

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 2016 (SOCIAL SECURITY) (DISABILITY LIVING
ALLOWANCE) (AMENDMENT) REGULATIONS 2023

2023 No. 664

1. Introduction

- 1.1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1. This instrument makes consequential amendments to social security legislation in respect of Great Britain (GB) and also, in certain respects, Northern Ireland to allow payment of Disability Living Allowance for children (DLAc) to continue for 13 weeks before entitlement terminates after a claimant has left England, Wales or Northern Ireland and becomes permanently resident in Scotland.
- 2.2. It also amends social security legislation applying in Great Britain and Northern Ireland to make clear that DLAc entitlement depends, amongst other things, on presence in England, Wales or Northern Ireland. It does, however, provide an exception so that people who are only temporarily absent and are present in Scotland may continue to claim DLAc if they intend to return to England, Wales or Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None.

4. Extent and Territorial Application

- 4.1. The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) reflects the territorial extent of the legislation being amended. Part 1 of the instrument extends to England and Wales, Scotland and Northern Ireland. Part 2 of the instrument extends to England and Wales, and Scotland. Part 3 extends to Northern Ireland only.
- 4.2. The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as the extent.

5. European Convention on Human Rights

- 5.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1. The Secretary of State can use section 71 of the Scotland Act 2016¹ (“the 2016 Act”) to make amendments to existing legislation that are considered appropriate in light of

¹ <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

the devolution of social security benefits in Scotland. This instrument is made under that section to support the devolution of social security benefits, and specifically Disability Living Allowance for children (DLAc), as explained further below.

- 6.2. Section 31 of the Social Security (Scotland) Act 2018² allows Scottish Ministers to provide Disability Assistance which will, in time, replace all the extra-costs disability benefits which are currently delivered by the UK Government in Scotland.
- 6.3. Child Disability Payment (CDP) replaced DLAc in Scotland for all new claimants in November 2021. Existing DLAc cases are administered by DWP on Scottish Ministers' behalf under an Agency Agreement until they are all transferred to Social Security Scotland (the delivery organisation of the Scottish Government) by the end of June 2023.
- 6.4. This instrument will allow DLAc to continue to be paid for 13 weeks and a maximum of a further six additional days following a claimant becoming permanently resident in Scotland. The Disability Living Allowance payment system pays in weekly amounts and can only stop payment in alignment with the claimant's weekly payment cycle. The additional days allow for the payment system to end the run-on either on or after the 13 weeks, but before payment reaches 14 weeks. Scottish Government legislation will apply with respect to any decisions regarding CDP or other Scottish Government benefits during or after the 13-week period.
- 6.5. Subject to the above, this instrument changes UK legislation to terminate DLAc payments once a claimant is no longer present in England, Wales or Northern Ireland.
- 6.6. This instrument amends Regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991³ (S.I. 1990/2860) in relation to Great Britain, so claimants have to be present in England and Wales to be entitled to DLAc.
- 6.7. The new regulation 2ZA introduces the 13-week run on to allow claimants in receipt of DLAc who move permanently to Scotland, to continue to receive DLAc for a period of 13 weeks starting on the date they move. The claimant's entitlement to DLAc stops at the end of that period.
- 6.8. For claimants whose end of entitlement would ordinarily occur during the 13-week run on, the new regulation 2ZA will align the end of award instead to the end of the 13-week run on. The amendments also allow people to continue to claim DLAc for an indefinite period of time if they are living in Scotland, but only temporarily absent from England and Wales.
- 6.9. For those with a claim for DLAc that has yet to be determined at the time they move to Scotland, new regulation 2ZB requires the claim to continue to a decision by DWP, unless that claim is withdrawn. If the claimant is awarded Disability Living Allowance for children (DLAc), they will benefit from the 13-week run on from the date they moved to Scotland, at the end of which entitlement will terminate.
- 6.10. Part 3 of the amendments make provision to introduce corresponding changes to Northern Ireland legislation, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992⁴. Although social security is a transferred matter

² <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

³ <https://www.legislation.gov.uk/ukSI/1991/2890/contents>

⁴ <https://www.legislation.gov.uk/nisr/1992/32/contents/made>

in Northern Ireland, section 71 of the 2016 Act allows for amendments to be made to Northern Ireland legislation by a Minister of the Crown where these are considered appropriate in light of the devolution of social security benefits in Scotland. In the absence of Northern Ireland Ministers, the Department for Communities in Northern Ireland has requested that the Secretary of State make the necessary provisions in respect of Northern Ireland.

7. Policy background

What is being done and why?

- 7.1. DLAc and Child Disability Payment (CDP) are mutually exclusive benefits, paid in different, separate legal jurisdictions. The jurisdiction that a particular claimant falls under is essentially based on their place of residence. Therefore, provision is needed for people moving between jurisdictions.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2. Other arrangements not requiring legislation have been able to accommodate the transfer of DLAc cases to Social Security Scotland up until June 2023.

Why is it being changed?

- 7.3. DLAc will be paid for a maximum of 13 weeks and six days following a permanent move from England, Wales or Northern Ireland to Scotland, after which entitlement will terminate. This is in line with the approach already legislated for by the Scottish Government to allow existing awards of CDP to continue for 13 weeks when a resident leaves Scotland and becomes ordinarily resident in England, Wales or Northern Ireland.

What will it now do?

- 7.4. As well as clarifying that DLAc is not generally available to people who are not present in England, Wales or Northern Ireland, the Regulations will allow claimants who may need to move temporarily to Scotland to be allowed an indefinite period of temporary absence and to continue to claim DLAc if they intend to return to England, Wales or Northern Ireland eventually. In addition, provision is made to ensure that those in receipt of DLAc when they move permanently to Scotland, or who have an ongoing claim at that time, can continue to receive DLAc for up to 13 weeks and 6 days following their move.

8. European Union Withdrawal and Future Relationship

- 8.1. This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1. The regulations will be consolidated in due course within the published legislation at www.legislation.gov. In Northern Ireland they will be informally consolidated in the Law relating to Social Security (Northern Ireland) or (“Blue Volumes”). It will be available to the public at no cost via the internet at: <https://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx>

10. Consultation outcome

10.1. There has been no consultation on these Regulations. They relate to the territorial application of payments arising from the devolution of additional-needs disability benefits to the Scottish Parliament and to the prevention of double provision of assistance from two separate jurisdictions at the same time.

11. Guidance

11.1. Guidance for staff at the Department for Work and Pensions and the Department for Communities will be produced to allow for the effective implementation of the changes made by these Regulations.

12. Impact

12.1. There is no, or no significant, impact on business, charities or voluntary bodies.

12.2. There is no, or no significant, impact on the public sector.

12.3. A full Impact Assessment has not been prepared for this instrument because of the reasons set out in 12.1 and 12.2.

13. Regulating small business

13.1. The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1. The approach to monitoring of this legislation is through normal business accuracy and assurance processes. In the year to August 2022, 195 Disability Living Allowance for children (DLAc) claimants moved from England and Wales to Scotland, accounting for less than 0.1% of the DLAc caseload. No claimants moved from Northern Ireland to Scotland that year.

14.2. This instrument does not include a statutory review clause.

15. Contact

15.1. Victoria Oliphant at the Department for Work and Pensions (victoria.oliphant@dpw.gov.uk) can be contacted with any queries regarding the instrument. David Tarr at the Department for Communities in Northern Ireland (david.tarr@communities-ni.gov.uk) can be contacted with any queries regarding the parts of this instrument relating to Northern Ireland.

15.2. Andrew Latto, Deputy Director at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3. The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Tom Pursglove MP, can confirm that this Explanatory Memorandum meets the required standard.