EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (PERSONS DETAINED IN HOSPITAL) (AMENDMENT) REGULATIONS 2026

2026 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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 The Rt Hon Pat McFadden MP, Secretary of State at the Department for Work and Pensions, confirms that this Explanatory Memorandum meets the required standard.

2.2 Clare Brookes, Deputy Director for Universal Credit Policy, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amy Trigg at the Department for Work and Pensions can be contacted by email at the following address with any queries regarding the instrument: UC.policyengagement@dwp.gov.uk. Alternatively, the department can be contacted by telephone: 0800 731 0122.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument disqualifies individuals detained in hospital under section 37 of the Mental Health Act 1983,[1] or section 57A of the Criminal Procedure (Scotland) Act 1995,[2] from certain social security benefits, following their conviction of a prescribed serious offence (listed in paragraph 5.13 and 5.14), until they are no longer subject to a section 37 order or section 57A order, when they are discharged. These benefits are: Universal Credit,[3] Pension Credit,[4] State Pension[5] and Employment and Support Allowance.[6]

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain. Northern Ireland has made the decision to maintain parity.

---

[1] https://www.legislation.gov.uk/ukpga/1983/20/section/37
[2] https://www.legislation.gov.uk/ukpga/1995/46/section/57A
[3] https://www.gov.uk/universal-credit
[4] https://www.gov.uk/pension-credit
[5] https://www.gov.uk/government/publications/your-new-state-pension-explained/your-state-pension-explained
[6] https://www.gov.uk/employment-support-allowance

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain. Northern Ireland has made the decision to maintain parity.

5. Policy Context

What is being done and why?

5.1 Section 37 of the Mental Health Act 1983 allows a court to issue a hospital order,[7] in place of a prison sentence, if it is determined, based on the evidence of two registered medical practitioners, that an individual should be detained in hospital rather than prison. This is applied when a person is convicted of a criminal offence, but also in a number of other limited circumstances, such as being found unfit to plead.

5.2 The effect of a hospital order is that individuals are legally required to remain in a hospital for their treatment. They are given when the court believes an individual should be in hospital rather than in prison as the best place to receive treatment (and potentially be treated without their consent).

5.3 Convicted criminals in prison are generally not entitled to receive benefits. This includes those transferred from prison to hospital for treatment under section 47 of the Mental Health Act 1983,[8] as well as those subject to a hybrid order under section 45A of the Act,[9] who begin treatment in hospital but remain subject to a prison sentence and are transferred to prison after treatment.

5.4 This instrument removes entitlement to specified social security benefits from individuals detained in hospital under section 37 of the Mental Health Act 1983, or section 57A of the Criminal Procedure (Scotland) Act 1995, following conviction for a prescribed serious offence. The changes apply to individuals detained under section 37 hospital orders and section 57A hospital orders from the coming into force date, regardless of when they were admitted to hospital or when the relevant court made the hospital order.

5.5 This instrument applies only to Universal Credit, Pension Credit, State Pension and Employment and Support Allowance. These benefits are paid indefinitely to hospital in-patients. Other benefits are not affected, as entitlement already ends, or is restricted, following admission to hospital under existing rules.

5.6 The instrument does not apply to individuals awaiting trial, those found unfit to plead, or those who have not been convicted of an offence. It also does not apply to individuals with section 37 orders and section 57A orders who are subject to Community Treatment Orders.[10] Those subject to a Community Treatment Order are receiving treatment in the community and therefore, not resident in hospital and responsible for meeting their own living costs. Such individuals remain eligible to claim benefits, although entitlement would cease if they returned to hospital detention and met the conditions of these Regulations.

---

[7] An order by a court under part 3 of the Act for the detention for medical treatment in hospital of a mentally disordered offender, given instead of a prison sentence or other form of punishment. Hospital orders are normally made under section 37 of the Act.

[8] https://www.legislation.gov.uk/ukpga/1983/20/section/47

[9] https://www.legislation.gov.uk/ukpga/1983/20/section/45A

[10] The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary. Community patients are expected to comply with the conditions specified in the community treatment order.

5.7 Individuals detained in secure hospital settings in Great Britain should have their living costs, including their accommodation and meals, met through the relevant health service. The benefits affected by these Regulations are intended to help meet these same day-to-day living costs. Continuing to pay these benefits during detention therefore results in a duplication of public funding. As a result of this double provision, individuals are accumulating savings and financing spending on purposes beyond the policy intent of the benefit payments.

5.8 This policy change is a proportionate approach, applying only to individuals who have committed the gravest offences that would typically lead to a substantial custodial sentence and therefore who, if detained in prison, would not be entitled to receive these benefit payments. The Government therefore considers it appropriate that entitlement to these benefits should cease in these circumstances. This ensures that public funds are targeted at those who need it most and that the benefits system is fair.

5.9 In addition, currently, individuals detained under section 47 and 45A of the Mental Health Act 1983, or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003[11] and section 59A of the Criminal Procedure (Scotland) Act 1995[12] are able to receive the specified benefits when they reach the point their custodial sentence would have ended, even if they continue to be detained in hospital. The Regulations will in addition, for those who have been convicted of one of the serious offences prescribed in the instrument, mean that they cease to be entitled to the relevant benefits when they reach the point at which their custodial sentence would otherwise have ended, until they are discharged from hospital.

5.10 Individuals detained under these provisions are generally not entitled to receive benefits while serving their custodial sentence. These amendments extend that restriction for the duration of the individual's hospital detention, rather than at the point their custodial sentence would have ended. This is in order to ensure parity with individuals detained under section 37 or section 57A who have committed the same, serious offence prescribed in the instrument.

5.11 For the purposes of these Regulations, a serious offence is one that is violent or sexual in nature, namely involving, or posing a clear risk of, death, serious personal injury or sexual harm. It applies only to individuals who have been convicted of a prescribed serious offence and who, in the absence of their mental health condition, would be very likely to receive a substantial custodial sentence. In such cases, entitlement to the relevant benefits would not generally continue.

5.12 The approach is intended to be targeted and proportionate, with a prescribed list of offences that can be monitored and, if necessary, amended in future, should it be required. The short list of offences will ensure that only individuals who have committed the most serious offences are affected by the policy change. There is no single, universal definition of a serious offence. The existing definitions and lists of serious offences have not been developed with this policy change in mind and therefore, do not adequately meet the criteria outlined above. Therefore, the Regulations create a bespoke list of serious offences for benefit purposes. The list does not include murder. Murder has a mandatory fixed life sentence, and section 37 orders or section 57A orders are made instead of the sentence so you cannot get a hospital order and be convicted of murder.

[11] https://www.legislation.gov.uk/asp/2003/13/section/136
[12] https://www.legislation.gov.uk/ukpga/1995/46/section/59A

5.13 In England and Wales, the prescribed serious offences include the offences listed below. Repealed sexual offences that mirror these offences are also included to cover existing cases whose offence took place before the Sexual Offences Act 2003[13] came into force.

- Manslaughter (whether voluntary or involuntary)
- Attempted murder
- Wounding (etc) with intent to cause grievous bodily harm (GBH)
- Rape
- Assault by penetration
- Causing a person to engage in sexual activity without consent (aggravated – with penetration)
- Rape of a child under 13
- Sexual assault of a child under 13 (aggravated – with penetration)
- Causing or inciting a child under 13 to engage in sexual activity (aggravated – with penetration)
- Sexual activity with a child
- Familial sexual offences (sexual activity with a child family member) (offender 18 or over)
- Familial sexual offences (inciting a child family member to engage in sexual activity) (offender 18 or over)

5.14 In Scotland, the prescribed serious offences include the offences listed below.

- Culpable Homicide
- Attempted Murder
- Rape
- Sexual assault by penetration
- Sexual Coercion
- Rape of a young child
- Sexual assault on a young child, under 13, by penetration
- Sexual assault on a young child
- Causing a young child to participate in a sexual activity
- Having intercourse with an older child
- Engaging in penetrative sexual activity with or towards an older child
- Engaging in sexual activity with or towards an older child
- Sexual assault on a young child by penetration
- Sexual assault on a young child
- Incest
- Incest - Intercourse with a stepchild
- An offence against a law of Scotland that is no longer in force where, if the offence were committed on the date the regulations come into force, the conduct constituting it would have constituted an offence under one of the provisions of the Sexual Offences (Scotland) Act 2009[14] listed above.

[13] https://www.legislation.gov.uk/ukpga/2003/42/contents
[14] https://www.legislation.gov.uk/asp/2009/9/contents

What was the previous policy, how is this different?

5.15 Under the previous policy, all hospital in-patients, including those detained under section 37 of the Mental Health Act 1983, or section 57A of the Criminal Procedure (Scotland) Act 1995, remained entitled to Universal Credit, Pension Credit, State Pension and Employment and Support Allowance throughout the duration of their hospital stay. Unlike prisoners serving custodial sentences, there was no provision to disqualify this cohort from receiving those benefits.

5.16 This instrument changes that position. Individuals detained under section 37 of the Mental Health Act 1983 or section 57A of the Criminal Procedure (Scotland) Act 1995 who have been convicted of a serious offence prescribed in the instrument are disqualified from receiving Universal Credit, Pension Credit, State Pension and Employment and Support Allowance. For individuals already subject to a relevant hospital order when these Regulations come into force, disqualification takes effect from commencement. For future cases, disqualification takes effect from the point of conviction and continues until they are no longer subject to a section 37 order or a section 57A order, when they are discharged. All other hospital in-patients remain eligible for benefits, subject to the existing entitlement rules which are unchanged.

5.17 Amendments are required to introduce a new disqualification from benefit entitlement and to specify who it applies to. The amendments also ensure that individuals detained under section 47 or 45A of the Mental Health Act 1983 who have committed a serious offence prescribed in the instrument are no longer entitled to the relevant benefit payments once they reach the point when their custodial sentence would otherwise have ended, until they are discharged from hospital. These changes provide the legal basis for implementing the policy.

6. Legislative and Legal Context

How has the law changed?

6.1 These measures relate to Universal Credit, Pension Credit, State Pension and Employment and Support Allowance which are administered by the Department for Work and Pensions in England, Wales and Scotland and transferred (devolved) in Northern Ireland.

6.2 This instrument amends the Social Security (General Benefit) Regulations 1982,[15] the State Pension Credit Regulations 2002,[16] the Universal Credit Regulations 2013,[17] the Employment and Support Allowance Regulations 2013[18] and the State Pension Regulations 2015.[19] This is to establish in legislation the position that an individual detained in hospital under section 37 of the Mental Health Act 1983, or section 57A of the Criminal Procedure (Scotland) Act 1995, following their conviction of a prescribed serious offence ("section 37 or section 57A offender") is disqualified from Universal Credit, Pension Credit, State Pension and Employment and Support Allowance.

6.3 Regulation 2 amends the Social Security (General Benefit) Regulations 1982 ("the General Benefit Regulations"). Section 113 of the Social Security Contributions and

[15] https://www.legislation.gov.uk/uksi/1982/1408
[16] https://www.legislation.gov.uk/uksi/2002/1792/contents
[17] https://www.legislation.gov.uk/uksi/2013/376/contents
[18] https://www.legislation.gov.uk/uksi/2013/379/contents
[19] https://www.legislation.gov.uk/uksi/2015/173/contents

Benefits Act 1992[20] disqualifies persons who are currently imprisoned or detained in legal custody from benefits under Parts 2 to 5 of that Act. Regulation 2 of the General Benefit Regulations creates exceptions, which include a general exception for those detained in hospital for a mental health disorder. Persons who are serving their prison sentence in hospital, and have not reached their release date, are excluded from that exception. Regulation 2 extends that exclusion to section 37 or section 57A offenders in relation to any shared additional pension, retirement pensions of all categories or age addition. It also extends the exclusion to those detained in hospital under sections 45A or 47 of the Mental Health Act 1983 after the point at which their custodial sentence was due to end, if they have been convicted of a serious offence prescribed in the instrument.

6.4 Regulation 3 amends the State Pension Credit Regulations 2002. Regulation 8 of, and Schedule 3 to, those Regulations (special cases) already prescribe the nil rate for the guaranteed credit and savings credit in the case of offenders serving their sentence in hospital. Regulation 3 extends that rate to section 37 or section 57A offenders. It also provides for the nil rate to apply to those detained in hospital under sections 45A or 47 of the Mental Health Act 1983 who have reached the point at which their custodial sentence was due to end and has been convicted of a serious offence prescribed in the instrument.

6.5 Regulation 4 amends the Universal Credit Regulations 2013. Regulation 19 of those Regulations already restricts those serving a sentence in hospital from entitlement to Universal Credit and Regulation 4 extends this restriction to section 37 or section 57A offenders. It also extends the restriction to those detained in hospital under sections 45A or 47 of the Mental Health Act 1983 who have reached the point at which their custodial sentence was due to end and has been convicted of a serious offence prescribed in the instrument.

6.6 Regulation 5 amends the Employment and Support Allowance Regulations 2013. Section 18(5) of the Welfare Reform Act 2007[21] disqualifies those undergoing imprisonment or detention in legal custody from the allowance. Regulation 96 of those Regulations provides for exceptions, which include a general exception for those detained in hospital for a mental health disorder. Persons who are serving their prison sentence in hospital, and have not reached their release date, are excluded from that exception. Regulation 5 further excludes section 37 or section 57A offenders from that exception and also excludes those detained in hospital under sections 45A or 47 of the Mental Health Act 1983 who have reached the point at which their custodial sentence was due to end and has been convicted of a serious offence prescribed in the instrument. Regulation 5 also corrects an error in regulation 63 whereby a rate of the allowance is prescribed for claimants who are disqualified by virtue of section 18(5).

6.7 Regulation 6 amends the State Pension Regulations 2015, in relation to State Pension under the Pensions Act 2014.[22] Regulation 2 of those Regulations provides for disqualification of those imprisoned or detained in legal custody, with a general exception for those receiving treatment for a mental disorder. Those serving a sentence in hospital are already excluded from that exception. Regulation 6 extends this to section 37 or section 57A offenders. It also extends the exclusion to those detained in hospital under sections 45A or 47 of the Mental Health Act 1983 who have reached the point at which their custodial sentence was due to end and has been

[20] https://www.legislation.gov.uk/ukpga/1992/4/contents
[21] https://www.legislation.gov.uk/ukpga/2007/5/contents
[22] https://www.legislation.gov.uk/ukpga/2014/19/contents

convicted of a serious offence prescribed in the instrument. Regulation 6 also corrects an omission in regulation 2.

Why was this approach taken to change the law?

6.8 The current approach is defined in secondary legislation and therefore, this is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal public consultation was not undertaken. In his January 2026 announcement,[23] the Secretary of State for Work and Pensions committed to a targeted programme of engagement, gathering views from experts in recognition of the complexity and sensitivity of the issues addressed by these Regulations. This engagement took place from January 2026 until May 2026.

7.2 The Department undertook an extensive programme of stakeholder engagement through a combination of in-person meetings, virtual meetings and written correspondence. Engagement included mental health charities, clinical experts, victim representative groups, patient groups and other relevant stakeholders. These included the Royal College of Psychiatrists, Mind and Hundred Families. In addition, over 160 written submissions were received from clinicians, patients, carers and others with direct experience via NHS England and NHS Wales. Across the responses received, stakeholders highlighted considerable variation in patient experiences, support provided by secure units and the role of benefit payments. The evidence suggests that while some individuals are using benefits in connection with their clinical treatment like accessing therapeutic treatments and practising budgeting, the majority of purchases are on discretionary items like food, drink, electronics etc. There were also mixed views on whether benefit payments supported or hindered recovery and the positive role benefit payments can play in preparing for discharge.

7.3 This feedback informed the development of the policy and the approach taken in these Regulations.

7.4 The Department engaged closely with the Devolved Governments throughout the policy development process. This included working with the Scottish Government to discuss the policy approach and agree on a list of relevant offences. The Northern Ireland Executive will maintain parity with the UK Government's social security measures.

7.5 The Department presented the regulations to the Social Security Advisory Committee (SSAC) on 15 July 2026. Following SSAC's scrutiny, the committee did not take the Regulations on formal reference. The minutes will be available on GOV.UK.[24]

8. Applicable Guidance

8.1 Guidance for operational staff and decision makers in the Department for Work and Pensions will be updated internally when the legislation comes into force. The legislative change will also be supported by updated guidance and communications for NHS England, Wales and Scotland staff. The Department for Work and Pensions intends to notify affected individuals in advance of the changes taking effect, where possible, to allow time to prepare for the loss of benefit entitlement. The Department

[23] https://www.gov.uk/government/news/convicted-criminals-detained-in-hospitals-set-to-lose-benefits
[24] https://www.gov.uk/government/organisations/social-security-advisory-committee

will work with NHS staff and other supporting organisations to communicate the changes, alongside direct communication with affected individuals where possible.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this is not a regulatory provision as detailed in section two of the Better Regulation Framework.[25]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation only affects welfare benefits administered by the Department for Work and Pensions.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is expected to be a small saving in departmental spending as a result of removing benefit payments from the affected cohort. The Government is still identifying individuals who will be affected by the change and therefore does not have an exact forecast at this time. However, the Government expects that it will affect circa 2,000 existing cases and circa 150 people per year. A proportion of these savings will be transferred to the health system to fund alternative financial support at a lower level for affected individuals.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be part of the Department's routine data collection.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Regulations contain two corrections to previous instruments and, following consultation with the SI Registrar, are being published under the free issue procedure.

11.2 The first correction is made by regulation 5(2), which amends regulation 63 of the Employment and Support Allowance Regulations 2013. That regulation currently prescribes a rate of Employment and Support Allowance (i.e. the personal allowance only) for persons serving a prison sentence detained in hospital. However, this conflicts with the provisions in regulation 96 and in section 18(5) of the Welfare Reform Act 2007, which have the overriding effect of disqualifying such persons from receiving the allowance. This instrument corrects the error by removing references to those persons from regulation 63 and omitting a redundant definition of "prisoner".

[25] https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf

11.3 The second correction is made by regulation 6(2)(a), which amends regulation 2 of the State Pension Regulations 2015. That regulation contains the disqualification of persons serving a sentence in hospital under section 47 of the Mental Health Act 1983 but omits the reference to section 45A of that Act. The omitted reference is now inserted.

12. European Convention on Human Rights

12.1 The Rt Hon Pat McFadden MP, Secretary of State at the Department for Work and Pensions has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security (Persons Detained in Hospital) (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").