EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (CARER'S ASSISTANCE) (CONSEQUENTIAL MODIFICATIONS) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 The Rt Hon Douglas Alexander MP, Secretary of State for Scotland, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rachel Irvine, Deputy Director for Constitutional Policy at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cat Carrigan at the Scotland Office (email: cat.carrigan1@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes consequential amendments to social security legislation in Great Britain and Northern Ireland to reflect the introduction of changes to Scottish carer's assistance (Carer Support Payment), and the introduction of two new forms of Scottish carer's assistance, Carer Additional Person Payment and Scottish Carer Supplement in Scotland.

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: England, Wales, Scotland and Northern Ireland for Parts 1 and 5; England and Wales for Part 2; England, Wales and Scotland for part 3; and Northern Ireland for part 4.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 The Scotland Act 2016[1] devolved responsibility for certain social security benefits to the Scottish Parliament. The Scottish Government introduced carer's assistance, its replacement for Carer's Allowance by way of the Carer's Assistance (Carer Support

[1] 2006 c. 11, https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted

Payment) Regulations 2023 in November 2023. The Scottish Government is now introducing further changes to its carer's assistance via the Carer's Assistance (Miscellaneous and Consequential Amendments, Revocation, Transitional and Saving Provisions) (Scotland) Regulations 2025. The relevant changes introduce Carer Support, an overarching benefit with three components: Carer Support Payment, and two new forms of carer's assistance, Carer Additional Person Payment, Scottish Carer Supplement and provide that carers in receipt of Carer Support will continue to receive that benefit after the death of their cared-for person for twelve weeks instead of eight weeks. This instrument provides the legislative basis to continue to treat Carer Support Payment, and the changes being made to it, in the same way as Carer's Allowance in reserved social security benefits and to disregard the new or additional Scottish Government carer's assistance. This approach is in line with the UK and Scottish Government's agreement that "any new benefits or discretionary payments introduced by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction by the UK government in their entitlement elsewhere in the UK benefits system. Any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed taxable such as Carer's Allowance".

5.2 This instrument amends the definition of Carer Support Payment in social security legislation to reflect the changes made by the Scottish Government, so that only the Carer Support Payment component of the revised carer's assistance is treated the same way as Carer's Allowance in reserved social security legislation in Great Britain, including the extended payment period after the death of a cared for person. It also ensures that the Scottish Government's new components of carer's assistance will not be qualifying benefits for additional amounts in reserved income-related benefits and will be disregarded in the purposes of capital and the calculation of income other than earnings.

5.3 The instrument makes equivalent provision in Northern Ireland in respect of those policy areas that are transferred to Northern Ireland.

What was the previous policy, how is this different?

5.4 There has been no change to the policy, which is to treat Carer Support Payment insofar as it replaces Carer's Allowance in the same way as that benefit and to disregard new forms of Scottish assistance. This instrument makes consequential amendments to social security legislation in Great Britain and Northern Ireland to ensure the continuation of the existing policy position by reflecting the changes the Scottish Government has made to its carer's assistance.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made in exercise of the powers conferred by sections 104, 112(1), and 113(5) of the Scotland Act 1998[2] ("the 1998 Act"). Section 104 of the 1998 Act allows consequential provision to be made where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.2 Scottish Ministers are introducing changes to their range of carer's assistance under Sections 28, 41, 43, 51, 52, 81 and 95 of the Social Security (Scotland) Act 2018. The

[2] 1998 c.46, https://www.legislation.gov.uk/ukpga/1998/46/contents

Secretary of State for Scotland is introducing changes to social security benefit legislation on behalf of the Secretary of State for Work and Pensions and the Department for Communities in Northern Ireland to ensure that these changes can come into force and do not affect the eligibility of Scottish customers for reserved/transferred social security benefits in Great Britain and Northern Ireland.

Provisions

6.3 The effect of the provisions in this instrument are as follows:

Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 18, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 40, 41, 43, 44, 49, 50, 51, 52, 53, 54, 55 and 56

6.4 These amendments make changes to the definitions of and references to Carer Support Payment so that they are narrowly defined to include only the Carer Support Payment component of carer's assistance, and exclude the new components, Carer Additional Person Payment and Scottish Carer Supplement. This ensures that the Scottish Government's new components do not affect the qualifying conditions for reserved benefits. This includes ensuring that the narrow definition applies for the purposes of entitlement to i) certain Class 1 and Class 3 National Insurance credits, ii) that only entitlement to the Carer Support Payment component provides a self-employed person with an exemption from a class 2 national insurance contribution while they are entitled to a class 1 national insurance credit for each week they receive that benefit and iii) that Carer Support is disregarded when calculating income where entitlement to Employment and Support Allowance is for less than a week.

Articles 8, 12, 17, 20, 21, 22, 35, 38, 42, 46, 47 and 48

6.5 These amendments make changes to the definition of Carer Support Payment as above and extend the bereavement run-on from 8 to 12 weeks that applies when the cared for person dies for people receiving Carer Support Payment in Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit and Housing Benefit. These amendments also disregard payments of i) Carer Additional Person Payment, ii) Scottish Carer Supplement and iii) any carer support payment in excess of the amount they would receive if they had an entitlement to carer's allowance, for the purposes of capital and the calculation of income other than earnings.

Articles 19 and 45

6.6 These amendments broaden the definition of Carer Support Payment to include all the components of carer's assistance for the purpose of disregarding the assets of the deceased so that they will not be deducted from an award of a social fund funeral payment.

Legislation to be amended:

- Social Security Contributions and Benefits Act 1992[3]
- Social Security (Invalid Care Allowance) Regulations 1976[4]
- State Pension Credit Act 2002[5]
- Social Security (Credits) Regulations 1975[6]

[3] https://www.legislation.gov.uk/ukpga/1992/4/contents
[4] https://www.legislation.gov.uk/uksi/1976/409/contents
[5] https://www.legislation.gov.uk/uksi/2002/1792/contents
[6] https://www.legislation.gov.uk/uksi/1975/556/contents

- Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979[7]
- Income Support (General) Regulations 1987[8]
- Social Security (Claims and Payments) Regulations 1987[9]
- Social Security (Payments on account, Overpayments and Recovery) Regulations 1988[10]
- Income Support (Liable Relatives) Regulations 1990[11]
- The Jobseeker's Allowance Regulations 1996[12]
- Social Security and Child Support (Decisions and Appeals) Regulations 1999[13]
- Social Security (Work-focused Interviews) Regulations 2000[14]
- Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000[15]
- Social Security (Contributions) Regulations 2001[16]
- State Pension Credit Regulations 2002[17]
- Social Security (Jobcentre Plus Interviews) Regulations 2002[18]
- Social Security (Deferral of Retirement Pensions) Regulations 2005[19]
- Social Fund Maternity and Funeral Expenses (General) Regulations 2005[20]
- Housing Benefit Regulations 2006[21]
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[22]
- Employment and Support Allowance Regulations 2008[23]
- Social Security (Contributions Credits for Parents and Carers) Regulations 2010[24]
- Child Support Maintenance Calculation Regulations 2012[25]
- Universal Credit Regulations 2013[26]
- Jobseeker's Allowance Regulation 2013[27]
- Employment and Support Allowance Regulations 2013[28]
- Universal Credit (Transitional Provisions) Regulations 2014[29]

[7] https://www.legislation.gov.uk/uksi/1979/642/contents
[8] https://www.legislation.gov.uk/uksi/1987/1967/contents
[9] https://www.legislation.gov.uk/uksi/1987/1968/contents
[10] https://www.legislation.gov.uk/uksi/1988/664/contents
[11] https://www.legislation.gov.uk/uksi/1990/1777/contents
[12] https://www.legislation.gov.uk/uksi/1996/207/contents
[13] https://www.legislation.gov.uk/uksi/1999/991/contents
[14] https://www.legislation.gov.uk/uksi/2000/897/contents
[15] https://www.legislation.gov.uk/uksi/2000/1926/contents
[16] https://www.legislation.gov.uk/uksi/2001/1004/contents
[17] https://www.legislation.gov.uk/uksi/2002/1792/contents
[18] https://www.legislation.gov.uk/uksi/2002/1703/contents
[19] https://www.legislation.gov.uk/uksi/2005/453/contents
[20] https://www.legislation.gov.uk/uksi/2005/3061/contents
[21] https://www.legislation.gov.uk/uksi/2006/213/contents
[22] https://www.legislation.gov.uk/uksi/2006/214/contents
[23] https://www.legislation.gov.uk/uksi/2008/794/contents
[24] https://www.legislation.gov.uk/uksi/2010/19/contents
[25] https://www.legislation.gov.uk/uksi/2012/2677/contents
[26] https://www.legislation.gov.uk/uksi/2013/376/contents
[27] https://www.legislation.gov.uk/uksi/2013/378/contents
[28] https://www.legislation.gov.uk/uksi/2013/379/contents
[29] https://www.legislation.gov.uk/uksi/2014/1230/contents

- State Pension Regulations 2015[30]
- Social Security (Contributions) Regulations 2001[31]

Northern Ireland

6.7 Social security is a transferred matter in Northern Ireland, however an Order under section 104 of the Scotland Act 1998 allows for amendments to be made to legislation in Northern Ireland by the UK Government on behalf of the Northern Ireland Assembly. The relevant Northern Ireland Minister has asked that the UK Government make such provision. This instrument therefore makes corresponding changes, where applicable, to legislation in Northern Ireland to those changes being made in respect of reserved benefits for England and Wales. Northern Ireland regulations to be amended.

Legislation to be amended

- The corresponding amendments to Northern Ireland legislation which can be accessed in the Northern Ireland Blue Volumes.[32]
- Social Security Contributions and Benefits (Northern Ireland) Act 1992
- State Pension Credit Act (Northern Ireland) 2002
- Social Security (Credits) Regulations (Northern Ireland) 1975
- Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976
- Social Security (Widow's Benefit and Retirement Pensions) (Northern Ireland) Regulations 1979
- Income Support (General) Regulations (Northern Ireland)1987
- Social Security (Claims and Payments) Regulations (Northern Ireland)1987
- Income Support (Liable Relatives) Regulations (Northern Ireland) 1990
- Jobseeker's Allowance Regulations (Northern Ireland) 1996
- Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999
- Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2001
- State Pension Credit Regulations (Northern Ireland) 2003
- Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003
- Social Security (Deferral of Retirement Pensions) Regulations (Northern Ireland) 2005
- Housing Benefit Regulations (Northern Ireland) 2006
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006
- Employment and Support Allowance Regulations (Northern Ireland) 2008
- Social Security (Contributions Credits for Parents and Carers) Regulations (Northern Ireland) 2010
- Child Support Maintenance Calculation Regulations (Northern Ireland) 2012
- State Pension Regulations (Northern Ireland) 2015
- Universal Credit Regulations (Northern Ireland) 2016

[30] https://www.legislation.gov.uk/uksi/2015/173/contents
[31] https://www.legislation.gov.uk/uksi/2001/1004/contents
[32] The law relating to Social Security in Northern Ireland (Blue Volumes) | Department for Communities (https://www.communities-ni.gov.uk/services/law-relating-social-security-northern-ireland-blue-volumes)

- Jobseeker's Allowance Regulations (Northern Ireland) 2016
- Employment and Support Allowance Regulations (Northern Ireland) 2016
- Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016

Why was this approach taken to change the law?

6.8 Section 104 of the Scotland Act 1998 allows consequential modifications to be made to United Kingdom legislation where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.9 These amendments are in direct consequence of devolution and the introduction of changes to Carer Support Payment. An Order under Section 104 of the 1998 Act is the appropriate way to legislate for such changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no requirement to submit S104 Orders to the Social Security Advisory Committee or Local Authority Associations for scrutiny, although a copy has been shared with both for information.

7.2 As amendments in this Order are consequential to changes to carer's assistance in Scotland, for which formal consultation was carried out by the Scottish Government between 28th February 2022 and 25th May 2022, a formal consultation on the draft Order was not considered necessary.

8. Applicable Guidance

8.1 The respective operational guidance for Department for Work and Pensions and Department for Communities staff will be updated in due course to include the changes that the Scottish Government has made to its carer's assistance and explain how it affects other entitlements. In addition, the respective Decision Makers' Guide and Advice for Decision Makers will be updated and available on the guidance for decision makers section of Gov.UK and Department for Communities websites. Social Security Scotland will be responsible for providing guidance to its own staff.

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 no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through normal business accuracy and assurance processes. These amendments will be considered again should further changes to carers assistance or the reserved legislation be made in the future.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

"In my view, the provisions of the Social Security (Scotland) Act 2018 (Carer's Assistance) (Consequential Modifications) Order 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").