POLICY NOTE

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

SSI 2025/415

The above instrument was made in exercise of the powers conferred by sections 70(4), 71(6), 175(1) and (3) of the Social Security Contributions and Benefits Act 1992 and sections 77(3), 94(1) and (2) of the Welfare Reform Act 2012. The instrument is subject to negative procedure.

Summary Box

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 continued payment of these benefits to a cohort of people residing in a European Economic Area (EEA) state or Switzerland.

Policy Objectives

Following the United Kingdom's (UK) withdrawal from the European Union (EU), EU regulations no longer apply except for individuals in scope of the EU-UK Withdrawal Agreement or equivalent agreements with the EEA EFTA states (Iceland, Liechtenstein and Norway) and Switzerland.

This legislation places entitlement on a statutory footing for a small cohort of approximately 60 EEA or Swiss citizens who were residing in an EEA state or Switzerland on 31 December 2020 and who were also in receipt of one of the qualifying disability and carers' benefits. The EU regulations that applied to this cohort were Regulation 1408/1971 and Regulation 883/2004 which continue to apply to those in scope of the Withdrawal Agreement, the European Economic Area-European Free Trade Association Separation Agreement and the UK-Switzerland Citizens' Rights Agreement ("Agreements").

Since these Agreements were drafted, 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, 31 December 2020, would see no change in their rights.

However, the cohort referred to above was inadvertently not covered by any of the Agreements. 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 Agreements, and it was not intended for this cohort to be excluded.

Payments have continued to be made by the Department for Work and Pensions on an ex-statutory basis from the end of the transition period, as a short-term solution which is set to expire on 5 April 2026. This legislation is the long-term statutory solution to give full legal effect for these payments. The Department for Work and Pensions remains responsible for making payments to this cohort. The Scottish Ministers are required to make mirroring legislation in accordance with the agency agreements with the UK Government in respect of the disability and carers' benefits.

This instrument amends the following regulations:

- The Social Security (Invalid Care Allowance) Regulations 1976, regulation 9B(b);
- The Social Security (Disability Living Allowance) Regulations 1991, regulation 2B(b); and
- The Social Security (Personal Independence Payment) Regulations 2013, regulation 23(b).

These amendments enable this cohort to maintain only their existing entitlement to the disability and carers' benefits. They cannot make new applications to these benefits, nor can they maintain entitlement following a relevant change in circumstances – for example starting work in an EU member state. This legislation does not affect the entitlement to benefits of any other cohorts.

This a closed cohort as the amendments require any person to have continuously been in receipt of the existing benefit since 31 December 2020, as such they do not create a basis for any new eligibility. They provide a legislative basis for the continuation of the disability and carers' benefits already in payment.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Social Security (Residence in an EEA state or Switzerland) (Miscellaneous Amendment) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This legislation relates to UK policy, after exiting the EU, to maintain EU-related international social security co-ordination for a protected cohort of individuals who remain in cross-border situations following EU exit.

The EU requires social security co-ordination to take place between member states when individuals exercise freedom of movement rights and move between states. The EEA EFTA states and Switzerland also take part in this co-ordination through their own agreements with the EU. The relevant law is EC Regulation 883/2004, which replaced EC Regulation 1408/1971 (which continues to apply to historic entitlement). EU member states remain free to determine domestic social security rules and entitlement entirely.

By maintaining social security co-ordination for protected individuals in perpetuity, Scotland and the whole of UK remain aligned to the relevant EU policy following EU exit.

This instrument amends only domestic legislation to create a statutory entitlement for this defined, closed cohort.

Consultation

No formal consultation was undertaken for this instrument.

Impact Assessments

A Child Rights and Wellbeing Impact Assessment was carried out which found no adverse impacts. No other impact assessments were completed due to the extremely refined scope of the legislation to a very small and diminishing cohort of people affected.

Financial Effects

The Cabinet Secretary for Social Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

December 2025