*Draft Regulations laid before Parliament under section 71(7) of the Scotland Act 2016, for approval by resolution of each House of Parliament.*

D R A F T  S T A T U T O R Y  I N S T R U M E N T S

# 2021 No.

# CONSTITUTIONAL LAW

# DEVOLUTION, SCOTLAND

# SOCIAL SECURITY

## The Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021

| | |
|---|---|
| *Made - - - -* | *** |
| *Coming into force - -* | *26th July 2021* |

CONTENTS


PART 1
Introductory

1. Citation, commencement and extent

PART 2
Amendment of primary legislation: England and Wales, and Scotland
*Prevention of overlapping payments: Disability Living Allowance and Personal Independence Payment*
2. Amendment of the Social Security Contributions and Benefits Act 1992
3. Amendment of the Welfare Reform Act 2012

PART 3
Amendment of secondary legislation: England and Wales, Scotland, and Northern Ireland
*Prevention of overlapping payments: Armed Forces Independence Payment*
4. Amendment of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011

PART 4
Amendment of secondary legislation: England and Wales, and Scotland
*Persons moving from Scotland to England and Wales: Disability Living Allowance and Personal Independence Payment*
5. Amendment of the Social Security (Disability Living Allowance) Regulations 1991

6. Amendment of the Social Security (Personal Independence Payment) Regulations 2013

PART 5

Amendment of secondary legislation: Northern Ireland

*Persons moving from Scotland to Northern Ireland: Disability Living Allowance and Personal Independence Payment*

7. Amendment of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992
8. Amendment of the Personal Independence Payment Regulations (Northern Ireland) 2016

PART 6

Amendment of secondary legislation: England and Wales, and Scotland

*Appointees*

9. Amendment of the Social Security (Claims and Payments) Regulations 1987
10. Amendment of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(1)(a), (2)(a), (5)(a) and (b) of the Scotland Act 2016(**a**).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 71(7) of that Act.

# PART 1

## Introductory

### Citation, commencement and extent

**1.**—(1) These Regulations may be cited as the Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021.

(2) These Regulations come into force on 26th July 2021.

(3) Each amendment made by these Regulations has the same extent as the provision being amended.

# PART 2

## Amendment of primary legislation: England and Wales, and Scotland

*Prevention of overlapping payments: Disability Living Allowance and Personal Independence Payment*

### Amendment of the Social Security Contributions and Benefits Act 1992

**2.**—(1) The Social Security Contributions and Benefits Act 1992(**b**) is amended as follows.

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(**a**) 2016 c. 11.
(**b**) 1992 c. 4.

(2) In section 71 (disability living allowance)(**a**), after subsection (6) insert—

"(7) A person shall not be entitled to a disability living allowance while they are entitled to Child Disability Payment.".

(3) In section 122 (interpretation of Parts I to VI and supplementary provisions)(**b**), after the definition of "child" insert—

""Child Disability Payment" means assistance under regulation 3 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(**c**);".

**Amendment of the Welfare Reform Act 2012**

**3.**—(1) The Welfare Reform Act 2012(**d**) is amended as follows—

(2) After section 77(3) (personal independence payment) insert—

"(4) A person is not entitled to personal independence payment while they are entitled to Child Disability Payment.".

(3) In section 95 (interpretation of Part 4), before the definition of "daily living activities" insert—

""Child Disability Payment" means assistance under regulation 3 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;".

# PART 3

## Amendment of secondary legislation: England and Wales, Scotland, and Northern Ireland

*Prevention of overlapping payments: Armed Forces Independence Payment*

**Amendment of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011**

**4.**—(1) Article 2 of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**e**) (interpretation)(**f**) is amended as follows.

(2) In the definition of "extra-costs disability benefit", before the words "or any equivalent benefit" insert "Child Disability Payment under regulation 3 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,".

# PART 4

## Amendment of secondary legislation: England and Wales, and Scotland

*Persons moving from Scotland to England and Wales: Disability Living Allowance and Personal Independence Payment*

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(**a**) Section 71(3) was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (1999 c. 30).
(**b**) In section 122, the definition of "child" was substituted by Schedule 1 Part 1 paragraphs 1, 8(1) and (2) of the Child Benefit Act 2005 (c. 6). There are other amendments to section 122 not relevant to these Regulations.
(**c**) S.S.I. 2021/174.
(**d**) 2012 c. 5.
(**e**) S.I. 2011/517.
(**f**) The definition of "extra-costs disability benefit" was inserted by articles 2(1) and (2) of S.I. 2013/436.

**Amendment of the Social Security (Disability Living Allowance) Regulations 1991**

**5.**—(1) Regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991(**a**) (conditions as to residence and presence in Great Britain)(**b**) is amended as follows.

(2) Before paragraph (2) insert—

"(1ZA) A person to whom regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.".

**Amendment of the Social Security (Personal Independence Payment) Regulations 2013**

**6.**—(1) The Social Security (Personal Independence Payment) Regulations 2013(**c**) are amended as follows.

(2) In Part 4 (residence and presence conditions), before regulation 23A (refugees)(**d**) insert—

**"Persons in receipt of an equivalent Scottish benefit who move from Scotland to England or Wales**

**23ZA.** Where regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 36(1) of those Regulations.".

# PART 5

## Amendment of secondary legislation: Northern Ireland

*Persons moving from Scotland to Northern Ireland: Disability Living Allowance and Personal Independence Payment*

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

**7.**—(1) Regulation 2 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**e**) (conditions as to residence and presence in Northern Ireland)(**f**) is amended as follows.

(2) Before paragraph (2) insert—

"(1ZA) A person to whom regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 applies shall be treated for the period set out in that regulation as though he does not satisfy the condition in paragraph (1)(a)(i) of this regulation.".

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(**a**) S.I. 1991/2890.
(**b**) Regulation 2(2) was amended by regulation 2(3) of S.I. 1993/1939, regulation 2(3) and Schedule 3 to S.I. 2005/2877, and regulations 4(1) and 4(3)(d)(i), (d)(ii), (e) and (f) of S.I. 2013/389.
(**c**) S.I. 2013/377.
(**d**) Regulation 23A was inserted by regulation 14 of S.I. 2017/1015.
(**e**) S.R. 1992 No. 32.
(**f**) Regulation 2(2) was amended by regulation 2(3)(a) of S.R. 1993 No. 340, regulation 3(2) of S.R. 1997 No. 69, regulation 9(a) of S.R. 2000 No. 71, regulation 8 of S.R. 2006 No. 359, regulation 4(3)(a)(i), (ii) and (iii) of S.R. 2016 No. 229, and regulation 8(2) of S.R. 2017 No. 218.

**Amendment of the Personal Independence Payment Regulations (Northern Ireland) 2016**

**8.**—(1) The Personal Independence Payment Regulations (Northern Ireland) 2016(**a**) are amended as follows.

(2) In Part 4 (residence and presence conditions), before regulation 23A (refugees)(**b**) insert—

**"Persons in receipt of an equivalent Scottish benefit who move from Scotland to Northern Ireland**

**23ZA.** Where regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 applies to C, regulation 16(c) of these Regulations is treated as not satisfied for the period set out in regulation 36(1) of those Regulations.".

# PART 6

## Amendment of secondary legislation: England and Wales, and Scotland

*Appointees*

**Amendment of the Social Security (Claims and Payments) Regulations 1987**

**9.**—(1) The Social Security (Claims and Payments) Regulations 1987(**c**) are amended as follows.

(2) In regulation 2(1) (interpretation)(**d**), after the definition of "the 2013 Regulations" insert—

""the 2018 Scotland Act" means the Social Security (Scotland) Act 2018;".

(3) After regulation 33(1A) (persons unable to act)(**e**) insert—

"(1B) Where a natural person over the age of 18 has been appointed by the Scottish Ministers under a qualifying appointment pursuant to the 2018 Scotland Act in connection with the determination of assistance under section 24 of that Act (whether or not including an appointment to receive assistance on behalf of the individual), the Secretary of State may, if the person agrees, treat that person as if she had appointed them under paragraph (1).

(1C) In paragraph (1B), a qualifying appointment means—

(a) an appointment made under section 58(1) of the 2018 Scotland Act in a case where section 58(4) of that Act applies, or

(b) an appointment made under section 85B(1)(**f**) of the 2018 Scotland Act in a case where section 85B(7) of that Act applies.".

(4) After regulation 43(1) (children) insert—

"(1A) Subject to paragraph (1B), where a person has been appointed by the Scottish Ministers under section 85A(1) of the 2018 Scotland Act(**g**) in connection with the determination of assistance under section 24 of that Act (whether or not including an appointment to receive assistance on behalf of the child), the Secretary of State may, if the person agrees, treat that person as if she had appointed them under paragraph (1).

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(**a**) S.R. 2016 No. 217.
(**b**) Regulation 23A was inserted by regulation 15 of S.R. 2017 No. 218.
(**c**) S.I. 1987/1968.
(**d**) The definition of "the 2013 Regulations" was inserted by regulations 2(1) and (2) of S.I. 2013/1508.
(**e**) Regulation 33(1A) was inserted by regulations 7(1) and 7(7)(b) of S.I. 2005/337, amended by regulation 5 of and Schedule 2 to S.I. 2006/217 and substituted by regulation 4 of and Schedule 2 to S.I. 2013/458.
(**f**) Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (2020 asp 18).
(**g**) Section 85A was inserted by section 1 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (2020 asp 18).

(1B) Paragraph (1A) does not apply if the person appointed by the Scottish Ministers does not satisfy the conditions in paragraph (2).".

**Amendment of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013**

**10.**—(1) The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(**a**) are amended as follows.

(2) After regulation 57(1) (persons unable to act) insert—

"(1A) Where a natural person over the age of 18 has been appointed by the Scottish Ministers under a qualifying appointment pursuant to the 2018 Scotland Act in connection with the determination of assistance under section 24 of that Act (whether or not including an appointment to receive assistance on behalf of the individual), the Secretary of State may, if the person agrees, treat that person as if the Secretary of State had appointed that person under paragraph (1).

(1B) In paragraph (1A) a qualifying appointment means—

(a) an appointment made under section 58(1) of the 2018 Scotland Act in a case where section 58(4) of that Act applies, or

(b) an appointment made under section 85B(1) of the 2018 Scotland Act in a case where section 85B(7) of that Act applies.

(1C) In this regulation "the 2018 Scotland Act" means the Social Security (Scotland) Act 2018.".

Signed by authority of the Secretary of State for Work and Pensions

*Name*
Minister for Employment
Department for Work and Pensions

Date

**EXPLANATORY NOTE**

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

Section 71 of the Scotland Act 2016 (c. 11) ("the Act") allows the Secretary of State by regulations to make such consequential provision including amendments to primary legislation in connection with any provision of Part 1, 3, 4, 5 or 6 of the Act as the Secretary of State considers appropriate. These Regulations make provision consequential upon the introduction of Child Disability Payment ("CDP"), the devolved Scottish equivalent of Disability Living Allowance ("DLA") for children, pursuant to Part 3 of the Act (Welfare benefits and employment support).

Regulation 2 amends the Social Security Contributions and Benefits Act 1992 (c. 4) so that there is no overlapping payment of DLA and CDP. Regulation 3 amends the Welfare Reform Act 2012 (c. 5) so that there is no overlapping payment of Personal Independence Payment ("PIP") and CDP in relation to claimants in receipt of CDP who become eligible for PIP as opposed to DLA by reason of their age.

Regulation 4 amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) so that there can be no overlapping provision of Armed Forces Independence Payment and CDP.

(**a**) S.I. 2013/380.

Regulation 36(1) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174) deems claimants in receipt of CDP who move from Scotland to England or Wales, to be resident in Scotland for 13 weeks following their move and hence enables them to continue receiving CDP for that period. Consequentially, regulation 5 of these Regulations amends the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) so that the same claimants are not deemed to be resident simultaneously in England or Wales and in Scotland for the purposes of DLA entitlement and regulation 7 makes the corresponding amendment to the Northern Ireland version of the same regulations. Regulation 6 amends the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/277) for the same reason and with the same effect for the purposes of PIP entitlement and regulation 8 makes the corresponding amendment to the Northern Ireland version of the same regulations.

Regulation 9 amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) to allow (where a claimant is not capable of acting for themselves and no other relevant appointee is already in place) former claimants of any devolved benefit who had been granted an appointee in Scotland to be granted the same appointee without a fresh application if they are claiming a reserved benefit (whether whilst still in Scotland or after a move to England and Wales). Regulation 10 amends the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380) to do the same.

A full impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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