POLICY NOTE

THE SOCIAL SECURITY (CROSS-BORDER PROVISION, CASE TRANSFER AND MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988, section 175(4) of the Social Security Contributions and Benefits Act 1992 and sections 28(2), 31(2), 32(2), 51, 52, 79, 81(8) and 95 of the Social Security (Scotland) Act 2018 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Summary Box

These regulations will amend the Child Disability Payment (CDP), Adult Disability Payment (ADP), Pension Age Disability Payment (PADP) and Carer Support Payment (CSP) regulations so that people moving to Scotland from the rest of the UK who have been in receipt of a corresponding benefit from the Department for Work and Pensions (England and Wales) or the Department for Communities (Northern Ireland) will need to make a new application for a corresponding Social Security Scotland benefit and will have their award backdated to the day after their DWP/DfC benefit ends. For Scottish Adult Disability Living Allowance (Scottish Adult DLA), which does not have a route for new applications, cross border clients in receipt of DLA must make a request for a determination of Scottish Adult DLA.

The previous cross border provisions are saved so that anyone who moves to Scotland and notifies Scottish Ministers of their move before these regulations come into force can still be transferred without needing to make a new application. Disabled people who move after the coming to force (CIF) date, have 26 weeks from the date of move to submit their name and date of birth to Social Security Scotland to indicate their intention to make an application for disability benefit, with 32 weeks to then complete the full application for CDP and 34 weeks for ADP and PADP in order to have their Scottish disability benefit backdated to when their DWP administered disability benefit ends. For Scottish Adult DLA, the individual has 26 weeks to submit their name and date of birth and 34 weeks to supply the required information to support their request for a determination.

For CSP, which does not have a two part application process, where a carer notifies Scottish Ministers after the CIF date that they have moved, then they will have 26 weeks from their date of move to make a new application in order to benefit from the new backdating rules. If an application is made later than 26 weeks from the date of move, then the normal CSP backdating rules will apply. The amendments to the CSP regulations also cover changes to entitlement start date in some scenarios and temporary stops in entitlement.

Where the Scottish Ministers are satisfied that there is a good reason why an individual provides their name and date of birth after the 26 week deadline, or completes their full application after the 32 or 34 week deadline (or after the 26 week application deadline for CSP), they may treat the application as having been made within that period.

These regulations also revoke case transfer provisions for the above benefits. The case transfer provisions will still apply for anyone who has already started the case transfer journey when these regulations come into force. These regulations also include provisions which set out backdated payments to be made where someone should have had their case transferred but did not.

This instrument will also be used to make other miscellaneous amendments, primarily to residence and presence conditions for Best Start Foods (BSF) and Best Start Grant (BSG), to update references to international social security coordination agreements for disability and carers benefits, and to revoke provisions relating to the initial period of applications for disability and carer benefits. The regulations also include amendments for Scottish Child Payment (SCP), CDP, ADP, PADP and Scottish Adult DLA to ensure that where a person has continually disengaged with requests for information and is no longer entitled to assistance after suspension, the award can be ended at the date of the suspension.

Policy Objectives

New Cross Border Journey

The CDP, ADP, PADP and CSP regulations are being amended to remove the regulations requiring a determination without application when individuals move to Scotland from the rest of the UK, and they are paid a corresponding Department for Work and Pensions (DWP) / Department for Communities (DfC) benefit in the rest of the UK. Instead, we will require these individuals to make a new application. For Scottish Adult DLA, we will not require individuals to make a new application when they move to Scotland from the rest of the UK with an award of DLA. Instead, individuals will request that Scottish Ministers make a determination of their entitlement to Scottish Adult DLA. This request must be made to Scottish Ministers in such form, and accompanied by such evidence, as the Scottish Ministers require. Scottish Ministers must then make a determination of an individual's entitlement to Scottish Adult DLA. This different process is required because new applications are not available for Scottish Adult DLA.

For disability benefits, we have defined cross-border clients as individuals who submit their name and date of birth within 26 weeks of the date of move and complete the full application within 32 or 34 weeks of the date of move. The additional 6 weeks for CDP and 8 weeks for other disability benefits reflect the time period allowed to complete part two of an application for disability benefits, and aligns with the time provided for new applications. For CSP, which does not have a two part application process, it is those who submit a full application within 26 weeks of a move. Clients in this position will be able to have their awards begin from the day after the end of entitlement date of their previous award. Those who don't meet that period will be treated in the same way as those making fresh applications. If an individual has a good reason why they provide their name and date of birth after the 26 week deadline, or complete their full application after the 32 or 34 week deadline (or after the 26 week application deadline for CSP), they will be treated as having met the deadline so that they can have their award backdated to the day after their DWP/DfC end of entitlement date. People over state pension age who were in receipt of PIP or DLA will be able to access the mobility component for ADP or Scottish Adult DLA at the rate of the mobility component the person received in PIP or DLA.

For CSP, which does not have a 2 part application process, where a carer moves after the CIF date, they will have 26 weeks from their date of move to make a new application in order to benefit from the new backdating rules.

The previous cross border provisions are saved so that anyone who moves to Scotland and notifies Scottish Ministers of their move before these regulations come into force can still be transferred without needing to make a new application.

The aim of the proposed changes to the ADP, CDP, CSP, PADP and Scottish Adult DLA regulations for cross-border movers is to ensure that where applications are made within certain timescales, the transition between DWP/DfC and Social Security Scotland benefits will be smooth. While people moving to Scotland from the rest of the UK will no longer be able to receive a determination without application, it is important to ensure that people have their awards set up accurately from the beginning, in the most straightforward way possible. This process is designed to minimise the risk of gaps in payments for people.

The regulations also ensure there is no overlapping entitlement of, or any gap in entitlement between, CSP and Carer's Allowance (CA) caused by the difference in CSP and CA award weeks. Where entitlement to CSP is to begin the day after entitlement to CA ends, then provision is made to define the first CSP award week after the end of entitlement to CA as 6 days, starting on a Monday and ending the following Saturday, or, where the qualifying disability benefit being paid to the person being cared for is Constant Attendance Allowance, a period of 4 days, starting on the Wednesday of that week and ending on the following Saturday.

Case transfer revocation

These regulations will revoke case transfer provisions for CDP, ADP, PADP, CSP and Scottish Adult DLA as the functionality to transfer data between the DWP and Social Security Scotland will no longer be available after the provisions come into force. Anyone who has started the transfer process before these regulations come into force will be able to complete the process. Coming into force is staggered to take account of the different end dates of case transfer for each benefit.

This instrument also makes amendments to cover the potential situation where an individual should have had their award transferred but did not. This might happen where the address data held by DWP was incorrect or where someone's entitlement to a DWP award is retroactively established after the transfer process for that benefit is complete. Anyone in this situation who newly applies for the equivalent Scottish award within 26 weeks of Scottish Ministers learning their case was missed for transfer will have their Scottish award backdated to the day their DWP benefit ends. Where someone already successfully applied for a Scottish benefit and it is later determined they should have had their DWP award transferred, their Scottish award can be backdated to the date their DWP award ends without having to make an application.

Several case transfer provisions are saved that will need to be maintained, such as provisions for review determinations after transfer, or those that require a determination without application where the previous DWP-administered award is retroactively changed.

Miscellaneous amendments

Carer Support Payment – entitlement start date changes

These regulations amend the provision in the CSP regulations on when entitlement to CSP can begin. Amendments provide for specific entitlement start dates for individuals applying following a cross-border move, individuals living in Scotland who have been missed from the case transfer process, and those awarded CA retrospectively. This is intended to prevent any gaps in entitlement to support between CA and CSP where individuals remain entitled. Amendments also allow for entitlement to support to begin on a date after the application is treated as made, or the date entitlement would otherwise start, where the individual does not meet all of the eligibility criteria on that date, but will on a later date, within 13 weeks. This is intended to prevent the need for CSP to be denied and individuals to be required to apply again for support when it can be seen that they would become eligible within a short period after their application. This is intended to support the new cross border process but is not limited to cross border movers.

Temporary stops in entitlement for Carer Support Payment

These regulations also amend the provision in the CSP regulations regarding temporary stops in entitlement. Temporary stops in entitlement provisions allow for a CSP award which has ended to be reinstated without an application in certain circumstances where an individual becomes entitled again within 26 weeks. These regulations extend provisions so that when a CSP award has been ended because the person they are caring for is no longer getting a DWP administered qualifying disability benefit, because it has been ended by DWP as that person lives in Scotland, or following a move from the rest of the UK to Scotland, it can be reinstated without an application when a Scottish qualifying disability benefit is then awarded, where this is within 26 weeks of the CSP award ending.

UK-Gibraltar social security agreement

In addition to the cross-border and case transfer amendments, these regulations amend CDP, ADP, PADP, CSP, Young Carer Grant (YCG) and Carer's Allowance Supplement (CAS) to include references to the 2024 social security agreement between the UK and Gibraltar, to make clear that people covered by this agreement are covered by the regulations.

Amendments to Best Start Grant and Best Start Foods

Amendments have also been made to the Best Start Foods (BSF) and Best Start Grant (BSG) regulations to make clear that applicants to the EU settlement scheme and joining family members in the first three months of residence are entitled to apply. This is currently provided for by direct effect of the UK-EU Withdrawal Agreement. We have also amended the BSG regulations to revoke references to redundant EU law.

Regulations relating to when an award can be ended relating to specific suspension scenarios

The regulations also include suspension related amendments for CDP, ADP, PADP and Scottish Adult DLA. These ensure that where a person has continually disengaged with requests for information made under section 54 of the 2018 Act and is no longer entitled to

assistance after suspension, the award can be ended at the date of the suspension. This will apply to both scheduled reviews and determinations on the basis of a change of circumstances, where an individual has continued to not engage with a section 54 request for information, leading to the suspension of their entitlement (under section 54(1A)) and subsequent ending of entitlement (under section 54(2)). This will mean that no payment is due to the individual for the period of suspension. Respective provision is also made to amend the Scottish Child Payment (SCP) Regulations for where information has been requested under paragraph 25 of the schedule.

Revocations

Finally, we are revoking provisions relating to the initial period of applications for disability benefits, as these are no longer required.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers certify that, in their view, the Social Security (Cross-border Provision, Case Transfer and Miscellaneous Amendments) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on a draft of these regulations. The Scottish Government provided SCoSS with the draft regulations and an accompanying policy note on 3 January 2025. The Scottish Government considered it appropriate to request SCoSS' scrutiny of the entirety of the draft Regulations, rather than limiting the request to the specific regulations that fall under section 97 of the 2018 Act. SCoSS published its scrutiny report on 28 March 2025, making 6 recommendations and 2 observations in relation to the draft regulations. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.

Impact Assessments

Full Equality Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Business and Regulatory Impact Assessment, Data Protection Impact Assessment, and Children's Rights and Wellbeing Impact Assessment, were published at the same time as the principal regulations for each of the impacted benefits.

An Equality Impact Assessment, a Fairer Scotland Duty Assessment and a Children's Rights and Wellbeing Impact Assessment are to be published with laid regulations. An update to the Data Protection Impact Assessment was not undertaken because the impacts on the use of

personal data are covered by considerations in the previously published assessments for the individual benefits.

Financial Effects

The Cabinet Secretary for Social Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate
June 2025