
STATUTORY INSTRUMENTS

2023 No. 664

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

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⁽¹⁾ are amended as follows.

(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⁽²⁾”;

(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⁽³⁾;

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

(3) After regulation 1 insert—

⁽¹⁾ [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⁾ [S.I. 1987/1968](#).

⁽³⁾ Regulation 25(1) was amended by [S.I. 1991/2741](#) and [1996/1436](#).

“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(4) 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(5),
- (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.

(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(6);
- (b) “the PIP Transitional Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations 2013(7);
- (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.”;

(4) 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](#).

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

(6) Regulation 3(1) was amended by [S.I. 2013/2231](#).

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

- (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.

(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.

(3) 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.

(4) 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.

(5) 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.

(6) 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⁽⁸⁾;
- (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⁽⁹⁾.

⁽⁸⁾ S.S.I. 2021/174.

⁽⁹⁾ 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.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
