SCOTTISH STATUTORY INSTRUMENTS

2024 No. 241

SOCIAL SECURITY

The Social Security (Genuine and Sufficient Link to the United Kingdom) (Miscellaneous Amendment) (Scotland) Regulations 2024

Made - - - -	*10th September 2024*
Laid before the Scottish Parliament	*12th September 2024*
Coming into force - -	*7th November 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 64(1), 70(4), 71(6), 138(2), 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 77(3), 94(1) and (2) of the Welfare Reform Act 2012(**b**) and all other powers enabling them to do so.

(**a**) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carers benefits were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) ("the 1998 Act") as read with section 22(2) and section 32 of the Scotland Act 2016 (c. 11) ("the 2016 Act"). Section 22(2) of the 2016 Act inserted exceptions to the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act relating to carers' and disability benefits. Regulations 3 and 4 of S.I. 2017/444 provide for functions conferred on the Secretary of State by a pre-commencement enactment that would be within the legislative competence of the Scottish Parliament by virtue of exception 1 in reservation F1 in schedule 5 of the 1998 Act (social security schemes) to transfer to the Scottish Ministers on 1 April 2020. Accordingly, in so far as the functions under the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. Section 32 of the 2016 Act provides the meaning of "pre-commencement enactment" in this context. Under section 172(1) of the Social Security Administration Act 1992 (c. 5), the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under "relevant enactments", as defined in section 170(5) of that Act. This includes regulations under the provisions of the 1992 Act. As a result of section 33(1) of the 2016 Act, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.

(**b**) 2012 c. 5. The function of making regulations under section 77 of the Act is exercisable by the Secretary of State by virtue of section 94(1) and (2) of that Act. The functions of the Secretary of State under sections 77 and 94, as regards Scotland, transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act as read with section 22(2) and section 32 of the 2016 Act. Sections 22(2) of the 2016 Act inserted exceptions to the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act relating to carers' and disability benefits. Regulation 3 and 4 of S.I. 2017/444 provide for functions conferred on the Secretary of State by a pre-commencement enactment that would be within the legislative competence of the Scottish Parliament by virtue of exception 1 in reservation F1 in schedule 5 of the 1998 Act (social security schemes) to transfer to the Scottish Ministers on 1 April 2020. Section 32 of the 2016 Act provides the meaning of "pre-commencement enactment" in this context. Accordingly, in so far as the functions are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. Under section 172(1) of the Social Security Administration Act 1992 (c. 5), the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under "relevant enactments", as defined in section 170(5) of that Act. This includes regulations under Part 4 of the Welfare Reform Act 2012. As a result of section 33(1) of the 2016 Act, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Genuine and Sufficient Link to the United Kingdom) (Miscellaneous Amendment) (Scotland) Regulations 2024 and come into force on 7 November 2024.

(2) These Regulations extend to Scotland only.

Amendment of the Social Security (Invalid Care Allowance) Regulations 1976

2.—(1) The Social Security (Invalid Care Allowance) Regulations 1976(**a**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 9A(1)(c) (persons residing in Great Britain to whom a relevant EU Regulation applies) omit "social security system".

(3) In regulation 9B(c) (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies) omit "social security system".

Amendment of the Social Security (Attendance Allowance) Regulations 1991

3.—(1) The Social Security (Attendance Allowance) Regulations 1991(**b**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2A(1)(c) (persons residing in Great Britain to whom a relevant EU Regulation applies) omit "social security system".

(3) In regulation 2B(c) (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies) omit "social security system".

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

4.—(1) The Social Security (Disability Living Allowance) Regulations 1991(**c**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2A(1)(c) (persons residing in Great Britain to whom a relevant EU Regulation applies) omit "social security system".

(3) In regulation 2B(c) (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies) omit "social security system".

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

5.—(1) The Social Security (Personal Independence Payment) Regulations 2013(**d**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 22(c) (persons residing in Great Britain to whom a relevant EU Regulation applies) omit "social security system".

(**a**) S.I. 1976/409, relevantly amended by S.I. 2013/389 and S.I. 2019/128.
(**b**) S.I. 1991/2740, relevantly amended by S.I. 2013/389 and S.I. 2019/128.
(**c**) S.I. 1991/2890, relevantly amended by S.I. 2013/389 and S.I. 2019/128.
(**d**) S.I. 2013/377, relevantly amended by S.I. 2019/128.

(3) In regulation 23(c) (persons residing in an EEA or in Switzerland to whom a relevant EU Regulation applies) omit "social security system".

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew's House,
Edinburgh
10th September 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Attendance Allowance) Regulations 1991, the Social Security (Disability Living Allowance) Regulations 1991 and the Social Security (Personal Independence Payment) Regulations 2013 in relation to the past presence test ("PPT") and the genuine and sufficient link ("GSL") to the United Kingdom by removing references to "social security system" so that the GSL simply needs to be to the United Kingdom.

Usually, those arriving in the UK, including UK nationals, have no access to the relevant benefits until they meet the conditions of the PPT. The PPT for those over the age of sixteen requires a claimant to be have been present in Great Britain for 104 out of the 156 weeks immediately before making their claim (for children they are required to have lived in Great Britain for at least 6 of the last 12 months, if over 3 years old).

The GSL to the UK is an exemption to the PPT which applies to claimants covered by the Withdrawal Agreement or a relevant EU regulation to gain access to the relevant benefits

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen. A Child Rights and Wellbeing Impact Assessment has been prepared and is available online at legislation.gov.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

£5.78

http://www.legislation.gov.uk/id/ssi/2024/241

ISBN 978-0-11-106076-6

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