EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016 (SOCIAL SECURITY) (CONSEQUENTIAL PROVISION) (MISCELLANEOUS AMENDMENT) REGULATIONS 2021

2021 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 and Northern Ireland to prevent payments of Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP) overlapping with the Scottish Government's Child Disability Payment (CDP) both as a general principle and in cases of continued CDP payment for the 13-week period after CDP recipients move from Scotland to England or Wales, or to Northern Ireland. It also provides for certain appointee arrangements granted for devolved benefits in Scotland to be accepted for reserved benefit purposes in Scotland, England and Wales.

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 Parliament because they amend primary as well as secondary legislation.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 There are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

---

[1] The Scotland Act 2016, section 71 – Power to make consequential, transitional or savings provision.

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.

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) (Consequential Provisions) (Miscellaneous Amendment) Regulations 2021 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 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 6.3 and 6.4. The legislation being amended for those purposes is:

- The Social Security Contributions and Benefits Act 1992
- The Welfare Reform Act 2012
- The Social Security (Claims and Payments) Regulations 1987
- The Social Security (Disability Living Allowance) Regulations 1991
- The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992
- The Social Security (Personal Independence Payment) Regulations 2013
- The Personal Independence Payment Regulations (Northern Ireland) 2016
- The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013
- The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011

Prevention of Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP) overlap with Child Disability Payment (CDP)

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[2] ("the 2018 Act") the Scottish Government is introducing CDP for applicants ordinarily resident in Scotland. This will start to replace DLA for children in Scotland and be paid up to the age of 18 from July 2021. CDP will also continue be paid for a period of 13 weeks following a move from Scotland to England or Wales or to Northern Ireland to allow the customer time to make a claim to DLA or PIP.

6.3 These amendments prevent an overlapping payment of DLA, PIP or AFIP being made when CDP is in payment. 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 the customer is receiving a 13-week run-on payment of CDP following their move.

Appointees

6.4 Where in Scotland someone over the age of 18 has been appointed by Social Security Scotland to act for a claimant who cannot manage their own affairs because they are mentally and/or physically disabled, this amendment will allow the Department for Work and Pensions (DWP) to accept that appointee without having to re-make it for its own purposes.

7. Policy background

What is being done and why

7.1 The Scottish Government (SG) is due to introduce CDP, its replacement benefit for DLA for children, from July 2021. 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 should the customer wish to make a new application to the relevant Great Britain (GB) or Northern Ireland (NI) equivalent benefit (i.e. DLA for children or PIP depending on child's age).

Prevention of DLA, PIP and AFIP payment overlap with CDP

7.2 The purpose of these amendments is to ensure that (a) in any circumstances DLA, PIP and AFIP cannot be paid if CDP is in payment and (b) in cases of cross-border movement from Scotland to another part of the UK, DLA, PIP and AFIP will start where entitlement is assessed and confirmed, after the 13-week CDP run-on payment from the SG has ended.

Appointees

7.3 For the purposes of Scottish social security benefits, the SG has its own arrangements under section 58 and 85 of the 2018 Act for appointing individuals to act on behalf of someone who cannot manage their own affairs because they are mentally and /or physically disabled. Given the standard of checks carried out prior to these appointments, we are satisfied they already meet the United Kingdom Government's criteria and therefore will not require a separate application for the purposes of a Great Britain (GB) benefit for these existing appointees over the age of 18. This easement

[2] The Social Security (Scotland) Act 2018

will simplify the administrative process and reduce the burden on appointees who would otherwise need to make separate applications to both jurisdictions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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.

11. Guidance

11.1 Guidance for staff will be produced to cover both the changes to legislation to prevent Disability Living Allowance (DLA) for children, Personal Independence Payment (PIP) and Armed Forces Independence Payment (AFIP) overlapping with Child Disability Payment (CDP) and the revised appointee arrangements.

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 and that certain Scottish appointee arrangements can be accepted for Department for Work and Pensions purposes.

13. Regulating small business

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

14. Monitoring & review

14.1 As the Scottish Government (SG) take on responsibility for other forms of social security benefits and payments under the 2016 Act, further consequential amendments will be made to ensure reserved law relating to England, Wales and Northern Ireland is up to date to help make devolution work.

14.2 The United Kingdom Government will continue to work together with the SG to ensure the safe and secure transfer of devolved social security benefits.

15. Contact

15.1 Una Wiatrek at the Department for Work and Pensions (Una.Wiatrek@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 Sylvia Thompson-Call, 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, Justin Tomlinson MP, can confirm that this Explanatory Memorandum meets the required standard.