EXPLANATORY MEMORANDUM TO

THE INCOME TAX (EXEMPTION OF SCOTTISH ADULT DISABILITY LIVING ALLOWANCE) REGULATIONS 2025

2025 No. 212

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

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

2. Declaration

2.1 James Murray MP, the Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

2.2 Philip Batchelor, Deputy Director for Income Tax Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Eunice Gonyora at HMRC, telephone: 0300 056 6778 and email: incometaxstructuremailbox@hmrc.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 purpose of the legislation is to exempt from Income Tax payments made under the Scottish Government's Scottish Adult Disability Living Allowance.

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 the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

Scottish Social Security Payments

5.1 Social security payments are administered by a number of different government departments and the devolved Governments in the United Kingdom.

5.2 The tax treatment of social security payments is legislated for in Income Tax legislation, and the tax treatment of each new payment should be confirmed when it is introduced.

5.3 The Scottish Government's updated Fiscal Framework 2023 ("the Fiscal Framework") underpins the powers over tax and welfare that are devolved to Scotland through the Scotland Act 1998. The Fiscal Framework states that a new benefit introduced by the Scottish Government will not be deemed to be income for tax purposes, unless it 'tops up' a taxable benefit.

Scottish Adult Disability Living Allowance

5.4 The Scottish Government is introducing the Scottish Adult Disability Living Allowance, which will replace a UK non-taxable social security benefit, the Disability Living Allowance, in Scotland. Under current taxation principles, payments made under the Scottish Adult Disability Living Allowance could be chargeable to Income Tax covered by the 'annual payments' provisions in part 5, chapter 7 Income Tax (Trading and Other Income) Act 2005 ("ITTOIA").

5.5 As payments made under the Scottish Adult Disability Living Allowance could be taxable under the annual payment rules, the Government is clarifying the tax treatment of this payment as a non-taxable social security benefit to comply with the Fiscal Framework.

What was the previous policy, how is this different?

5.6 The Scottish Adult Disability Living Allowance is being introduced on 21 March 2025. This instrument will confirm that payments will not be subject to Income Tax.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 13 of the Finance Act 2020 contains a power for the Treasury, by regulations, to amend Chapter 4 or 5 of Part 10 ITEPA 2003, so as to provide that no liability to Income Tax arises on social security benefits of a description specified in the regulations (section 13(1)).

6.2 The instrument will amend and modify Chapter 5 of Part 10 of ITEPA 2003 by inserting reference to payments made under the Scottish Adult Disability Living Allowance into Part 1 of Table B at section 677, which will have the effect of wholly exempting this social security benefit from Income Tax.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation exercise has been held as these changes are wholly relieving to the taxpayer.

8. Applicable Guidance

8.1 Guidance will be provided by the body administering the payment.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these payments are made to individuals.

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 there are no resource, IT or financial consequences for HMRC.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The are no plans to monitor or review the instrument.

10.2 The instrument does not include a statutory review clause because it does not make or amend regulatory provisions that relate to business activity.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 13 of the Finance Act 2020 ("FA 2020") conferred on the Treasury the power to exempt social security payments from Income Tax with retrospective effect by making regulations. It is a negative procedure instrument. The parliamentary procedure for this instrument is contained in section 1014 of the Income Tax Act 2007, which applies to all regulation-making powers under the Income Tax Acts. The Interpretation Act 1978 defines "the Income Tax Acts" as being all enactments relating to Income Tax, which includes section 13 of FA 2020.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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").