

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendment and
Transitional Provision) (Scotland) Regulations 2022**

Made - - - - 2022

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(1), sections 64(1), 70(4) and 71(6) of the Social Security Contributions and Benefits Act 1992(2), section 77(3) of the Welfare Reform Act 2012(3), sections 28(2), 31(2), 32(2), 52, 79 and 95 of the Social Security (Scotland) Act 2018(4), and all other powers enabling them to do so(5).

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- (1) 1988 c. 7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c. 11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) (“the 1998 Act”) as read with section 32 of the 2016 Act.
 - (2) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer benefits were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act as read with section 22(2) and section 32 of the 2016 Act. Section 22(2) of the 2016 Act inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act relating to carers’ and disability benefits. Section 22(2) was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. Section 32 was brought into force on 5 September 2016 by S.I. 2016/759. The transitional arrangements in respect of carers’ benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9) on 3 September 2018 (see S.S.I. 2018/250). The transitional arrangements in respect of disability benefits ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 22(2) and 32 are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. There are amendments to section 64(1) of the Social Security Contributions and Benefits Act 1992 but none are relevant to these Regulations.
 - (3) 2012 c. 5. The functions of the Secretary of State under sections 77 and 94 of the Welfare Reform Act 2012 (“the 2012 Act”), as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. Legislative competence for disability benefits was devolved to the Scottish Parliament by section 22(2) of the 2016 Act, which inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act. Section 22(2) of the 2016 Act was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of section 53 of the 1998 Act. Section 32 of the Scotland Act 2016 provides the meaning of “pre-commencement enactment” in this context. The transitional arrangements in respect of disability benefits, including personal independence payments, ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 77 and 94 are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. Under section 172(1) of the Social Security Administration Act 1992, the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the 2012 Act. As a result of section 33(1) of the 2016 Act, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.
 - (4) 2018 asp 9.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers⁽⁶⁾.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018, 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.

(5) The powers to make these Regulations are exercised together 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.

(6) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 ([c. 32](#)) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of schedule 11 to that Act.