EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016 (SOCIAL SECURITY) (ADULT DISABILITY PAYMENT AND CHILD DISABILITY PAYMENT) (AMENDMENT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes consequential amendments to social security legislation in respect of Great Britain (GB) and also, in certain respects, Northern Ireland (NI) to prevent entitlement to Attendance Allowance (AA), Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP) overlapping with the Scottish Government's Adult Disability Payment (ADP) both as a general principle and in cases of continued ADP payment for the 13-week period after ADP recipients move from Scotland to England or Wales, or to Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 71 of the Scotland Act 2016[1] ("the 2016 Act") provides a regulation making power to make consequential amendments or transitional or saving provisions in connection with Parts 1, 3, 4, 5 or 6 of that Act, as the Secretary of State considers appropriate. The amendments made by this instrument are consequential in connection with Part 3 of the 2016 Act, Welfare Benefits and Employment Support, in this case welfare benefits.

3.2 These regulations are to be made in exercise of the powers conferred by sections 71(1)(a), (2)(a) (5) (a) and (b) of the 2016 Act. They are, by virtue of section 71(7) of that Act, subject to an affirmative resolution in each House of the United Kingdom (UK) Parliament because they amend primary as well as secondary legislation.

4. Extent and Territorial Application

4.1 The territorial extent mirrors the territorial extent of the Acts and regulations being amended. For regulations 2, 3, 5, 6, 9 and 10 of the instrument that is England and Wales, and Scotland. For regulation 4 of the instrument that is England and Wales, Scotland and Northern Ireland. For regulations 7 and 8 that is Northern Ireland only.

4.2 The territorial application mirrors its territorial extent.

[1] https://www.legislation.gov.uk/ukpga/2016/11/section/71/enacted – Power to make consequential, transitional and saving provision.

5. European Convention on Human Rights

5.1 The Minister for Disabled People, Health and Work has made the following statement regarding Human Rights:

"In my view the provisions of the Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2016 Act devolved responsibility for certain social security benefits to the Scottish Ministers and the Scottish Parliament. Section 71 of the 2016 Act provides a regulation making power to make consequential amendments or transitional or saving provisions in connection with Parts 1, 3, 4, 5 or 6 of that Act, as the Secretary of State considers appropriate. The amendments made by this instrument are consequential in connection with provision made by Part 3 of the 2016 Act, Welfare Benefits and Employment Support, in this case welfare benefits. Accordingly, this instrument modifies laws in Great Britain and Northern Ireland in the ways mentioned in paragraphs 6.2 and 6.3. The legislation being amended for those purposes is:

- The Social Security Contributions and Benefits Act 1992 ("SSCBA")[2]
- The Welfare Reform Act 2012 ("WRA")[3]
- The Social Security (Disability Living Allowance) Regulations 1991[4]
- The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992[5]
- The Social Security (Personal Independence Payment) Regulations 2013[6]
- The Personal Independence Payment Regulations (Northern Ireland) 2016[7]
- The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011[8]
- The Social Security (Attendance Allowance) Regulations 1991[9]
- The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992[10]

Prevention of overlap of Attendance Allowance, Disability Living Allowance, Personal Independence Payment and Armed Forces Independence Payment with Adult Disability Payment

6.2 Following devolution of responsibility for certain social security benefits as mentioned in paragraph 6.1, under sections 24 and 31 of the Social Security (Scotland) Act 2018[11] of the Scottish Parliament ("the 2018 Act"), the Scottish

[2] https://www.legislation.gov.uk/ukpga/1992/4/contents
[3] https://www.legislation.gov.uk/ukpga/2012/5/contents
[4] https://www.legislation.gov.uk/uksi/1991/2890/contents
[5] https://www.legislation.gov.uk/nisr/1992/32/contents/made
[6] https://www.legislation.gov.uk/uksi/2013/377/contents
[7] https://www.legislation.gov.uk/nisr/2016/217/contents/made
[8] https://www.legislation.gov.uk/uksi/2011/517/contents
[9] https://www.legislation.gov.uk/uksi/1991
[10] https://www.legislation.gov.uk/nisr/1992/20/made
[11] https://www.legislation.gov.uk/asp/2018/9/contents

Government is introducing Adult Disability Payment (ADP) for applicants ordinarily resident in Scotland. This will start to replace Personal Independence Payment (PIP) in Scotland from March 2022. ADP will also continue to be paid for a period of 13 weeks following a move from Scotland to England or Wales or to Northern Ireland to allow the claimant time to make a claim to the relevant benefit.

6.3 These amendments prevent overlapping payments of Attendance Allowance (AA), DLA, PIP or Armed Forced Independence Payment (AFIP) when a claimant receives ADP. This will apply as a general principle, as well as following a cross-border move from Scotland to England or Wales, or to Northern Ireland, where claimants are receiving a 13-week run-on payment of ADP following their move.

7. Policy background

What is being done and why?

7.1 The Scottish Government is due to introduce ADP from March 2022. This will include provisions to pay a 13-week run-on payment to customers who leave Scotland and move cross-border to another part of the United Kingdom (UK), in order to minimise any break in payment while the claimant makes a new application to the relevant benefit in England, Wales or Northern Ireland.

Prevention of Disability Living Allowance, Personal Independence Payment, Attendance Allowance and Armed Forces Independence Payment overlap with Adult Disability Payment

7.2 The purpose of these amendments is to ensure that (a) in any circumstances AA, DLA, PIP and AFIP cannot be paid if ADP is in payment and (b) in cases of cross-border movement from Scotland to another part of the UK, the claimant is considered as not satisfying residence requirements for AA, DLA and PIP and therefore not entitled to those benefits while they are in receipt of the 13-week ADP run-on payment.

Consequential amendment

7.3 These Regulations also amend the definitions of Child Disability Payment (the Scottish Government's replacement for Disability Living Allowance for Children in Scotland, introduced from July 2021) in the Social Security Contributions and Benefits Act 1992 and the Welfare Reform Act 2012 so as to make the wording consistent with the definitions of ADP inserted by these Regulations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The regulations will be consolidated in due course within the published legislation at www.legislation.gov. In Northern Ireland they will be informally consolidated in the Law relating to Social Security (Northern Ireland) or ("Blue Volumes"). It will be available to the public at no cost via the internet at: https://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx

10. Consultation outcome

10.1 There has been no consultation on these regulations. This is a technical change to ensure that double entitlement in two jurisdictions for the same need is prevented and award start and end dates align in the case of claimants who move from Scotland to England or Wales or from Scotland to Northern Ireland.

11. Guidance

11.1 Guidance for staff at the Department for Work and Pensions and the Department for Communities will be produced to allow for the effective implementation of the changes made by these Regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment has not been prepared for this instrument. The reason is the changes are administrative in nature i.e. to prevent double provision for the same need in two jurisdictions.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 We will monitor this though normal business accuracy and assurance processes.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Victoria Oliphant at the Department for Work and Pensions (victoria.oliphant@dwp.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Anne McCleary at the Department for Communities in Northern Ireland (anne.mccleary@communities-ni.gov.uk) can be contacted with any queries regarding the parts of this instrument relating to NI.

15.3 Andrew Latto, Deputy Director at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Chloe Smith MP, can confirm that this Explanatory Memorandum meets the required standard.