EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (DISABILITY ASSISTANCE AND INFORMATION-SHARING) (CONSEQUENTIAL PROVISION AND MODIFICATIONS) ORDER 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes consequential amendments to legislation to provide for the treatment of various social security payments to be made under the Social Security (Scotland) Act 2018[1] ("the 2018 Act") and regulations made under it. It follows provision for the introduction of a new disability benefit in Scotland, Adult Disability Payment (ADP), which will replace Personal Independence Payment (PIP). The Order ensures that ADP can act as a qualifying benefit for certain reserved tax treatments and qualify for certain reserved payments and exemptions in the same way as the benefit which ADP replaces. The Order also extends a 50% discount or exemption on Vehicle Excise Duty (road tax) to someone receiving ADP at either the standard or enhanced rate of the mobility component respectively. It also entitles those in receipt of the mobility component, at the enhanced rate, of ADP to early acquisition of a driving licence at the age of 16 and to apply to vote by proxy and to sign by proxy a petition for recall of an MP, without the need for attestation of an application. The Order further includes provision for information sharing between Scottish Ministers and the Secretary for State for Transport (in practice, the Driving and Vehicle Licensing Agency (DVLA)) to facilitate early acquisition of a driving licence for a small vehicle at the age of 16. The Order also includes provision to enable the Secretary of State to request information from the Scottish Ministers about whether an individual is in receipt of the necessary component and rate of ADP if they have applied for a 50% discount on vehicle excise duty or vehicle tax exemption.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland in respect of Part 2 except where otherwise specified, England and Wales in respect of Part 3, England and Wales and to Scotland in respect of Parts 4 and 6, Northern Ireland in respect of Part 5.

4.2 The territorial application of this instrument is England and Wales, Scotland, and Northern Ireland in respect of Part 2 except where otherwise specified, England and

[1] 2018 asp 9, https://www.legislation.gov.uk/asp/2018/9

Wales in respect of Part 3, England and Wales and to Scotland in respect of Parts 4 and 6 and Northern Ireland in respect of Part 5.

5. European Convention on Human Rights

5.1 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 (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1), 113(2), (3) and (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 Under section 31 of the 2018 Act and regulations made under it, the Scottish Government (SG) is introducing disability assistance for applicants ordinarily resident in Scotland, a form of financial assistance for disabled people, presently provided by a number of benefits including DLA, PIP and Attendance Allowance. PIP will be replaced in Scotland by ADP from Spring 2022.

Individual Savings Accounts and Child Trust Funds

6.3 The definition of a child with a terminal illness, for the purpose of the Individual Savings Account Regulations 1998[3] and Child Trust Fund Regulations 2004[4], is extended to include a young person who is regarded as terminally ill within the meaning of regulations for ADP made under section 31(2) of the 2018 Act. This will enable a terminally ill young person to withdraw funds from an investment early.

Trusts for Disabled People

6.4 The definition of a disabled person for the purposes of the Finance Act 2005[5] is extended to include people in receipt of ADP by virtue of entitlement to either the standard or enhanced rates of the daily living component or the mobility component. This is to address the tax treatment of property held in trust for the benefit of a disabled person.

Insurance Premium Tax

6.5 The exemption from Insurance Premium Tax (IPT) on insurance contracts for vehicles leased under certain conditions to disabled people for the purposes of the Finance Act 1994[6] is extended to include people entitled to the mobility component of ADP.

[2] 1998 c. 46, https://www.legislation.gov.uk/ukpga/1998/46/contents
[3] 1998 No. 1870, https://www.legislation.gov.uk/uksi/1998/1870/contents/made
[4] 2004 No. 1450, https://www.legislation.gov.uk/uksi/2004/1450
[5] 2005 c. 7, https://www.legislation.gov.uk/ukpga/2005/7/contents
[6] 1994 c. 9, https://www.legislation.gov.uk/ukpga/1994/9/contents

Vehicle Excise Duty ("road tax")

6.6 The 50% discount on Vehicle Excise Duty (VED) for people in receipt of the standard rate mobility component of PIP is extended to include individuals who are in receipt of the equivalent rate of ADP.

6.7 This amendment will also include reference to a person appointed by Scottish Ministers under sections 58 and 85B of the 2018 Act ('an appointee') to be eligible for the discounting of VED.

6.8 The exemption from VED for the purposes of the Vehicle Excise and Registration Act 1994[7] is extended to include a person in receipt of the enhanced rate of the mobility component of ADP. This amendment will also include reference to a person appointed by Scottish Ministers under sections 58 and 85B of the 2018 Act ('an appointee').

6.9 As with individuals in receipt of the equivalent rate of the mobility component for DLA and PIP, zero-rated ADP awards for individuals who are in-patients in hospitals and similar institutions, for 28 days or more, will continue to receive either the 50% discount on VED or exemption from VED.

Value Added Tax

6.10 The zero rating of Value Added Tax (VAT) on a lease of a vehicle when certain conditions are met for the purposes of the Value Added Tax Act 1994[8] is extended to include leases of vehicles to individuals entitled to the mobility component of ADP.

Driving Licences for Motor Vehicles

6.11 The eligibility to obtain a driving licence from age 16 years for the purpose of the Motor Vehicles (Driving Licences) Regulations 1999[9] is extended to include an individual who is in receipt of the enhanced rate of the mobility component of ADP.

Elections and Recall Petitions

6.12 The eligibility for a proxy vote or proxy signature for a definite or indefinite period on grounds of blindness or other disability in Great Britain and Northern Ireland, without the need for the application to be attested is extended to include a person who is given the enhanced rate of the mobility component of ADP.

Provision in respect of entitlement to Carer's Allowance

6.13 The eligibility for Carer's Allowance is extended to include someone in England and Wales who is caring for someone in Scotland who is in receipt of the daily living component of ADP at the standard or enhanced rate. As competence for Carer's Allowance in Scotland passed to the SG in 2018, the SG is responsible for making equivalent provision in its own regulations to ensure ADP is a qualifying benefit for individuals who are carers ordinarily resident in Scotland.

Provision is respect of entitlement to Carer's Credit

6.14 The eligibility for a Class 3 national insurance credit (Carer's Credit) is extended to include someone that is caring for an individual who is entitled to a payment of the

[7] 1994 c. 22, https://www.legislation.gov.uk/ukpga/1994/22/contents
[8] 1994 c. 23, https://www.legislation.gov.uk/ukpga/1994/23/contents
[9] 1994 No. 2864, https://www.legislation.gov.uk/uksi/1999/2864/contents/made

daily living component at the standard or enhanced rate of ADP in England, Wales and Scotland.

Provision in respect of entitlement to the Christmas Bonus

6.15 The eligibility for a Christmas Bonus in England, Wales and Scotland is extended to include someone receiving ADP.

6.16 In respect of Carer's Allowance and Carer's Credit, equivalent provision is made in respect of Northern Ireland so that if a claimant moves from Scotland to Northern Ireland and a new carer based in Northern Ireland needs to make an application for carer's benefits in respect of providing care for that claimant, the standard or enhanced rate of ADP can be treated as a qualifying benefit for the duration of the 13-week ADP run on while the ADP recipient applies for PIP in Northern Ireland.

Information Sharing with the Driver and Vehicle Licensing Agency

6.17 The DVLA is responsible for issuing driving licences and administering vehicle tax. The sharing of information is therefore required to enable the DVLA to request information from the Scottish Ministers to confirm whether an individual who has applied for an early driving licence, 50% discount on vehicle excise duty, or exemption from vehicle excise duty is in receipt of the necessary component and level of ADP.

6.18 This instrument therefore provides the Scottish Ministers with a legal gateway to share information about individuals with the DVLA, and vice versa, for the purpose of confirming the component(s) of ADP of which an individual is in receipt, and the level at which they are paid. These legal gateways will ensure that individuals in Scotland who receive ADP continue having access to these DVLA benefits as people receiving the equivalent rate of PIP and DLA in the rest of the UK.

7. Policy background

What is being done and why?

7.1 The Scotland Act 2016[10] devolved responsibility for certain social security benefits, and employment support, to the Scottish Parliament. Section 31 of the 2018 Act confers powers on the SG to introduce forms of disability assistance through regulations which will replace the disability benefits currently paid by the Department for Work and Pensions in Scotland. The second form of Scottish disability assistance to be introduced will be ADP.

7.2 ADP will initially operate in broadly a similar way to the benefit it replaces. As such, the UK Government has agreed that ADP can act as a qualifying benefit for certain reserved tax exemptions and qualify for additional reserved social security payments and exemptions in the same way as PIP. As these areas are reserved to the UK Government, any amendments to the relevant legislation would require to be undertaken by the UK Government. Equivalent provision is being made in Northern Ireland in respect of those policy areas that are transferred to Northern Ireland because when a claimant moves to Northern Ireland they will continue to receive ADP for 13 weeks while they apply for PIP, and their ADP benefit will continue to attract the related entitlements.

[10] 2016 c. 11, https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted

7.3 For disability assistance, the SG does not intend that these forms of social security assistance should be taxable. The current disability benefits confers certain exemptions where specific conditions are met.

7.4 Similar to how PIP operates, the SG sought agreement that entitlement to certain rates and components of ADP may also entitle an individual to apply for a proxy vote at UK Parliamentary and other elections across the UK and for a proxy signature for petitions to recall a of Member of Parliament, without requiring attestation of the individual's disability. The proposed order amends the relevant regulations to give recipients of the enhanced rate of the mobility component of ADP exemption from the need for their applications to be attested when applying for either a proxy vote or a proxy signature for a recall petition. This exemption from attestation can be for a definite or indefinite period.

7.5 Entitlement to the enhanced rate of the mobility component of ADP will also permit an individual to apply for a driving licence for a small vehicle at age 16, rather than 17. This Order will also ensure that a 50% discount or exemption from vehicle excise duty can be applied where the registered keeper (or their appointee) of a vehicle is in receipt of a qualifying rate of ADP.

7.6 Additional provision has been made to allow for the necessary sharing of information to take place between the Secretary of State and Scottish Ministers for the purpose of confirming the components(s) of ADP for which an individual is in receipt. This will ensure that individuals in Scotland, who receive ADP, continue to have access to the DVLA benefits as outlined in paragraph 7.5. The DVLA will only be providing the SG with national insurance numbers in order for the SG to share information with the DVLA on the level of ADP an individual is entitled to receive.

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 2020[11].

9. Consolidation

9.1 Consolidation is not required.

10. Consultation outcome

10.1 There has been no consultation on the proposals in this instrument.

11. Guidance

11.1 This instrument stands alone and guidance is not necessary.

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 A full Impact Assessment has not been prepared for this instrument because no impact on business is expected.

[11] 2020 c. 1, https://www.legislation.gov.uk/en/ukpga/2020/1/part/3

13. Regulating small business

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

14. Monitoring & review

14.1 No formal approach to monitoring or review is considered necessary.

15. Contact

15.1 Ella Morrell at the Office of the Secretary of State for Scotland Telephone: 07827 254 788 or email: ella.morrell@ukgovscotland.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.