

Draft Disability Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023

Draft Regulations

February 2023

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

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

Made 2023

Coming into force - - - *in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 31(2) and 95 of the Social Security (Scotland) Act 2018(a) 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 [] 2023.

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

2.—(1) The Social Security (Invalid Care Allowance) Regulations 1976(b) 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 (iiia), omit “or”,

(b) after head (iv), insert—

(a) (“the 2018 Act”). Schedule 5 of the 2018 Act makes provision about the exercise of powers under section 31. Schedule 5 of the 2018 Act was amended by sections 11(2)(a) and 13(3) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). The powers to make these Regulations are exercised 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. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2020 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) 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(a), 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(b).”.

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 are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (interpretation), 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—

- (a) in paragraph (1) (age criteria), 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) 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, until the age of 19 years except where paragraph (1C) applies,
- (c) 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) and reaches the age of 18 on or before 31 December 2023, until the age of 19 years except where paragraph (1C) applies,
- (d) where the individual does not fall within sub-paragraph (b) or (c) and is awaiting a determination of their entitlement to Adult Disability Payment or where such a determination has been made but payment of Adult Disability Payment has not begun, until—
 - (i) the age of 19 years, or
 - (ii) the individual becomes entitled to Adult Disability Payment in accordance with regulation 58(2)(b) of the ADP Regulations,

whichever is earlier.

(1C) Where an individual falls within paragraph (1B)(b) or (c) and a determination of their entitlement to Adult Disability Payment is made within 4 weeks before the date on which the individual reaches the age of 19, they may continue to be paid Child Disability Payment until—

- (a) where a determination is made that the individual is entitled to Adult Disability Payment, the day before the day on which the individual becomes entitled to Adult Disability Payment in accordance with regulation 58(2)(b) of the ADP Regulations, or
- (b) where a determination is made that the individual is not entitled to Adult Disability Payment, until the age of 19 years.”.

(a) S.S.I. 2021/174, relevant amending instrument is S.S.I. 2021/416.
(b) S.S.I. 2022/54.

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

“**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 person 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), after paragraph (1)(a), insert—

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

(ab) 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”.

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

4.—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022(a) are amended in accordance with paragraphs (2) to (5).

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

“**20A.** An individual to whom a relevant EU regulation applies is not entitled to the daily living component for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person 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), after paragraph (1)(a) insert—

“(aa) in the case of a determination under regulation 48(b), on the date of the individual’s death,”.

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

(a) in paragraph (1), after “Adult Disability Payment”, insert “and submits the required data in terms of regulation 35(4) on a day on which the individual is still entitled to Child Disability Payment”,

(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 (“the Adult Disability Payment determination”) and on the date of that determination—

(a) 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,

(b) the individual is still entitled to Child Disability Payment, the date on which their entitlement to Adult Disability Payment begins is to be—

(i) where the individual is paid Child Disability Payment in accordance with regulation 25(b)(i) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(b), the day after the first day on which

(a) S.S.I. 2022/54.

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

the individual is to be paid Child Disability Payment after the day of the Adult Disability Payment determination,

- (ii) where the individual is paid Child Disability Payment in accordance with regulation 25(b)(ii) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021, 7 days after the first day on which the individual is to be paid Child Disability Payment after the day of the Adult Disability Payment determination.”.

(5) In paragraph 12 of Part 3 of schedule 2 (change of circumstances), 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 receiving a notice of a determination under paragraph 9(1) (the “transfer determination”), 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.”.

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((a)) are amended in accordance with paragraphs (2) to (6).

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

(3) In regulation 12(1) (review determination without application of entitlement to Adult Disability Payment), after the second occurrence “of that individual’s”, omit “notice of intention to transfer” and insert “transfer determination”.

(4) 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 receiving a notice of a transfer determination, 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. ”.

(5) 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.”.

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

(a) S.S.I. 2022/17.

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

(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.”.

St Andrew’s House,
Edinburgh
2023

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments in relation to disability assistance regulations.

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 (paragraph (2) and (3)). Paragraph (4) amends the residence and presence conditions to provide for the United Kingdom being component for the payment of sickness benefits in cash. Paragraph (5) amends regulation 29 to provide when a decrease or cessation of entitlement takes effect when an individual dies or where an individual becomes entitled to adult disability payment. Paragraph 6 corrects a typographical error.

Regulation 4 amends the Disability Assistance for Working Age People (Scotland) Regulations 2022. Paragraph (2) amends the residence and presence conditions to provide for the United Kingdom being competent for the payment of sickness benefits in cash. Paragraph (3) amends regulation 46 to provide when a decrease or cessation of entitlement takes effect when an individual dies. 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.

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.



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