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STATUTORY INSTRUMENTS

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**2023 No. 664**

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

**PART 3**

**Amendment of legislation applying in Northern Ireland**

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

**3.—(1)** The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992<sup>(1)</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (2)—

(i) after the definition of “adjudicating authority” insert—

““assessment determination” has the meaning given in regulation 2(1) of the PIP Transitional Regulations;”;

(ii) after the definition of “the Claims and Payments Regulations” insert—

““exempt person” has the meaning given in regulation 2(1) of the PIP Transitional Regulations<sup>(2)</sup>;”;

(iii) after the definition of “mobility component” insert—

““notified person” has the meaning given in regulation 2(1) of the PIP Transitional Regulations;

“PIP notification” means a notification under regulation 3(1) of the PIP Transitional Regulations;

“the PIP Transitional Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016<sup>(3)</sup>;

“the residence change date”, in relation to a person, means the date on which he becomes permanently resident in Scotland (whether or not the Department is notified of the move and whether or not any such notification takes place before or after he moves to Scotland);

“the run-on period” has the meaning given in paragraph (5);”;

(iv) after the definition of “terminally ill” insert—

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(1) S.R. 1992 No. 32. Regulation 1(2) was amended by S.R. 1996 No. 225. Regulation 2 was amended by S.R. 1993 No. 340, 1997 No. 69, 1999 No. 48, 2000 No. 71, 2005 No. 536, 2006 No. 359, 2016 No. 229, 2017 No. 218 and 2021 No. 804, and S.I. 2022/335.

(2) The definition of “exempt person” was inserted by S.R. 2016 No. 235.

(3) S.R. 2016 No. 227.

““transfer claimant” has the meaning given in regulation 2(1) of the PIP Transitional Regulations”;

- (b) after paragraph (4) insert—
- “(5) “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.
- (6) For the purposes of paragraph (5)—
- (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<sup>(4)</sup>;
  - (b) “the relevant period” means the period of 13 weeks beginning with the residence change date.”.
- (3) In regulation 2 (conditions as to residence and presence in Northern Ireland)—
- (a) in paragraph (1), in the words before sub-paragraph (a), after “regulations” insert “2ZA, 2ZB,”;
  - (b) in paragraph (2C), for “if” substitute “only if”.
- (4) 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) or (2B) is treated as, present in Northern Ireland, and
- (c) is under the age of 16 or satisfies the status condition and the award condition.

(3) A person satisfies the status condition if—

- (a) he was, on the day on which he reached the age of 16, terminally ill and either—
  - (i) is terminally ill, or
  - (ii) following a change in his prognosis, is a person to whom the Department is required by regulation 3(5) of the PIP Transitional Regulations<sup>(5)</sup> to send a PIP notification but to whom such a notification has not yet been sent,
- (b) he is an exempt person,
- (c) he has ceased to be an exempt person and is a person—
  - (i) to whom the Department is required by regulation 3(3) or (5) of the PIP Transitional Regulations<sup>(6)</sup> to send a PIP notification, but
  - (ii) to whom such a notification has not yet been sent,

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<sup>(4)</sup> Regulation 25(1) was amended by [S.R. 1992 No. 7](#) and [1996 No. 225](#).

<sup>(5)</sup> Regulation 3(5) was amended by [S.R. 2016 No. 235](#).

<sup>(6)</sup> Regulation 3(3) was amended by [S.R. 2016 No. 235](#).

- (d) no disability living allowance is payable to him only by virtue of regulation 8, 9 or 12A(7),
- (e) he is a notified person but not a transfer claimant, or
- (f) he is a transfer claimant and no assessment determination has been made on his claim for personal independence payment.

(4) 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 Article 10 of the 1998 Order or follows a supersession in accordance with Article 11 of the 1998 Order).

(5) 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.

(6) 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 his claim for disability allowance is made (“the claim date”),
  - (iii) is, or in accordance with regulation 2(2) or (2B) is treated as, present in Northern Ireland 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) or (2B) is treated as, present in Northern Ireland 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 the new DLA claimant’s claim for disability living allowance has not—
  - (i) been decided by the Department under Article 9 of the 1998 Order 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 Department under Article 9 of the 1998 Order.

(3) The Department must make a decision under Article 9 of the 1998 Order 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 Department 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 Department 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” means—

(i) the final day of the run-on period, or

(ii) if earlier, the day preceding the date on which the new DLA claimant's entitlement to Child Disability Payment begins in accordance with regulation 24 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;

(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(8).”.

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(8) Regulation 6 was amended by S.R. 1988 No. 141, 1989 No. 398, 1990 No. 137 and No. 398, 1991 No. 488, 1992 No. 7, 1993 No. 375, 1994 No. 3454, 1996 No. 354, 1997 No. 156 and No. 417, 1999 No. 2574, 2000 No. 215 and No. 365, 2001 No. 175, No. 176 and No. 568, 2002 No. 67 and No. 323, 2003 No. 195 and No. 317, 2004 No. 378, 2005 No. 14, No. 46, No. 536 and No. 539, 2006 No. 168 and No. 365, 2007 No. 392 and No. 467, 2008 No. 417, 2009 No. 240, 2010 No. 81, and 2011 No. 356.