SCOTTISH STATUTORY INSTRUMENTS

2025 No. 415

SOCIAL SECURITY

The Social Security (Residence in an EEA State or Switzerland) (Miscellaneous Amendment) (Scotland) Regulations 2025

Made - - - -	*18th December 2025*
Laid before the Scottish Parliament	*22nd December 2025*
Coming into force - -	*1st April 2026*

The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 70(4), 71(6) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 77(3) and 94(1) and (2) of the Welfare Reform Act 2012(**b**).

(**a**) 1992 c. 4 ("the 1992 Act"). Section 175(1) was amended by paragraph 29(1) and (2) of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). See section 122(1) for the meaning of "prescribe" in sections 70(4) and 71(6) of the 1992 Act. 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 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. See section 95 for the meaning of "prescribed". 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 1998 Act as read with section 22(2) and section 32 of 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 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 SSAC proposals for regulations under "relevant enactments", as defined in section 170(5) of that Act. This includes regulations under the provisions 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 (Residence in an EEA State or Switzerland) (Miscellaneous Amendment) (Scotland) Regulations 2025 and come into force on 1 April 2026.

(2) These Regulations extend to Scotland only.

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

2. In regulation 9B of the Social Security (Invalid Care Allowance) Regulations 1976 (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies)(**a**) for paragraph (b) substitute—

"(b) a relevant EU Regulation—

(i) applies to the person; or

(ii) except where the person has been habitually resident in the United Kingdom after 31st December 2020, applied to the person on 31st December 2020 and they have been continuously in receipt of a carer's allowance on and from that date; and".

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

3. In regulation 2B of the Social Security (Disability Living Allowance) Regulations 1991 (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies)(**b**) for paragraph (b) substitute—

"(b) a relevant EU Regulation—

(i) applies to the person; or

(ii) except where the person has been habitually resident in the United Kingdom after 31st December 2020, applied to the person on 31st December 2020 and they have been continuously in receipt of the care component of disability living allowance on and from that date; and".

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

4. In regulation 23 of the Social Security (Personal Independence Payment) Regulations 2013 (persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies)(**c**) for paragraph (b) substitute—

"(b) a relevant EU Regulation—

(i) applies to C; or

(ii) except where C has been habitually resident in the United Kingdom after 31st December 2020, applied to C on 31st December 2020 and they have been continuously in receipt of the daily living component of personal independence payment on and from that date; and".

(**a**) S.I. 1976/409, relevant amending instruments are S.I. 2013/389, S.I. 2019/128 and S.S.I. 2024/241.
(**b**) S.I. 1991/2890, relevant amending instruments are S.I. 2013/389, S.I. 2019/128 and S.S.I. 2024/241.
(**c**) S.I. 2013/377, relevant amending instruments are S.I. 2019/128 and S.S.I. 2024/241.

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew's House,
Edinburgh
18th December 2025

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Disability Living Allowance) Regulations 1991 and the Social Security (Personal Independence Payment) Regulations 2013. They reflect that claimants, to whom a relevant EU regulation applied on 31st December 2020 (the date of the end of the transition period following the UK's withdrawal from the EU), maintain their rights to carer's allowance, the care component of disability living allowance and the daily living component of personal independence payment subject to certain conditions. The individual must have continuously received these benefits since 31st December 2020, and they must not have been habitually resident in the United Kingdom on or after that date. These Regulations do not create a ground for new claims but provide a legislative basis to continue paying benefits already in payment.

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