

Draft Regulations laid before Parliament under section 71(7) of the Scotland Act 2016 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2022 No. 0000

**CONSTITUTIONAL LAW
DEVOLUTION
SOCIAL SECURITY**

**The Scotland Act 2016 (Social Security)
(Adult Disability Payment and Child Disability
Payment) (Amendment) Regulations 2022**

Made - - - - 2022

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 71 of the Scotland Act 2016(1).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 71(7) of that Act.

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022 and come into force on 21st March 2022 immediately after the Disability Assistance for Working Age People (Scotland) Regulations 2022(2) come into force.

(2) Each amendment made by these Regulations has the same extent as the provision being amended.

(1) 2016 c. 11.

(2) S.S.I. 2022/xxx. This instrument comes into force on 21st March 2022.

PART 2

AMENDMENT OF PRIMARY LEGISLATION: ENGLAND AND WALES, AND SCOTLAND

Prevention of overlapping payments: Attendance Allowance, Disability Living Allowance and Personal Independence Payment

Amendment of the Social Security Contributions and Benefits Act 1992

- 2.—(1) The Social Security Contributions and Benefits Act 1992⁽³⁾ is amended as follows.
- (2) In section 64 (attendance allowance), in subsection (1A)⁽⁴⁾, after paragraph (a) insert—
- “(aa) adult disability payment;”.
- (3) In section 71 (disability living allowance), in subsection (7), for “Child Disability Payment” substitute “adult disability payment or child disability payment”.
- (4) In section 122 (interpretation of Parts 1 to 6 and supplementary provisions), in subsection (1) —
- (a) after the definition of “additional primary percentage”, insert—
- ““adult disability payment” means disability assistance given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022;”;
- (b) for the definition of “Child Disability Payment”⁽⁵⁾, substitute—
- ““child disability payment” means disability assistance given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174);”.

Amendment of the Welfare Reform Act 2012

- 3.—(1) The Welfare Reform Act 2012⁽⁶⁾ is amended as follows.
- (2) In section 77 (personal independence payment), in subsection (4)⁽⁷⁾, for “Child Disability Payment” substitute “adult disability payment or child disability payment”.
- (3) In section 95 (interpretation of Part 4)—
- (a) at the appropriate place insert—
- ““adult disability payment” means disability assistance given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022;”;
- (b) for the definition of “Child Disability Payment”⁽⁸⁾ substitute—
- ““child disability payment” means disability assistance given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174);”.

(3) 1992 c. 4.

(4) Section 64(1A) is inserted by paragraph 5(3) of Schedule 9 to the Welfare Reform Act 2012 (c. 5).

(5) The definition is inserted by S.I. 2021/804.

(6) 2012 c. 5.

(7) Section 77(4) is inserted by S.I. 2021/804.

(8) The definition is inserted by S.I. 2021/804.

PART 3

AMENDMENT OF SECONDARY LEGISLATION: ENGLAND AND WALES, SCOTLAND AND NORTHERN IRELAND

Prevention of overlapping payments: Armed Forces Independence Payment

Amendment of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011

4. In article 2 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (interpretation)(9), in the definition of “extra-costs disability benefit”—

- (a) for “under regulation 3 of” substitute “given by virtue of”;
- (b) after “2021” insert “, Adult Disability Payment given by virtue of the Disability Assistance for Working Age People (Scotland) Regulations 2022,”.

PART 4

AMENDMENT OF SECONDARY LEGISLATION: ENGLAND AND WALES AND SCOTLAND

Persons moving from Scotland to England and Wales: Attendance Allowance, Disability Living Allowance and Personal Independence Payment

Amendment of the Social Security (Attendance Allowance) Regulations 1991

5. After regulation 2(1) of the Social Security (Attendance Allowance) Regulations 1991(10) (conditions as to residence and presence in Great Britain), insert—

“(1ZA) A person to whom regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.”.

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

6. After regulation 2(1ZA) of the Social Security (Disability Living Allowance) Regulations 1991(11) (conditions as to residence and presence in Great Britain), insert—

“(1ZB) A person to whom regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.”.

Amendment of the Social Security (Personal Independence Payment) Regulations 2013

7. Renumber the existing text of regulation 23ZA of the Social Security (Personal Independence Payment) Regulations 2013(12) (persons in receipt of an equivalent Scottish benefit who move from Scotland to England or Wales) as regulation 23ZA(1) and after that renumbered paragraph insert—

(9) S.I. 2011/517. Relevant amending instruments are S.I. 2013/436 and 2021/804.

(10) S.I. 1991/2740. Relevant amending instruments are S.I. 1996/30 and 2000/636.

(11) S.I. 1991/2890. Regulation 2(1ZA) is inserted by S.I. 2021/804.

(12) S.I. 2013/377. Regulation 23ZA is inserted by S.I. 2021/804.

“(2) Where regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 53(1) of those Regulations.”.

PART 5

AMENDMENT OF SECONDARY LEGISLATION: NORTHERN IRELAND

Persons moving from Scotland to Northern Ireland: Attendance Allowance,
Disability Living Allowance and Personal Independence Payment

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

8. After regulation 2(1) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (**13**) (conditions as to residence and presence in Northern Ireland), insert—

“(1ZA) A person to whom regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.”.

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

9. After regulation 2(1ZA) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (**14**) (conditions as to residence and presence in Northern Ireland), insert—

“(1ZB) A person to whom regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.”.

Amendment of the Personal Independence Payment Regulations (Northern Ireland) 2016

10. Renumber the existing text of regulation 23ZA of the Personal Independence Payment Regulations (Northern Ireland) 2016 (**15**) (persons in receipt of an equivalent Scottish benefit who move from Scotland to Northern Ireland) as regulation 23ZA(1) and after that renumbered paragraph insert—

“(2) Where regulation 53(1) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 53(1) of those Regulations.”.

(13) S.R. 1992 No. 20. Relevant amending instruments are S.R. 1998 No. 81 and 2000 No. 71.

(14) S.R. 1992 No. 32. Regulation 2(1ZA) is inserted by S.I. 2021/804.

(15) S.R. 2016 No. 217. Regulation 23ZA is inserted by S.I. 2021/804.

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

Date

Name
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 including amendments to primary legislation in connection with any provision of Part 1, 3, 4, 5 or 6 of the Act as the Secretary of State considers appropriate.

These Regulations make provision consequential upon the introduction of Adult Disability Payment (“ADP”) pursuant to Part 3 of the Act (welfare benefits and employment support). ADP is to be the equivalent payment in Scotland to Personal Independence Payment (“PIP”) which will remain payable in the remainder of the United Kingdom.

Regulation 2 amends the Social Security Contributions and Benefits Act 1992 (c. 4) so that there is no overlapping payment of Attendance Allowance (“AA”) and Disability Living Allowance (“DLA”) on the one part and ADP on the other.

Regulation 3 amends the Welfare Reform Act 2012 (c. 5) so that there is no overlapping payment of PIP and ADP.

Regulations 2 and 3 also respectively substitute the definitions of Child Disability Payment (“CDP”) in those Acts so as to make the wording consistent with the definitions of ADP inserted by these Regulations.

Regulation 4 amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) so that there can be no overlapping provision of Armed Forces Independence Payment and ADP. It also amends the definition of CDP in that Order in line with the amendments made by regulations 2 and 3.

The Disability Assistance for Working Age People (Scotland) Regulations 2022 (S.S.I. 2022/) deem claimants in receipt of ADP who have moved to another part of the United Kingdom as still being ordinarily resident in Scotland for 13 weeks following their move, thereby enabling them to continue receiving ADP for that period. Consequentially, these Regulations amend the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740), the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) and the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377) so that such claimants are not deemed to be resident simultaneously in England or Wales and in Scotland for the purposes of DLA, AA or PIP entitlement (see regulations 5, 6 and 7) and regulations 8, 9 and 10 make the corresponding amendments to the Northern Ireland versions of the same regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.