EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (DISABILITY ASSISTANCE) (CONSEQUENTIAL AMENDMENTS) ORDER 2025

2025 No. 227

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.

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

2. Declaration

2.1 Andrew Western MP, Minister for Transformation at the Department for Work and Pensions, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits & Carer's Allowance at the Department for Work and Pensions, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Vanessa Calvache at the Department Work and Pensions, email: devolution.scotlandact2016policy@dwp.gov.uk, 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 This instrument makes consequential amendments to legislation in Great Britain and Northern Ireland to reflect the introduction of the Scottish Government's Scottish Adult Disability Living Allowance which will replace Disability Living Allowance for adults[1] in Scotland.

4.2 It also makes minor amendments to the Social Security (Invalid Care Allowance) Regulations 1976,[2] the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976[3] and the Social Security and Child Support (Decisions and Appeals) Regulations 1999,[4] relating to the introduction of the Scottish Government's Child Disability Payment and Adult Disability Payment, so that these disability benefits are treated in the same way as Disability Living Allowance for children and Personal Independence Payment respectively.

[1] Adults refer to people aged 18 and over.
[2] https://www.legislation.gov.uk/uksi/1976/409/contents
[3] https://www.legislation.gov.uk/nisr/1976/99/contents/made
[4] https://www.legislation.gov.uk/uksi/1999/991/contents

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, Scotland and Northern Ireland in respect of Part 1, England and Wales in respect of Part 2, England and Wales and Scotland in respect of Part 3 and Northern Ireland in respect of Part 4.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland in respect of Part 1, England and Wales in respect of Part 2, England and Wales and Scotland in respect of Part 3 and Northern Ireland in respect of Part 4.

5. Policy Context

What is being done and why?

5.1 The Scotland Act 2016[5] devolved responsibility for certain social security benefits to the Scottish Parliament. Section 31 of the Social Security (Scotland) Act 2018[6] confers powers on the Scottish Ministers to introduce new forms of 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 in Scotland. Given that Scottish Adult Disability Living Allowance will operate broadly in the same way as the Disability Living Allowance it will replace, the United Kingdom (UK) Government has agreed that those in receipt will have the same access to additional amounts and exemptions in reserved benefits as those in receipt of Disability Living Allowance in England and Wales. The Minister for Communities in Northern Ireland has agreed similar consequential amendments are made for Northern Ireland. This instrument provides the legislative basis for this treatment.

5.3 This instrument makes consequential amendments to social security legislation in Great Britain and Northern Ireland so that Scottish Adult Disability Living Allowance is treated in the same way as Disability Living Allowance. As such, it will act as a qualifying benefit for additional amounts in Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit and Housing Benefit. Scottish Adult Disability Living Allowance will also provide an exemption from the Benefit Cap and will act as a qualifying benefit for Universal Credit for a pensioner in a couple with someone under State Pension age, i.e. in a mixed-age couple, to receive additional amounts in respect of a disability.

5.4 This instrument amends the Social Security (Invalid Care Allowance) Regulations 1976 and the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976 to ensure that someone receiving Carer's Allowance because they are caring for a person in receipt of the Scottish Government's Child Disability Payment, Scottish Adult Disability Living Allowance or Adult Disability Payment is entitled to the same temporary absence exemptions[7] that apply to someone receiving Disability Living

[5] https://www.legislation.gov.uk/ukpga/2016/11/contents
[6] https://www.legislation.gov.uk/asp/2018/9/section/31
[7]Temporary absence exemptions enable entitlement to continue whilst the claimant is outside of England and Wales (or Northern Ireland where relevant) and include periods of temporary absence up to four weeks, or that the absence is for the purpose of caring for a disabled person who is still receiving payment of a disability benefit. https://www.legislation.gov.uk/uksi/1976/409/contents

Allowance for children, Disability Living Allowance or Personal Independence Payment.

5.5 It also amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 to ensure that someone receiving the Scottish Government's Adult Disability Payment and either Income Support or income-related Employment and Support Allowance will not lose their Income Support or income-related Employment and Support Allowance payment when they go into hospital or a care home for a period of 28 days, as they will be paid daily instead of weekly where the end of entitlement date falls within a weekly cycle.

What was the previous policy, how is this different?

5.6 The Scottish Government is replacing Disability Living Allowance with Scottish Adult Disability Living Allowance. There is no substantive change of policy in reserved or Northern Ireland benefits since Scottish Adult Disability Living Allowance will have the same interaction as the benefit it replaces.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made in exercise of the powers conferred by section 104 of the Scotland Act 1998.[8] 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 Section 31 of the Social Security (Scotland) Act 2018 allows the Scottish Ministers to provide disability assistance in Scotland. This is the legislative basis for Scottish Adult Disability Living Allowance which will replace Disability Living Allowance.

Provisions

6.3 The effect of the provisions in this instrument are as follows:

Articles 2 and 20

6.4 Ensure that Carer's Allowance can continue to be paid during a carer's temporary absence from England, Wales or Northern Ireland, where that absence is to provide care for a person who is entitled to the care component of Scottish Adult Disability Living Allowance, Child Disability Payment or Adult Disability Payment.

Articles 3 and 22

6.5 Make changes to the Social Security (Disability Living Allowance) Regulations 1991[9] and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992[10] to ensure that a person who continues to receive Scottish Adult Disability Living Allowance during a period set out in the Disability Assistance (Scottish Adult Disability Living Allowance) Regulations 2025[11] for a period after they move to England, Wales or Northern Ireland is treated as not meeting the residence

[8] https://www.legislation.gov.uk/ukpga/1998/46/section/104
[9] https://www.legislation.gov.uk/uksi/1991/2890/contents
[10] https://www.legislation.gov.uk/nisr/1992/32/contents/made
[11] https://www.legislation.gov.uk/ssi/2025/3/contents/made

requirements[12] and so is not eligible for Disability Living Allowance during that period. This is to avoid double payments between jurisdictions. It is achieved by treating claimants who move from Scotland and who are in receipt of Scottish Adult Disability Living Allowance as if they did not meet the residence requirements for Disability Living Allowance in the jurisdiction they have moved to. This period of payment outside Scotland is to allow for a fresh claim to Disability Living Allowance if they were 65 years old or over on 8 April 2013.

6.6 The amendments also provide that recipients who move to England, Wales or Northern Ireland following a period in receipt of Scottish Adult Disability Living Allowance, are treated as having already served the relevant qualifying period for either the care or mobility component[13] of Disability Living Allowance, if a claim is made within two years of a previous entitlement to the equivalent component of Scottish Adult Disability Living Allowance.

6.7 The amendments also specify that people of State Pension age or over who were previously in receipt of Scottish Adult Disability Living Allowance and who move to England, Wales or Northern Ireland can have their benefit reviewed or renewed in some circumstances if a claim is made within 12 months of their previous entitlement ending. In England and Wales if a claimant has a change in need, then they can have their Disability Living Allowance claim reviewed and renewed if their condition has deteriorated. Therefore, they may receive an increase in their care award.

Articles 4 and 33

6.8 Make changes to ensure that individuals who move from Scotland to England or Wales who previously received Scottish Adult Disability Living Allowance and who were 64 years old or younger on 8 April 2013, are treated in the same way as those who were either in receipt of Disability Living Allowance or who return to Personal Independence Payment after a previous period in receipt of it. A similar provision is made for individuals moving from Scotland to Northern Ireland who were under age 65 on 20 June 2016. This includes having met the qualifying period to be eligible for Personal Independence Payment from the date of their claim.

6.9 Provisions are also made so that Scottish Adult Disability Living Allowance recipients who continue to receive Scottish Adult Disability Living Allowance during a period set out in the Disability Assistance (Scottish Adult Disability Living Allowance) Regulations 2025 for a period after they move to England, Wales or Northern Ireland, can make a claim for Personal Independence Payment during that period and have their entitlement to Personal Independence Payment commence from the date on which their Scottish Adult Disability Living Allowance award ends. An equivalent provision is made for Child Disability Payment recipients who move to England, Wales or Northern Ireland to make a claim for Personal Independence Payment.

Articles 5, 7, 9, 10, 11, 12, 13, 14, 15, 21, 23, 25, 26, 27, 28, 29, 30 and 32

6.10 These articles amend regulations so that Scottish Adult Disability Living Allowance exempts a household from the Benefit Cap and is treated as a qualifying benefit for

[12] Residence requirements refer to being habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands.

[13] Disability Living Allowance is made up of two components – care and mobility. They are each payable at different rates depending on the level of help an individual needs with personal care or getting around.

additional amounts in Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit and Housing Benefit.

6.11 Scottish Adult Disability Living Allowance will act as a qualifying benefit in Universal Credit for a pensioner in a couple with someone under State Pension age, i.e. in a mixed-age couple, to receive additional amounts in respect of disability. This is achieved by treating them as if they had limited capability for work or limited capability for work and work-related activity, although no such a test of limitation is applied to a Universal Credit recipient who is over State Pension age.

6.12 Scottish Adult Disability Living Allowance will also provide an exemption to the Universal Credit full-time education exclusion. It will also ensure that when assessing housing costs for Universal Credit recipients or entitlement for Housing Benefit, a non-dependent deduction will not be made if the recipient, or, their partner, is in receipt of Scottish Adult Disability Living Allowance. This exception is where a person who has already been determined to have limited capability for work before starting a course of education and is entitled to a qualifying benefit, becomes exempt from the requirement to not be receiving education to be eligible for Universal Credit. The rules for this exception are designed to not discourage those already assessed as having limited capability for work because of disability or ill health to take up education that may help them into work in the future.

6.13 They also ensure that receipt of Scottish Adult Disability Living Allowance is a qualifying benefit for a qualifying young person[14] who may be awarded the relevant rate of the Universal Credit disabled child addition.

6.14 They also ensure that receipt of Scottish Adult Disability Living Allowance is considered when assessing hardship where a recipient's benefit has been reduced as a result of a sanction having been imposed in income-based Jobseeker's Allowance or, income-related Employment and Support Allowance and where a penalty or sanction has been applied for benefit fraud offences under the Loss of Benefit provisions.[15]

6.15 They also amend the definition in Universal Credit and Housing Benefit of a person who cannot share a bedroom, so that receipt of Scottish Adult Disability Living Allowance gives entitlement to payment for an additional bedroom to couples who cannot share a bedroom because one or both members of a couple is disabled.

6.16 They also amend the definition in Universal Credit and Housing Benefit of a person who requires overnight care, so that receipt of Scottish Adult Disability Living Allowance gives entitlement to payment for an additional bedroom to recipients who receive overnight care from persons who do not live in their accommodation.

6.17 They also amend the childcare disregard provisions[16] in Housing Benefit so that receipt of Scottish Adult Disability Living Allowance allows the childcare disregard to apply when one member of a couple is unable to work and is receiving Scottish Adult Disability Living Allowance. This means that a couple is able to keep more of their earnings when assessing entitlement to Housing Benefit.

[14] A qualifying young person is defined as a person who has reached the age of 16 but not the age of 20 for the purposes of the Universal Credit Regulations 2013. https://www.legislation.gov.uk/uksi/2013/376/regulation/5

[15] The Loss of Benefit provisions apply a penalty or sanction to those who are convicted or accept an administrative penalty for benefit fraud offences relating to certain benefits.

[16] The Childcare disregard from earnings is intended as a work incentive to help lower paid parents into work by offering help with childcare costs whilst they are in work.

6.18 The rules on the treatment of earnings in Pension Credit and pension age Housing Benefit are also amended so that £20 of weekly earnings is disregarded if either the recipient or their partner is in receipt of Scottish Adult Disability Living Allowance.

Article 6

6.19 This amendment ensures that when a person goes into a hospital or care home and their means-tested benefit stops because their Scottish Adult Disability Living Allowance payment has also stopped or reduced, their reclaim for the means-tested benefit will be treated as having been made from the date on which their Scottish Adult Disability Living Allowance is re-awarded or increased and not the date the reclaim was received. This means that the Scottish Adult Disability Living Allowance recipient is not penalised should they later need to reclaim the means-tested benefit.

Article 8

6.20 This amendment ensures that entitlement to Scottish Adult Disability Living Allowance provides entitlement to an additional amount for severe disability in Income Support, income-related Employment and Support Allowance and Pension Credit in the same way as Disability Living Allowance.

Article 18, 24 and 36

6.21 These amendments include the addition of Scottish Adult Disability Living Allowance to the definition of Scottish disability benefit, in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013,[17] the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016[18] and the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.[19] This will ensure that where reference is made to "Scottish disability benefit" in these Regulations, the relevant provision will thereby apply to Scottish Adult Disability Living Allowance and the appropriate decision can be made.

Articles 14 and 30

6.22 This article amends the Child Support Maintenance Calculation Regulations 2012[20] and the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012[21] to ensure that a non-resident parent who receives Scottish Adult Disability Living Allowance is treated as disabled for the purposes of assessing expenses in relation to a variation of a child maintenance calculation. This means that the non-resident parent in receipt of Scottish Adult Disability Living Allowance may be eligible for a reduction in child maintenance costs.

Articles 16 and 34

6.23 Amendments are made to contributory Jobseeker's Allowance to ensure that hours spent caring for someone in receipt of Scottish Adult Disability Living Allowance are not treated as being in remunerative work.

[17] https://www.legislation.gov.uk/uksi/2013/381/contents
[18] https://www.legislation.gov.uk/nisr/2016/221/contents
[19] https://www.legislation.gov.uk/nisr/1999/162/contents/made
[20] https://www.legislation.gov.uk/uksi/2012/2677/contents
[21] https://www.legislation.gov.uk/nisr/2012/427/contents

Articles 17 and 35

6.24 These amendments are made to contributory Employment and Support Allowance to ensure that Scottish Adult Disability Living Allowance is considered when assessing hardship where a recipient's benefit has been reduced as the result of a sanction having been imposed.

Article 19 and 31

6.25 These articles amend the State Pension Regulations 2015[22] and the State Pension Regulations (Northern Ireland) 2015[23] so that a person can apply to be credited with a Class 3 National Insurance contribution for any week in which they are providing care for at least 20 hours to someone who is entitled to Scottish Adult Disability Living Allowance.

UKG Regulations to be amended:

The Social Security (Invalid Care Allowance) Regulations 1976[24]

The Social Security (Disability Living Allowance) Regulations 1991[25]

The Social Security (Personal Independence Payment) Regulations 2013[26]

The Income Support (General) Regulations 1987[27]

The Social Security (Claims and Payments) Regulations 1987[28]

The Jobseeker's Allowance Regulations 1996[29]

The Social Security and Child Support (Decisions and Appeals) Regulations 1999[30]

The Social Security (Loss of Benefit) Regulations 2001[31]

The State Pension Credit Regulation 2002[32]

The Housing Benefit Regulations 2006[33]

The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006[34]

The Employment and Support Allowance Regulations 2008[35]

The Child Support Maintenance Calculations Regulations 2012[36]

The Universal Credit Regulations 2013[37]

The Jobseeker's Allowance Regulations 2013[38]

[22] https://www.legislation.gov.uk/uksi/2015/173/contents
[23] https://www.legislation.gov.uk/nisr/2015/315/contents
[24] https://www.legislation.gov.uk/uksi/1976/409/contents
[25] https://www.legislation.gov.uk/uksi/1991/2890/contents
[26] https://www.legislation.gov.uk/uksi/2013/377/contents
[27] https://www.legislation.gov.uk/uksi/1987/1967/contents
[28] https://www.legislation.gov.uk/uksi/1987/1968/contents
[29] https://www.legislation.gov.uk/uksi/1996/207/contents
[30] https://www.legislation.gov.uk/uksi/1999/991/contents
[31] https://www.legislation.gov.uk/uksi/2001/4022/contents
[32] https://www.legislation.gov.uk/uksi/2002/1792/contents
[33] https://www.legislation.gov.uk/uksi/2006/213/contents
[34] https://www.legislation.gov.uk/uksi/2006/214/contents
[35] https://www.legislation.gov.uk/uksi/2008/794/contents
[36] https://www.legislation.gov.uk/uksi/2012/2677/contents
[37] https://www.legislation.gov.uk/uksi/2013/376/contents

The Employment and Support Allowance Regulations 2013[39]

The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decision and Appeals) Regulations 2013[40]

The State Pension Regulations 2015[41]

Northern Ireland

6.26 Social security is a transferred matter in Northern Ireland, however an Order under section 104 of the Scotland Act 1998 allows for amendments to be made to legislation in Northern Ireland by the UK Government on behalf of the Northern Ireland Assembly. The relevant Northern Ireland Minister has asked that the UK Government make such provision. This instrument therefore makes corresponding changes, where applicable, to legislation in Northern Ireland to those changes being made in respect of reserved benefits for England and Wales.

Northern Ireland regulations to be amended

6.27 This instrument also makes corresponding amendments to Northern Ireland legislation which can be accessed in the Northern Ireland Blue Volumes.[42]

Why was this approach taken to change the law?

6.28 Section 104 of the Scotland Act 1998 allows consequential amendment to be made to United Kingdom legislation where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.29 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 The Scottish Government carried out a consultation on disability assistance in 2019.[43] There has been no separate consultation on the amendments in this instrument as they are consequential on the Scottish Adult Disability Living Allowance legislation[44] that followed that consultation. They ensure that Scottish Adult Disability Living Allowance recipients are treated in a similar way in reserved and Northern Ireland benefits as those in receipt of Disability Living Allowance.

8. Applicable Guidance

8.1 Operational guidance for Department for Work and Pensions and Department for Communities staff will be updated by 21 March 2025. The Decision Makers' Guide and Advice for Decision Makers on Gov.UK will be updated.[45]

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[38] https://www.legislation.gov.uk/uksi/2013/378/contents
[39] https://www.legislation.gov.uk/uksi/2013/379/contents
[40] https://www.legislation.gov.uk/uksi/2013/381/contents
[41] https://www.legislation.gov.uk/uksi/2015/173/contents
[42] https://www.communities-ni.gov.uk/services/law-relating-social-security-northern-ireland-blue-volumes
[43] https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/
[44] https://www.legislation.gov.uk/ssi/2025/3/contents/made
[45] https://www.gov.uk/government/collections/decision-makers-guide-staff-guide

8.2 Guidance about the changes to Housing Benefit will be available on the 'Housing Benefit for local authorities' section of Gov.UK.[46]

8.3 The Scottish Government is responsible for guidance in Social Security Scotland, which will administer Scottish Adult Disability Living Allowance.

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 impact on business, charities and 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 this instrument seeks to maintain equitable treatment between those in receipt of Scottish Adult Disability Living Allowance, as those on Disability Living Allowance in regard to reserved benefits.

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 instrument maintains continuity in reserved and Northern Ireland benefits by providing for equitable treatment between those in receipt of Scottish Adult Disability Living Allowance, and those in receipt of Disability Living Allowance.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The entitlement to, and payment of additional amounts in income-related benefits is a reserved matter. The UK Government will keep this policy under review taking account of development in both the reserved and devolved benefit landscapes.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Articles 4 and 33 of this instrument contain (along with other provisions), new provisions which clarify a previous amendment to support recipients of Child Disability Payment who move to England or Wales, or Northern Ireland respectively, from Scotland. The new provisions make clear that for the purposes of determining a Personal Independence Payment claim, the 13-week run-on period of Child Disability Payment does not affect the process of linking the two awards. This ensures that the claimant will not be disadvantaged by making their claim promptly, in accordance with the policy intent.

11.2 This instrument is not, however, issued under the free issues procedure since it would be disproportionate to do so. The SI Registrar has been consulted as part of the Department's consideration of whether to use the free procedure in relation to the new provisions.

[46] https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars

12. European Convention on Human Rights

12.1 As this instrument is subject to the 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”).