

# Social Justice and Social Security Committee

## 25<sup>th</sup> Meeting, 2023 (Session 6), Thursday 26 October 2023

### Subordinate Legislation Cover Note

<b>Title of Instrument:</b>	<a href="#">The Disability Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023</a>
<b>Laid Date:</b>	11 September 2023
<b>Reporting deadline:</b>	5 November 2023
<b>Type of instrument:</b>	Affirmative
<b>Motion to approve:</b>	<a href="#">S6M-10409</a>

### Purpose of the regulations

1. According to the [Policy Note](#) and [Explanatory Note](#) (available in the Annexe), this instrument amends the Disability Assistance for Children and Young People Regulations 2021 and the Disability Assistance for Working Age People Regulations 2022, which set out the rules and eligibility criteria for Child Disability Payment (CDP) and Adult Disability Payment (ADP).
2. These forms of assistance provide support for disabled individuals, those with long-term illnesses, or those who are terminally ill.
3. The instrument also amends the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (ADP transitional provisions), which allows the transfer of entitlement from Disability Living Allowance to ADP.
4. Additionally, a minor amendment is made to the Social Security (Invalid Care Allowance) Regulations 1976, which govern the rules and eligibility criteria for Carer's Allowance.

## Parliamentary procedure

1. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
2. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee that examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
3. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of considering the instrument. The committee can ask the Minister and any officials questions about the SSI.
4. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
5. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

## Delegated Powers and Law Reform Committee consideration

5. The DPLR Committee considered the instrument at its meeting on [19 September 2023](#) and raised no points. The official report of the meeting is available [here](#).

## For decision

6. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 5 November 2023.**
7. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

**POLICY NOTE**  
**THE DISABILITY ASSISTANCE (MISCELLANEOUS AMENDMENT)**  
**(SCOTLAND) REGULATIONS 2023**  
**SSI 2023/XXX**

The above instrument was made in exercise of the powers conferred by sections 31(2) and 95 of the [Social Security \(Scotland\) Act 2018](#). The instrument is subject to affirmative procedure.

This instrument amends the following sets of principal regulations: the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Disability Assistance for Working Age People (Scotland) Regulations 2022, which set out the rules and eligibility criteria for Child Disability Payment (CDP) and Adult Disability Payment (ADP) respectively. These are both forms of assistance to support disabled individuals, people with a long term illness or those who are terminally ill.

It also amends the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (ADP transitional provisions) which enable the transfer of entitlement for individuals in receipt of Disability Living Allowance (DLA), currently delivered by the Department for Work and Pensions (DWP), to ADP. Finally, it makes a minor amendment to the Social Security (Invalid Care Allowance) Regulations 1976 which set out the rules and eligibility criteria for Carer's Allowance.

### **Policy Objectives**

These regulations make a number of amendments to the principal regulations for CDP, ADP and the ADP transitional provisions. Amending these principal regulations will ensure that these benefits are aligned with the Scottish Government's overall policy intent for disability assistance which is to improve outcomes for disabled people.

The main objective of these regulations is to make further improvements to the journey for young people moving from CDP to ADP. This includes enabling the payment cycles of clients moving from CDP to ADP to be maintained. The regulations include further amendments which are intended to clarify certain provisions relating to this journey, such as the upper age criteria for CDP.

The regulations also make other minor and consequential amendments to the principal regulations.

## **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## **Consultation**

### **Scottish Commission on Social Security**

Under section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). A draft policy note and draft regulations were provided for scrutiny, along with draft impact assessments to aid the scrutiny process. SCoSS published their scrutiny report on 19 May 2023, making 3 recommendations. The Scottish Government's response was sent to SCoSS on 26 July 2023. This follows extensive scrutiny by SCoSS of the principal regulations, with a number of changes made in response.

### **Stakeholder engagement**

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations, and a summary of these responses can be found in the analysis of written responses ([Disability assistance in Scotland: analysis of consultation responses - gov.scot](#)). The views expressed within the consultation responses helped shape the proposals for both CDP and ADP, and the Scottish Government published its response in October 2019 ([Disability assistance in Scotland: response to consultation - gov.scot](#)). Respondents were broadly supportive of the policy proposals, however, several changes were made in response to the consultation. These regulations do not introduce new policy so are still in alignment with the consultation and views expressed by stakeholders.

Stakeholder views gathered during the consultation were taken into account in the principal CDP and ADP Regulations. The changes we are proposing to make will smooth the journey for clients moving from CDP to ADP meaning that their payment cycles will be maintained and they will receive their ADP on the same date their CDP was previously paid.

### **Impact Assessments**

The following Impact Assessments have been completed for this instrument:

- A Child Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
  - A Business and Regulatory Impact Assessment
- An Island Communities Impact Assessment
- A Fairer Scotland Duty Impact Assessment

It is anticipated from the analysis in these impact assessments that these regulations will have a positive impact on disabled people, particularly those young people transitioning from CDP to ADP. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations. We have reviewed the impact assessments from the perspective of this specific cohort of individuals moving from CDP to ADP and consider there are potential positive impacts, such as providing continuity of payment. From this review we understand that there are no significant equalities or rights impacts that require further consideration in relation to the commencement of these amendment regulations.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed. The Scottish Fiscal Commission have confirmed they do not anticipate the changes proposed by these amendments will create a material change in spending. The impact of this policy on business is limited to a minor short to medium term increase in administrative burden on welfare rights and income maximisation services indirectly affected as a result of young people seeking advice and signposting. However, no quantifiable financial effects have been identified. The Scottish Government does not believe that these amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world.

Scottish Government

Social Security Directorate

September 2023

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make miscellaneous amendments to the Social Security (Invalid Care Allowance) Regulations 1976, the Disability Assistance for Children and Young People (Scotland) Regulations 2021, the Disability Assistance for Working Age People (Scotland) Regulations 2022 and the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022.

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 (paragraphs (2) and (3)). Paragraph (4) makes clear that payment of the care component to individuals to whom a relevant EU Regulation applies is where the United Kingdom is the competent state for the payment of sickness benefits in cash. Paragraph (6) corrects a typographical error. Paragraph (7) amends paragraph 8 of Part 3 of the schedule to provide for when the Scottish Ministers have the power to stop the transfer to Child Disability Payment in respect of an individual who was ordinarily resident in Scotland at the time the notice of intention to transfer was issued, and subsequently moves elsewhere in the UK before the transfer determination takes place. Paragraph (8) amends paragraph 14 of Part 3 of the schedule to provide that the duty in sub-paragraph (2) does not apply where an appointment has already been made by virtue of section 85A or 85B of the 2018 Act.

Regulation 4 amends the Disability Assistance for Working Age People (Scotland) Regulations 2022. Paragraph (2) makes clear that payment of the daily living component to individuals to whom a relevant EU Regulation applies is where the United Kingdom is the competent state for the payment of sickness benefits in cash. 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. Paragraph (5) amends paragraph 8 of Part 3 of schedule 2 to provide for when the Scottish Ministers have the power to stop the transfer to Adult Disability Payment in respect of an individual who was ordinarily resident in Scotland at the time the notice of intention to transfer was issued, and subsequently moves elsewhere in the UK before the transfer determination takes place. Paragraph (6) amends paragraph 12 of Part 3 of schedule 2 to provide for when the Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment without receiving an application. Paragraph (7) amends paragraph 15 of Part 3 of schedule 2 to provide that the duty in sub-paragraph (2) does not apply where an appointment has already been made by virtue of section 85B of the 2018 Act.

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](http://www.legislation.gov.uk).