EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (SCOTTISH ADULT DISABILITY LIVING ALLOWANCE) (CONSEQUENTIAL MODIFICATIONS) ORDER

2025 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.

2. Declaration

2.1 Ian Murray, Secretary of State at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Louise Nicholls, Deputy Director for Constitutional Policy at 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 and David Tarr at the Department for Communities in Northern Ireland email: david.tarr@communities-ni.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 The Social Security (Scotland) Act 2018 (Scottish Adult Disability Living Allowance) (Consequential Modifications) Order 2025 (S.I. 2025/XXX) makes consequential amendments to legislation in Great Britain and Northern Ireland to reflect the introduction of Scottish Adult Disability Living Allowance which will replace Disability Living Allowance for adults (recipients aged 18 and over) in Scotland.

4.2 This instrument makes consequential amendments to legislation in respect of extra-costs disability benefits to prevent entitlement to Disability Living Allowance, Attendance Allowance and Personal Independence Payment at the same time as entitlement to Scottish Adult Disability Living Allowance. Other UK legislation is amended to ensure that recipients of Scottish Adult Disability Living Allowance are treated in the same way as those in receipt of Disability Living Allowance in respect of reserved benefits and for tax purposes.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland in respect of Part 2, England and Wales in respect of Part 3, Northern Ireland in respect of Part 4 and England and Wales, Scotland and Northern Ireland in respect of Parts 1 and 5.

4.4 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. Section 31 of the Social Security (Scotland) Act 2018[2] (the 2018 Act) confers powers on the Scottish Ministers to introduce new forms of disability assistance through regulations which will replace the disability benefits currently being paid in Scotland, on behalf of Scottish Ministers, by the Department for Work and Pensions under Agency Agreements.

5.2 The Scottish Government is introducing Scottish Adult Disability Living Allowance which will replace Disability Living Allowance for adults aged 18 and over in Scotland. Given that at its introduction, Scottish Adult Disability Living Allowance will operate broadly the same way as the Disability Living Allowance it will replace, the United Kingdom (UK) Government has agreed that those in receipt of Scottish Adult Disability Living Allowance in Scotland will have the same access to additional payments and exemptions in reserved benefits and the same tax treatments as those in receipt of Disability Living Allowance in England and Wales. It will also be payable to any person who relocates permanently from Scotland to another part of the United Kingdom for a run-on period of 13 weeks, from the date of the move. This instrument provides the legislative basis for this treatment.

5.3 This instrument also provides that Disability Living Allowance, Attendance Allowance and Personal Independence Payment will not be paid at the same time as Scottish Adult Disability Living Allowance.

What was the previous policy, how is this different?

5.4 Following the devolution of the relevant powers to the Scottish Parliament under the Scotland Act 2016, provision of Disability Living Allowance in Scotland has been a matter for Scottish Ministers. Scottish Ministers subsequently entered into a temporary Agency Agreement with the Department for Work and Pensions to deliver Disability Living Allowance on their behalf whilst the Scottish Government developed its own delivery infrastructure and replacement benefit. Scottish Ministers are now using their powers under section 31 of the 2018 Act to replace Disability Living Allowance for adults, with Scottish Adult Disability Living Allowance, which will be administered directly by Social Security Scotland.

6. Legislative and Legal Context

How has the law changed?

6.1 Scottish Ministers are introducing regulations under section 31 of the Social Security (Scotland) Act 2018 to replace Disability Living Allowance in Scotland with Scottish Adult Disability Living Allowance. Disability Living Allowance interacts with other benefits in several ways, including with benefits that are reserved in Scotland. For example, it is a qualifying benefit for the Christmas Bonus. Department for Work and Pensions Ministers have agreed that while Scottish Adult Disability Living Allowance

[1] 2006 c. 11, https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted
[2] 2018 asp. 9, https://www.legislation.gov.uk/asp/2018/9/contents/enacted

operates in a broadly similar way to Disability Living Allowance, it should interact with reserved social security benefits in the same way as Disability Living Allowance.

6.2 Articles 2 and 3 of this instrument amend the Social Security Contributions and Benefits Act 1992[3] and Welfare Reform Act 2012[4] respectively, setting out that a person cannot be entitled to receive Attendance Allowance if they are in receipt of the care component of Scottish Adult Disability Living Allowance, and that a person cannot receive Disability Living Allowance or Personal Independence Payment if they are entitled to Scottish Adult Disability Living Allowance, in order to prevent duplicate payment for the same need in separate legal jurisdictions. Articles 5 and 6 make corresponding amendments to Northern Ireland legislation.

Provision in respect of entitlement to Carer's Allowance

6.3 Article 4 amends the Social Security Contributions and Benefits Act 1992[5], to extend the eligibility for Carer's Allowance to include where someone is caring for a person in Scotland who is receipt of Scottish Adult Disability Living Allowance.

6.4 Article 5(3) amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992[6] to allow eligibility for Carer's Allowance in Northern Ireland where someone is caring for a person who is in receipt of Scottish Adult Disability Living Allowance during the 13-week run-on period and is resident in Northern Ireland.

Provision in respect of eligibility for the Christmas Bonus

6.5 The 'Christmas Bonus' provides an annual one-off tax-free payment to people who receive a qualifying benefit in the qualifying week. The eligibility for a Christmas Bonus is extended to include someone receiving Scottish Adult Disability Living Allowance.

Provision in respect of the Inheritance Tax Act 1984

6.6 Article 7 makes amendments for the purposes of Inheritance Tax Act 1984[7] to include within the definition of "disabled person", for the purposes of pre-1981 trusts for disabled persons, certain individuals who are in receipt of Scottish Adult Disability Living Allowance; and, for the purposes of self-settled settlements, individuals who are expected to be such persons.

Provision in respect of the Vehicle Excise and Registration Act 1994

6.7 Article 8 amends paragraph 19 of Schedule 2 to the Vehicle Excise and Registration Act 1994[8] to provide that in specified circumstances, a vehicle is exempt from vehicle excise duty when it is being used, or kept for use, by or for the purposes of a person is in receipt of Scottish Adult Disability Living Allowance.

Provision in respect of the Finance Act 2005

6.8 Article 9 amends the meaning of "disabled person" for the purposes of Schedule 1A to the Finance Act 2005[9] to include certain individuals who are in receipt of Scottish

[3] 1992 c. 4, https://www.legislation.gov.uk/ukpga/1992/4/contents
[4] 2012 c. 5, https://www.legislation.gov.uk/ukpga/2012/5/contents
[5] 1992 c. 4, https://www.legislation.gov.uk/ukpga/1992/4/contents
[6] 1992 c. 7, https://www.communities-ni.gov.uk/services/law-relating-social-security-northern-ireland-blue-volumes
[7] 1984 c. 51, https://www.legislation.gov.uk/ukpga/1984/51/contents
[8] 1994 c. 22, https://www.legislation.gov.uk/ukpga/1994/22/contents
[9] 2005 c. 7, https://www.legislation.gov.uk/ukpga/2005/7/contents

Adult Disability Living Allowance. Article 9 also includes amendments so that a person is to be treated as a "disabled person" if they satisfy HMRC that they would be entitled to receive Scottish Adult Disability Living Allowance but for failing to meet residence and presence conditions, due to undergoing treatment for renal failure in hospital, or due to the zero-rating of Scottish Adult Disability Living Allowance payments when they are resident in a care home, detained in legal custody or they are in hospital or a similar institution.

Provision in respect of the Armed Forces Independence Payment legislation

6.9 Article 10 amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011[10] to include Scottish Adult Disability Living Allowance within the definition of "extra-costs disability benefit" so that, where a person receives Scottish Adult Disability Living Allowance in a given period, the value of the Scottish Adult Disability Living Allowance will be deducted from the value of the Armed Forces Independence Payment.

Why was this approach taken to change the law?

6.10 Section 104 of the Scotland Act 1998[11] allows consequential modifications to be made to UK legislation where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.11 These amendments are in direct consequence of devolution and the introduction of Scottish Adult Disability Living Allowance under section 31 of the Social Security (Scotland) Act 2018. 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 As amendments in this Order are consequential and seek to maintain similar treatment for those in receipt of Scottish Adult Disability Living Allowance in the reserved social security and tax systems as those in receipt of Disability Living Allowance, 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 staff will be updated in due course to include the introduction of Scottish Adult Disability Living Allowance 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 DfC websites. Social Security Scotland will be responsible for providing guidance to its own staff.

[10] 2011 No. 517, https://www.legislation.gov.uk/uksi/2011/517/contents
[11] 1998 c. 46, https://www.legislation.gov.uk/ukpga/1998/46/contents

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 impact on business, the private or voluntary sectors is expected.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant impact on business, charities or voluntary bodies because this instrument seeks to maintain equitable treatment of those in receipt of Scottish Adult Disability Living Allowance in reserved social security and tax legislation as those in receipt of Disability Living Allowance.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this maintains treatment for Scottish Adult Disability Living Allowance recipients that is similar to Disability Living Allowance claimants in respect of interactions with reserved social security and tax legislation.

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 changes to Scottish Adult Disability Living Allowance 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 (Scottish Adult Disability Living Allowance) (Consequential Modifications) Order 2025 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").