EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (RESIDENCE IN AN EEA STATE OR SWITZERLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 1198

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.

2. Declaration

2.1 The Rt Hon Sir Stephen Timms MP, Minister for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Ronan O'Connor, Deputy Director for International Strategy at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Priya Bahi at the Department for Work and Pensions can be contacted by email at the following address with any queries regarding the instrument: eu.agreements@dwp.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes minor amendments to existing regulations for Carer's Allowance, Disability Living Allowance, and Personal Independence Payment ("the disability and carers' benefits") to enable the continued payment of these benefits to a cohort of customers residing in the European Union (EU).

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 and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Following the United Kingdom's withdrawal from the European Union, EU regulations no longer apply except for individuals in scope of the Withdrawal Agreement (WA)[1]. This legislation provides additional protection for a small cohort of approximately 60 claimants who are persons that had a relevant EU regulation applied to them and who were residing in a European Economic Area (EEA) state or

[1] The Withdrawal Agreement: www.legislation.gov.uk/eut/withdrawal-agreement/contents

Switzerland on 31st December 2020[2] and who were also in receipt of one of the qualifying disability or carers' benefits. The relevant regulations are Regulation 1408/1971[3] and Regulation 883/2004[4] which apply to those in scope of the Withdrawal Agreement, the European Economic Area-European Free Trade Association[5] Separation Agreement and the UK-Switzerland Citizens' Rights Agreement.

5.2 Since the drafting of the Withdrawal Agreement, it has always been the intention of both the UK and European Union that citizens who were exercising free movement rights in both the UK and the EU at the end of the transition period would see no change in their rights.

5.3 However, the cohort referred to above was inadvertently not covered by Withdrawal Agreement (WA) or the equivalent agreements with the European Economic Area-European Free Trade Association states or Switzerland. This is because the drafting of the Withdrawal Agreement specified that a valid right to reside in the UK at the end of the transition period was required to ensure persons would be in scope of the Withdrawal Agreement. Other persons who exercised free movement rights under EU law by moving freely between states before the end of the transition period benefit from protections under the Withdrawal Agreement and it was not intended for this cohort to be excluded.

5.4 To ensure there was no risk that this cohort would not receive their payments after the end of the transition period, payments were made on an extra-statutory basis from the end of the transition period, with the Department seeking funding from HMT on an annual basis. The extra-statutory payments were agreed to ensure the department had time to secure a long-term solution. We cannot continue with this approach as the extra-statutory initiative was intended to be a short-term solution only, set to expire on the 5th April 2026.

5.5 This legislation enables this cohort to maintain their existing claim for benefit only, they cannot make new claims for further benefits, nor can they re-claim following a change in circumstances, for example starting work in an EU member state, or receiving a pension from a member state. This legislation does not affect the entitlements to benefits of any other cohorts.

What was the previous policy, how is this different?

5.6 This legislation provides a statutory footing for the continued payment of disability and carers' benefits for this cohort. The amendments will not introduce new policy, simply allowing continued payments as normal, now with a legislative basis. Estimated figures suggest that this cohort size is under 60 persons in scope[6].

5.7 This instrument will not change the operational process which has been established and implemented since 2021, when new rules regarding benefit export began. It will

[2] The 31st of December 2020 was the last day of the transition period and that day the UK left the EU. The European Economic Area refers to the total member states included in the EU and the three European Free Trade Association States (Iceland, Liechtenstein, Norway).
[3] Regulation (EEC) No 1408/71: https://www.legislation.gov.uk/eur/1971/1408. It was later replaced by Regulation 883/2004.
[4] Regulation (EEC) No 883/04: https://www.legislation.gov.uk/eur/2004/883/contents
[5] The European Free Trade Association (EFTA) is the intergovernmental organisation of Iceland, Lichtenstein, Norway and Switzerland.
[6] Figures are based on DWP Management Information with data as of April 2025.

regularise the payments made to customers by providing a statutory basis to continue these payments.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument will amend the following regulations:

- The Social Security (Invalid Care Allowance) Regulations 1976, reg 9A (b)[7]. The benefit was renamed Carers Allowance in Section 70 the Social Security Contributions and Benefits Act 1992[8].
- The Social Security (Disability Living Allowance) Regulations 1991, regulation 2B(b)[9].
- The Social Security (Personal Independence Payment) Regulations 2013, regulation 23(b)[10].

6.2 The amendments to each of the above Regulations allow individuals who had a relevant European Union Regulation applied to them and who were resident in the European Economic Area and/or Switzerland at the end of the transition period and who were in receipt of Carers Allowance, Disability Living Allowance or Personal Independence Payment at that time to continue receiving those benefits. The customers must have been eligible to receive these benefits continuously since the end of the transition period. Should the claim cease to be eligible they will be unable to make any further claims in the future.

Why was this approach taken to change the law?

6.3 Making a legislative amendment is the only way to ensure this cohort receives the benefits to which they have been in receipt. These individuals are out of scope of the Withdrawal Agreement (WA) and therefore we require legislation in order to ensure that this small cohort can continue receiving the qualifying carers' or disability benefits.

7. Consultation

Summary of consultation outcome and methodology

7.1 This Instrument was referred to the Social Security Advisory Committee on 8 October 2025, who confirmed they are content for the Regulations to proceed[11]. The official minutes to the meeting have not been published yet but will be available by 1st December.

7.2 No formal consultation was undertaken for this Instrument.

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[7] The Social Security (Invalid Care Allowance) Regulations 1976: www.legislation.gov.uk/uksi/1976/409/contents
For information, Carers Allowance was initially known as Invalid Care Allowance and its primary legislation is: Social Security Act 1975.

[8] The Social Security Contributions and Benefits Act: www.legislation.gov.uk/ukpga/1992/4/contents

[9] The Social Security (Disability Living Allowance) Regulations 1991: www.legislation.gov.uk/uksi/1991/2890/regulation/2B

[10] The Social Security (Personal Independence Payment) Regulations 2013: www.legislation.gov.uk/uksi/2013/377/part/4/made

[11] Social Security Advisory Committee: minutes of meetings in 2025: www.gov.uk/government/publications/social-security-advisory-committee-minutes-of-meetings-in-2025

8. Applicable Guidance

8.1 These changes were incorporated into internal departmental guidance in 2020 and present no changes to operational practise.

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

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because it is not a regulatory provision as defined in Section 2 of the Better Regulation Framework Guidance[12]. The legislation ensures continued entitlement to disability and carers benefits for a small cohort of customers.

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 the legislation ensures the continued entitlement to benefit for a small cohort of customers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. As this amendment will not change current operational practise The Department will however continue to monitor internal data on DWP benefit claims in the European Economic Areas and Switzerland.

10.2 The instrument does not include a statutory review clause.

[12] Better Regulation Framework: www.gov.uk/government/publications/better-regulation-framework

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 As the instrument is subject to negative 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"). It does however relate to the withdrawal of the United Kingdom from the European Union. Title III (the Social Security provisions) of the Withdrawal Agreement does not explicitly include EU citizens who were resident in the EU at the end of the transition period and this includes the cohort of individuals affected by this Instrument.