with regulation 5(2) of the Claims and Payments Regulations before that date, or
 - (iii) otherwise ceased, before that date, to be under consideration before being decided by the Secretary of State under section 8 of the 1998 Act.

(2) The Secretary of State must make a decision under section 8 of the 1998 Act on the new DLA claimant’s claim for disability living allowance, unless the new DLA claimant withdraws the claim in accordance with regulation 5(2) of the Claims and Payments Regulations.

(3) For the purposes of the Secretary of State making such a decision, regulation 2 applies as if the amendments made to that regulation by the Scotland Act 2016 (Social Security) (Disability Living Allowance) (Amendment) Regulations 2023 had not been made.

(4) If the Secretary of State determines that the new DLA claimant is entitled to disability living allowance—

- (a) the new DLA claimant is to be treated as satisfying the condition in regulation 2(1)(a)(ii) until the end of the transfer day, and
- (b) if—
 - (i) the new DLA claimant has an award of any component of disability living allowance which is for a fixed term period, and
 - (ii) the fixed term period is due to expire before the end of the transfer day,
 the fixed term period is extended so that it expires at the end of the transfer day.

(5) In this regulation—

- (a) “the transfer day”, in relation to a person, means—
 - (i) the final day of the run-on period, or
 - (ii) if earlier, the day preceding the day on which the person’s entitlement to Child Disability Payment begins in accordance with regulation 24 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(a);
- (b) any reference to the date on which a person makes a claim for disability living allowance (however expressed) is to be construed in accordance with regulation 6 of the Claims and Payments Regulations(b).”.

PART 3

Amendment of legislation applying in Northern Ireland

Amendment of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992

3.—(1) The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(c) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)—

- (a) in paragraph (2)—
 - (i) after the definition of “adjudicating authority” insert—

“assessment determination” has the meaning given in regulation 2(1) of the PIP Transitional Regulations;”;
 - (ii) after the definition of “the Claims and Payments Regulations” insert—

“exempt person” has the meaning given in regulation 2(1) of the PIP Transitional Regulations(d);”;
 - (iii) after the definition of “mobility component” insert—

“notified person” has the meaning given in regulation 2(1) of the PIP Transitional Regulations;

“PIP notification” means a notification under regulation 3(1) of the PIP Transitional Regulations;

(a) S.S.I. 2021/174.

(b) Regulation 6 was amended by S.I. 1989/1686, 1990/725 and 2208, 1991/2741 and 2284, 1993/2113, 1996/1460, 2319 and 2431, 1997/793 and 2290, 1998/522, 1999/2572 and 3108, 2000/897, 1596 and 1982, 2001/567 and 892, 2002/428 and 2497, 2003/455 and 1632, 2004/2283, 2005/34, 337 and 2877, 2006/832 and 2377, 2007/1602, 2470 and 2911, 2008/1554, 2667 and 2683, 2009/1490, 2010/510, 2011/2426 and 2022/177.

(c) S.R. 1992 No. 32. Regulation 1(2) was amended by S.R. 1996 No. 225. Regulation 2 was amended by S.R. 1993 No. 340, 1997 No. 69, 1999 No. 48, 2000 No. 71, 2005 No. 536, 2006 No. 359, 2016 No. 229, 2017 No. 218 and 2021 No. 804, and S.I. 2022/335.

(d) The definition of “exempt person” was inserted by S.R. 2016 No. 235.

“the PIP Transitional Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016”(a);

“the residence change date”, in relation to a person, means the date on which he becomes permanently resident in Scotland (whether or not the Department is notified of the move and whether or not any such notification takes place before or after he moves to Scotland);

“the run-on period” has the meaning given in paragraph (5);”;

(iv) after the definition of “terminally ill” insert—

““transfer claimant” has the meaning given in regulation 2(1) of the PIP Transitional Regulations”;

(b) after paragraph (4) insert—

“(5) “The run-on period”, in relation to a person, is the period—

(a) beginning with the residence change date, and

(b) ending at the end of the day preceding the pay day which falls immediately after the end of the relevant period.

(6) For the purposes of paragraph (5)—

(a) “pay day” means the day on which a payment of disability living allowance is made in accordance with regulation 25(1) of the Claims and Payments Regulations(b);

(b) “the relevant period” means the period of 13 weeks beginning with the residence change date.”.

(3) In regulation 2 (conditions as to residence and presence in Northern Ireland)—

(a) in paragraph (1), in the words before sub-paragraph (a), after “regulations” insert “2ZA, 2ZB,”;

(b) in paragraph (2C), for “if” substitute “only if”.

(4) After regulation 2 insert—

“Persons who are entitled to disability living allowance: effect of move to Scotland

2ZA.—(1) This regulation applies where a relevant DLA entitled person becomes permanently resident in Scotland on or after 7th July 2023.

(2) In this regulation “relevant DLA entitled person” means a person who, at the end of the day preceding the residence change date—

(a) is entitled to disability living allowance,

(b) is, or in accordance with regulation 2(2) or (2B) is treated as, present in Northern Ireland, and

(c) is under the age of 16 or satisfies the status condition and the award condition.

(3) A person satisfies the status condition if—

(a) he was, on the day on which he reached the age of 16, terminally ill and either—

(i) is terminally ill, or

(ii) following a change in his prognosis, is a person to whom the Department is required by regulation 3(5) of the PIP Transitional Regulations(c) to send a PIP notification but to whom such a notification has not yet been sent,

(b) he is an exempt person,

(c) he has ceased to be an exempt person and is a person—

(a) S.R. 2016 No. 227.

(b) Regulation 25(1) was amended by S.R. 1992 No. 7 and 1996 No. 225.

(c) Regulation 3(5) was amended by S.R. 2016 No. 235.

- (i) to whom the Department is required by regulation 3(3) or (5) of the PIP Transitional Regulations^(a) to send a PIP notification, but
- (ii) to whom such a notification has not yet been sent,
- (d) no disability living allowance is payable to him only by virtue of regulation 8, 9 or 12A^(b),
- (e) he is a notified person but not a transfer claimant, or
- (f) he is a transfer claimant and no assessment determination has been made on his claim for personal independence payment.

(4) A person satisfies the award condition if they have an award of disability living allowance for the under 16 age group (whether the award is as originally made, as revised in accordance with Article 10 of the 1998 Order or follows a supersession in accordance with Article 11 of the 1998 Order).

(5) The relevant DLA entitled person is to be treated as satisfying the condition in regulation 2(1)(a)(ii) for the duration of the run-on period.

(6) If—

- (a) the relevant DLA entitled person has an award of any component of disability living allowance which is for a fixed term period, and
- (b) the fixed term period is due to expire before the end of the run-on period,

the fixed term period is extended so that it expires at the end of the run-on period.

Persons with an ongoing claim for disability living allowance: effect of move to Scotland

2ZB.—(1) This regulation applies where a new DLA claimant has an ongoing claim for disability living allowance on the residence change date.

(2) For the purposes of this regulation—

- (a) “new DLA claimant” means a person who—
 - (i) does not have an award of disability living allowance,
 - (ii) makes a claim for disability living allowance and is under the age of 16 on the date on which his claim for disability allowance is made (“the claim date”),
 - (iii) is, or in accordance with regulation 2(2) or (2B) is treated as, present in Northern Ireland on the claim date,
 - (iv) becomes permanently resident in Scotland after the claim date and on or after 7th July 2023, and
 - (v) is, or in accordance with regulation 2(2) or (2B) is treated as, present in Northern Ireland at the end of the day preceding the residence change date;
- (b) a new DLA claimant has an ongoing claim for disability living allowance on the residence change date if the new DLA claimant’s claim for disability living allowance has not—
 - (i) been decided by the Department under Article 9 of the 1998 Order before that date,
 - (ii) been withdrawn in accordance with regulation 5(2) of the Claims and Payments Regulations before that date, or
 - (iii) otherwise ceased, before that date, to be under consideration before being decided by the Department under Article 9 of the 1998 Order.

(a) Regulation 3(3) was amended by S.R. 2016 No. 235.

(b) Regulation 12A was inserted by S.R. 1996/225, and amended by S.R. 1999 No. 221, 2000 No. 195 and 2016 No. 235.

(3) The Department must make a decision under Article 9 of the 1998 Order on the new DLA claimant's claim for disability living allowance unless the new DLA claimant withdraws the claim in accordance with regulation 5(2) of the Claims and Payments Regulations.

(4) For the purposes of the Department making such a decision, regulation 2 applies as if the amendments made to that regulation by the Scotland Act 2016 (Social Security) (Disability Living Allowance) (Amendment) Regulations 2023 had not been made.

(5) If the Department determines that the new DLA claimant is entitled to disability living allowance—

(a) the new DLA claimant is to be treated as satisfying the condition in regulation 2(1)(a)(ii) until the end of the transfer day, and

(b) if—

(i) the new DLA claimant has an award of any component of disability living allowance which is for a fixed term period, and

(ii) the fixed term period is due to expire before the end of the transfer day, the fixed term period is extended so that it expires at the end of the transfer day.

(6) In this regulation—

(a) “the transfer day” means—

(i) the final day of the run-on period, or

(ii) if earlier, the day preceding the date on which the new DLA claimant's entitlement to Child Disability Payment begins in accordance with regulation 24 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;

(b) any reference to the date on which a person makes a claim for disability living allowance (however expressed) is to be construed in accordance with regulation 6 of the Claims and Payments Regulations(a).”.

Signed by authority of the Secretary of State for Work and Pensions

14th June 2023

Mims Davies
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 71 of the Scotland Act 2016 (c. 11) (“the Act”) allows the Secretary of State, by regulations, to make such consequential provision in connection with any provision of Parts 1 and 3 to 6 of the Act as the Secretary of State considers appropriate. These Regulations make further provision consequential upon the introduction of Child Disability Payment (“CDP”) pursuant to Part 3 of the Act (welfare benefits and employment support). CDP is the equivalent in Scotland to Disability Living Allowance in respect of children (“DLAC”). DLAC remains payable in the rest of the United Kingdom.

(a) Regulation 6 was amended by S.R. 1988 No. 141, 1989 No. 398, 1990 No. 137 and No. 398, 1991 No. 488, 1992 No. 7, 1993 No. 375, 1994 No. 3454, 1996 No. 354, 1997 No. 156 and No. 417, 1999 No. 2574, 2000 No. 215 and No. 365, 2001 No. 175, No. 176 and No. 568, 2002 No. 67 and No. 323, 2003 No. 195 and No. 317, 2004 No. 378, 2005 No. 14, No. 46, No. 536 and No. 539, 2006 No. 168 and No. 365, 2007 No. 392 and No. 467, 2008 No. 417, 2009 No. 240, 2010 No. 81, and 2011 No. 356.

Regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) (“the DLA Regulations”) is amended so that a relevant person is eligible for DLAC only if they are present (or treated as present) in England and Wales.

New regulation 2ZA of the DLA Regulations allows a relevant person who moves permanently to Scotland to continue to be entitled to DLAC for a period of up to 13 weeks and 6 days following their move (the “run-on period”).

A “relevant person” is a person who is entitled to DLAC (whether or not it is payable to them) and—

- (a) is under the age of 16,
- (b) is aged 16 or over and is, or was, terminally ill or being maintained free of charge while undergoing medical treatment in a hospital or similar institution, or
- (c) is aged 16 or over and has received a notification under regulation 3(1) of the Personal Independence Payment (Transitional Provisions) Regulations 2013 (S.I. 2013/387), or made a claim for personal independence payment voluntarily, but has not received a decision on their entitlement to personal independence payment.

New regulation 2ZB of the DLA Regulations requires the Secretary of State to make a decision on any claim for DLAC which is made by a person who is under the age of 16 and which is ongoing on the date on which that person becomes permanently resident in Scotland. If the person is determined to be entitled to DLAC, they may remain entitled to it up to the end of the run-on period.

After the run-on period, a relevant person or new claimant may qualify for CDP or other equivalent benefits.

Regulation 3 amends the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 32) to make provision corresponding to that made in regulations 2ZA and 2ZB of the DLA Regulations.

No impact assessment has been prepared for this instrument as no impact, or no significant impact, on the private, voluntary or public sectors is foreseen.

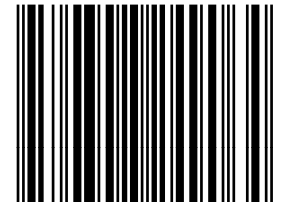
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