EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (SCOTTISH ADULT DISABILITY LIVING ALLOWANCE) (CONSEQUENTIAL AMENDMENTS) (NO. 2) ORDER 2025

2025 No. 229

1. Introduction

1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament in by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Ian Murray MP, Secretary of State for Scotland confirms that this Explanatory Memorandum meets the required standard.

2.2 Louise Nicholls, Deputy Director for Constitutional Policy at the 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.

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 Amendments) (No. 2) Order 2025 (S.I. 2025/229) makes consequential amendments to legislation in Scotland, England and Wales to reflect the introduction of 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 England and Wales in respect of Part 2; Scotland in respect of Part 3 and England and Wales, and Scotland in respect of Part 4.

4.3 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 (the 2018 Act)[2] confers powers on the Scottish Ministers to introduce new forms of disability assistance through regulations which will replace the disability benefits

[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

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.

What was the previous policy, how is this different?

5.3 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.

5.4 The UK Government has agreed that entitlement to certain rates and components of Scottish Adult Disability Living Allowance may entitle an individual to apply for a proxy vote at UK Parliamentary and other elections across the UK and for a proxy signature for petitions to recall a Member of Parliament, without requiring attestation of the individual's disability. This is in line with those in receipt of the equivalent benefit in England and Wales. This Order amends the relevant regulations to give recipients of the higher rate of the mobility component of Scottish Adult Disability Living Allowance an exemption from the need for their applications to be attested when applying for either a proxy vote or a proxy signature for a recall petition. The resulting proxy vote or signing entitlement can be for a definite or indefinite period.

6. Legislative and Legal Context

How has the law changed?

6.1 Article 2 of this instrument amends the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341)[3], setting out that where an individual is in receipt of the higher rate of the mobility component of Scottish Adult Disability Living Allowance, they are entitled to apply for a proxy vote in UK Parliamentary elections in England and Wales, and local elections in England and Wales without requiring a professional to attest to and sign their application in the same way that those in receipt of Disability Living Allowance are entitled to do.

6.2 Article 4 makes corresponding amendments to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497 (S. 2)[4] in relation to UK Parliamentary elections in Scotland.

6.3 Article 3 amends the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917)[5], setting out that where an individual is in receipt of the higher rate of the

[3] https://www.legislation.gov.uk/uksi/2001/341/contents
[4] https://www.legislation.gov.uk/uksi/2001/497/contents

mobility component of Scottish Adult Disability Living Allowance they are entitled to apply for a proxy vote in elections for Police and Crime Commissioners in England and Wales without requiring a professional to attest to and sign their application in the same way that those in receipt of Disability Living Allowance are entitled to do.

6.4 Article 5 amends the Recall of MPs Act 2015 (Recall Petition) Regulations 2016 (S.I. 2016/295) [6], setting out that where an individual is in receipt of the higher rate of the mobility component of Scottish Adult Disability Living Allowance they are entitled to apply for a proxy signature for a recall petition under the Recall of MPs Act 2015[7] in England, Wales and Scotland without requiring a professional to attest to and sign their application in the same way that those in receipt of Disability Living Allowance are entitled to do.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 As amendments in this Order are consequential and seek to ensure those in receipt of Scottish Adult Disability Living Allowance are treated the same as those in receipt of Disability Living Allowance for the purpose of proxy voting, a formal consultation on the draft Order was not considered necessary.

8. Applicable Guidance

8.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of polls, and to voters, and will update its guidance as necessary to reflect the changes set out in this instrument. Social Security Scotland will be responsible for providing guidance to its own staff.

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 ensure those in receipt of Scottish Adult Disability Living Allowance are treated the same as those in receipt of Disability Living Allowance for the purpose of proxy voting.

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 proxy voting.

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[5] https://www.legislation.gov.uk/uksi/2012/1917/contents
[6] https://www.legislation.gov.uk/uksi/2016/295/contents
[7] https://www.legislation.gov.uk/ukpga/2015/25/contents

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.

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 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 Amendments) (No. 2) Order 2025 is 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").