POLICY NOTE

THE DISABILITY ASSISTANCE (SCOTTISH ADULT DISABILITY LIVING ALLOWANCE) (CONSEQUENTIAL AMENDMENT, REVOCATION AND SAVING PROVISION) REGULATIONS

SSI 2024/311

The above instrument was made in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018. The instrument is subject to the negative procedure.

The purpose of this instrument is to make consequential amendments, revocation and savings provisions as a result of the introduction of a new form of disability assistance, Scottish Adult Disability Living Allowance. Scottish Adult Disability Living Allowance will be introduced by the Disability Assistance (Scottish Adult Disability Living Allowance) (Scotland) Regulations 2025, which were made by Scottish Ministers in exercise of the powers conferred by the Social Security (Scotland) Act 2018. Scottish Adult Disability Living Allowance will replace Disability Living Allowance in Scotland for those remaining adults in Scotland on that benefit. It will not be open to new applications.

These provisions are required to ensure that certain secondary legislation within the devolved competence of Scottish Ministers applies to individuals in receipt of Scottish Adult Disability Living Allowance in the same way they apply to individuals who receive Disability Living Allowance. This ensures that individuals who are entitled to Scottish Adult Disability Living Allowance will benefit from the same exemptions, concessions and reliefs, in devolved areas, as individuals currently in receipt of Disability Living Allowance.

Policy Objectives

1. The main purpose of this instrument is to make consequential amendments to reflect the transition from Disability Living Allowance to Scottish Adult Disability Living Allowance, so as to allow disability related passported benefits to be accessible in Scotland through Scottish Adult Disability Living Allowance in the same way as they are for people currently receiving Disability Living Allowance.

2. Scottish Adult Disability Living Allowance will be delivered by Social Security Scotland from March 2025. There will be no new applications for Scottish Adult Disability Living Allowance; all awards will result from case transfer from Disability Living Allowance. We aim to complete case transfer by the end of 2025.

3. Legislation will be introduced before the UK Parliament to enable the necessary legal changes to be made to reserved exemptions, concessions and reliefs for those in receipt of Scottish Adult Disability Living Allowance. For areas within the competence of the Scottish Parliament, these Regulations make the necessary changes to Scots law to fulfil the Scottish Government's commitment to a safe and secure transition. For Scottish Adult Disability Living Allowance, this means ensuring that people continue to receive access to the same payments and passported benefits as they would if they were receiving Disability Living Allowance.

4. Because social security interacts with a number of devolved areas, the following allowances, disregards or premiums are within the scope of these regulations:

- The Social Security (Invalid Care Allowance) Regulations 1976
- The Council Tax (Discounts) (Scotland) Regulations 1992
- The National Assistance (Assessment of Resources) Regulations 1992
- The Advice and Assistance (Scotland) Regulations 1996
- The Education (Student Loans) Regulations 1998
- The Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000
- The Repayment of Student Loans (Scotland) Regulations 2000
- The Civil Legal Aid (Scotland) Regulations 2002
- The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003
- The National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003
- The National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006
- The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007
- The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012
- The Home Energy Assistance Scheme (Scotland) Regulations 2013
- The Children's Legal Assistance (Scotland) Regulations 2013
- The Scottish Parliament (Elections etc.) Order 2015
- The Council Tax Reduction (Scotland) Regulations 2021
- The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023
- The Disability Assistance for Older People (Scotland) Regulations 2024
- The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

5. These regulations provide that where certain Scottish regulations refer to Disability Living Allowance, there is a corresponding reference to Scottish Adult Disability Living Allowance or Short-term Assistance. Short-term Assistance is assistance that an individual can elect to receive if they are appealing to Social Security Scotland, or to the Social Security Chamber First-tier Tribunal for Scotland, against a decision to stop or reduce their longstanding award of entitlement to assistance under Part 2 of the Social Security (Scotland) Act 2018. Short-term Assistance is not available for first-time applicants and is unique to the Scottish social security system.

6. Because Short-term Assistance can be paid in respect of more than one form of devolved assistance, the provision makes clear that the scope of the amendments extends only to circumstances where Short-term Assistance is paid as a result of a qualifying Scottish Adult Disability Living Allowance award being stopped or reduced. This fulfils a further policy objective by ensuring that individuals in receipt of Short-term Assistance benefit from the same income disregards and entitlements as they would have but for their Scottish Adult Disability Living Allowance award being stopped or reduced.

7. The regulations make provision to amend the Disability Assistance for Working Age People (Scotland) Regulations 2022 and the Disability Assistance for Older People (Scotland) Regulations 2024 to include reference to Scottish Adult Disability Living Allowance where

there are currently references to Disability Living Allowance. These amendments ensure that individuals cannot be entitled to Adult Disability Payment or Pension Age Disability Payment and Scottish Adult Disability Living Allowance simultaneously.

8. Finally, Part 3 makes provision to revoke the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022. This revocation brings to an end the case transfer journey from Disability Living Allowance to Adult Disability Payment. From the date these regulations come into force, there will be no further awards selected for transfer to Adult Disability Payment from Disability Living Allowance, as all Disability Living Allowance awards for adults will instead transfer to Scottish Adult Disability Living Allowance. For those who have already had their award selected for transfer to Adult Disability Payment but have not yet completed the journey by 21 March 2025, this transfer journey will continue until the transfer to Adult Disability Payment is complete.

EU Alignment Consideration

9. This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

10. 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. A summary of these responses can be found in the analysis of consultation responses.[1] The views expressed within the consultation responses helped shape the proposals for Scottish Adult Disability Living Allowance. The Scottish Government published its response to the consultation findings in October 2019.[2]

11. Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation. Such changes include setting the time limit for requesting a re-determination to 42 calendar days, an increase on the Department for Work and Pension's time limit of one month. If Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-tier Tribunal for Scotland.

12. In November 2022, officials presented the Scottish Government's policy position on Scottish Adult Disability Living Allowance to the Disability and Carers Benefits Expert Advisory Group (DACBEAG). DACBEAG provided advice on Scottish Adult Disability Living Allowance in December 2022, with the Scottish Government responding in March 2023.[3]

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[1] Disability assistance in Scotland: analysis of consultation responses - gov.scot (www.gov.scot)
[2] Disability assistance in Scotland: response to consultation - gov.scot (www.gov.scot)
[3] Disability and Carers Benefits Expert Advisory Group - gov.scot (www.gov.scot)

13. Officials have also engaged with a variety of stakeholders on Scottish Adult Disability Living Allowance. In April 2023, a meeting of the Ill Health and Disability Benefits Stakeholder Reference Group was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. Stakeholders were supportive of the introduction of Scottish Adult Disability Living Allowance, and emphasised the need for clear and concise communications on this complex policy. Officials agreed to continue to work with stakeholders to ensure that this is achieved. Officials met with the group again in August 2024 to discuss their approach to communications in more detail, which the group supported.

Impact Assessments

14. The impact of the introduction of Scottish Adult Disability Living Allowance, and the transfer of Disability Living Allowance from the Department for Work and Pensions, is considered in the impact assessments produced and laid alongside the Disability Assistance (Scottish Adult Disability Living Allowance) (Scotland) Regulations 2025. These include an Equality Impact Assessment (EQIA), Child Rights and Wellbeing Impact Assessment (CRWIA), Island Communities Impact Assessment (ICIA), Fairer Scotland Duty Assessment (FSDA), Business and Regulatory Impact Assessment (BRIA) and a Data Protection Impact Assessment (DPIA).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

15. The Scottish Ministers have made the following statement regarding children's rights. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Disability Assistance (Scottish Adult Disability Living Allowance) (Consequential Amendment, Revocation and Saving Provision) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Financial Effects

16. The Scottish Government does not believe that Scottish Adult Disability Living Allowance will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally including Europe and the rest of the world. The Scottish Government expects that there may be a limited impact on the operational business of local authorities or health boards, principally because Social Security Scotland may seek to obtain, with the individual's consent, information held by public sector bodies about the individual's disability to make a determination of entitlement.

17. The right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland is provided for in the 2018 Act. Legal Assistance will continue to be available to individuals to appeal a determination of entitlement to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Scottish Adult Disability Living Allowance. Current recipients of Disability Living Allowance are already able to access legal aid to appeal entitlement decisions.

Scottish Government

Social Security Directorate

October 2024