

DELEGATED POWERS AND LAW REFORM COMMITTEE

17th Meeting, 2022 (Session 6) Tuesday 24 May 2022

Instrument Responses

Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)

On 13 May 2022, the Committee asked the Scottish Government:

The instrument sets out provisions for transferring specified individuals in Scotland currently in receipt of Disability Living Allowance to become entitled to Adult Disability Payment (Parts 2 and 3) and makes miscellaneous amendments to specified legislation (Part 4).

1. Regulation 2 in Part 1 of the instrument makes interpretation provisions. Some of the defined terms are used within other definitions in this Part of the instrument. Should reference be made in the opening words of regulation 2 to Part 1 in addition to the existing reference to Parts 2 and 3?
2. The term “daily living component” is used in regulation 5(1) but is not defined in this instrument. The defined term in regulation 2 of the instrument is “daily living component of Adult Disability Payment”. Should the reference in regulation 5(1) be to this defined term?
3. Regulation 19(10) of the instrument inserts a new paragraph (e) into regulation 48 of the Disability Assistance for Working Age People (Scotland) Regulations 2022. The new paragraph 48(e)(ii) refers to a supersession under regulation 63 of the 1999 Regulations. The 1999 regulations are defined in the preceding new subparagraph (i) as the Social Security and Child Support (Decisions and Appeals) Regulations 1999. Regulation 63 of the 1999 Regulations doesn't appear to exist. Should this be reference to Regulation 6 or another regulation of the 1999 Regulations?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 17 May 2022, the Scottish Government responded:

The Scottish Government is grateful for the Committee drawing these points to our attention and would respond as follows:-

1. We agree that Part 1 also uses defined terms so shall use a correction slip to include reference to Part 1 which was omitted in error.

2. We agree that it may have been clearer to include the words “of Adult Disability Payment” after “daily living component” in regulation 5(1) and shall ensure that it is amended at the next opportunity. Meantime however, we consider that the reference to “daily living component” in regulation 5(1) can be properly interpreted as meaning the daily living component of Adult Disability Payment when taken in the context of regulations 5 and 6. Regulation 5(1) refers to “the daily living component at the transitional rate specified in regulation 6(1)” and regulation 6(1) refers to the “rate of payment of the daily living component of Adult Disability Payment” so when both provisions are read together it is sufficiently clear what the daily living component means. In addition, regulation 5(2)(a) makes clear that the transitional rate given under a transfer determination is “the transitional rate of the daily living component of Adult Disability Payment”. Therefore, we do not intend to take any corrective action at this time.
3. We confirm that the reference ought to have been to regulation 6 and intend to use a correction slip to remove the “3” which is a typographical error.