

Draft Disability Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023

Draft Table of Amendments

February 2023

PROPOSED AMENDMENTS

Amendments which require SCoSS scrutiny under s.97 of the Social Security (Scotland) Act 2018.

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

Regulation	Title	Proposed Amendment
9 (2)(b)	Conditions relating to residence and presence in Great Britain	<p>Regulation 9 (2)(b) of the Social Security (Invalid Care Allowance) Regulations 1976 sets out that some carers abroad can apply for Carer's Allowance where their absence is temporary and has not lasted a continuous period beyond 4 weeks. This also applies where the absence is to care for a severely disabled person who is also temporarily absent from the Common Travel Area (the UK, Jersey, Guernsey, the Isle of Man and the Republic of Ireland). The disabled person can be abroad for up to 26 weeks if for medical treatment and for 13 weeks for any reason.</p> <p>We have identified a gap in the amendments which were made to the 1976 Regulations as a consequence of the introduction of CDP and ADP, specifically that CDP and ADP were not added to the list of qualifying benefits in these circumstances. Therefore the change that we propose is to amend Regulation 9(2) to make reference to the following provisions:</p> <p>(1) the care component of CDP at the middle or highest rate, in accordance with Regulation 11 of the CDP Regulations</p> <p>(2) the daily living component of ADP at the standard or enhanced rate, in accordance with Regulation 5 of the ADP Regulations</p>

		This will reflect the current legal position for carers to be able to receive Carer's Allowance where they are abroad, and this is for the purposes of caring for someone who is in receipt of CDP or ADP.
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Amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021

Regulation	Title	Proposed Amendment
4 (1B)	Age criteria	<p>Currently, this regulation is intended to provide CDP clients sufficient time to make an application for ADP where their award has transferred from DLA and they were due to turn 18 immediately after ADP launched nationally. Without this provision, some individuals would only have had hours to submit an ADP application before their CDP would end. However, the regulation currently entitles all CDP recipients whose awards have transferred to stay on CDP until 19 regardless of the age they transferred. Therefore, we propose narrowing the extension of entitlement of CDP to those who turn 18 on or before 31 December 2023. This will ensure that that this policy remains to have the desired impact which is to protect those young people transitioning from Child Disability Payment to Adult Disability Payment. It also means that going forwards, regardless of whether an individual was originally in receipt of Disability Living Allowance or not, the same rules regarding entitlement to Child Disability Payment over the age of 18, apply. This change applies to people who were transferred from DLAc to Child Disability Payment by either the case transfer process or a cross border move.</p> <p>This regulation also currently allows CDP to continue to 19 for individuals who are over the age of 17 who have made a cross border move to Scotland or are a case transferee and are awaiting a determination of their entitlement to ADP. However we propose amending this regulation to take account of individuals who are not case transferees or have not made a cross border move and are awaiting a determination of their entitlement to ADP or who have received a determination but payment of</p>

		ADP has not yet begun. This would mean these individuals receive CDP until age 19 or until they become entitled to ADP.
4 (1C)	Age criteria	To ensure young people transitioning from CDP to ADP are able to maintain the same payment cycle where they reach age 19 while still receiving CDP.
9A	Residence and Presence Conditions	An amendment to the CDP Regulations to take account of the requirements of Regulation (EC) 883/2004. We propose inserting a new provision to make explicit that the care component of CDP is restricted to individuals for whom the United Kingdom is the correct state for paying this component.
29	When a decrease in level or cessation of entitlement takes effect	<p>(1) This amendment will make clear, in the event that a person entitled to CDP dies, their entitlement to CDP will cease on the day that person dies, in accordance with Regulation 31(b). This amendment is required as a result of the corresponding change to Regulation 46 of the ADP Regulations listed below.</p> <p>(2) Another amendment is required to Regulation 29 to make clear that, where a determination is made that an individual is entitled to ADP, their entitlement to CDP will end on the day that their entitlement to ADP begins in terms of Regulation 58 of the ADP Regulations.</p>
34 (3)(b)	Determination to effect a deduction decision	This amendment is to clarify this regulation by inserting the word 'Payment' after 'Child Disability' as this is currently missing.

Amendments to the Disability Assistance for Working Age People (Scotland) Regulations 2022

Regulation	Title	Proposed Amendment
20A	Residence and Presence conditions	To take account of the requirements of Regulation (EC) 883/2004. We propose inserting a new provision to make explicit that the daily living component of ADP is restricted to individuals for whom the United Kingdom is the correct state for paying this component.
46	When a decrease in level or cessation of entitlement takes effect	This amendment will provide clarity that, for cases where a Determination Without Application is made on an individual's entitlement to ADP when Scottish Ministers become aware that the individual has died, their entitlement will end on the day the person dies.
58	Applications by individuals entitled to Child Disability Payment	(1) Altering the start date of an individual's entitlement to ADP so that it begins the day after their CDP payment cycle ends. This is to enable the payment cycles of clients moving from CDP to ADP to be maintained, meaning that they will receive their ADP on the same date that their CDP was previously paid, providing these clients with financial continuity and easing their transition from one form of assistance to another.
Paragraph 12 of Part 3 of schedule 2	Change of circumstances	To clarify that relevant changes of circumstance will continue to be reported to the Department for Work and Pensions after a case has been selected for transfer until the transfer determination is made and the ADP award begins.
Paragraph 12 of Part 3 of schedule 2	Change of circumstances	To clarify that changes that occur after the transfer determination are subject to a determination without application under the usual ADP rules (Reg 48(a)) and the relevant effective date rules (regs 45 and 46).

Amendments to the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) (Regulations) 2022

Regulation	Title	Proposed Amendment
12	Review determination without application of entitlement to Adult Disability Payment	Clarify that it is the date of transfer determination notice, not notice of intention to transfer that begins the date from which the person's review must be completed by.
14	Change of circumstances	To clarify that changes that occur after the transfer determination are subject to a Determination Without Application under the usual ADP rules (Reg 48(a)) and the relevant effective date rules (regs 45 and 46).
14	Change of circumstances	To clarify that relevant changes of circumstance will continue to be reported to the Department for Work and Pensions after a case has been selected for transfer until the transfer determination is made and the ADP award begins.
10, 15 and 16	When an increase/decrease to level of entitlement takes effect	To clarify that the usual ADP effective date rules (regs 45 and 46) do not apply to review determinations.



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The Scottish Government
St Andrew's House
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EH1 3DG

ISBN: 978-1-80525-571-0 (web only)

Published by The Scottish Government, February 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1247482 (02/23)