EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND CROSS-BORDER CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) REGULATIONS 2025

2025 No. 1089

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 Victoria Oliphant at the Department for Work and Pensions, email: devolution.scotland2016policy@dwp.gov.uk and David Tarr at the Department for Communities, 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 amends social security legislation applying in Great Britain and Northern Ireland to make entitlement to Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment dependant, amongst other things, on presence in England, Wales or Northern Ireland only. It also includes an exception so that people who are only temporarily absent from England, Wales or Northern Ireland and are present in Scotland may continue to receive the relevant benefit.

4.2 The instrument also allows payment of Carer's Allowance, Attendance Allowance Disability Living Allowance and Personal Independence Payment to continue for a time-limited period when someone moves permanently to Scotland; ensures the above change to presence conditions for Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment does not apply to people who moved permanently to Scotland and notified Scottish Ministers of the move before the coming into force date of this instrument; and it ensures that a decision is made on any claim for Carer's Allowance, Attendance Allowance, Disability Living Allowance or Personal Independence Payment in England, Wales or Northern Ireland that was made prior to a person's permanent move to Scotland.

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 as follows: Part 1 of the instrument extends to England and Wales, Scotland and Northern Ireland; Part 2 extends to England and Wales, and Scotland; Part 3 extends to England and Wales only; Part 4 extends to Northern Ireland only.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is as follows: Part 1 of the instrument extends to England and Wales, Scotland and Northern Ireland; Part 2 extends to England and Wales, and Scotland; Part 3 extends to England and Wales only; Part 4 extends to Northern Ireland only.

5. Policy Context

What is being done and why?

5.1 Following the Scottish Independence Referendum in 2014, and the subsequent report of the Smith Commission[1] into further devolution of powers, with cross-party support the Scotland Act 2016[2] provided for the devolution of certain Department for Work and Pensions benefits for disabled people and unpaid carers to the Scottish Parliament. These have since been replaced by Scottish benefits under enabling powers included in the Social Security (Scotland) Act 2018[3]: Child Disability Payment has replaced Disability Living Allowance for children, Adult Disability Payment has replaced Personal Independence Payment, Carer Support Payment has replaced Carer's Allowance, Pension Age Disability Payment has replaced Attendance Allowance, and Scottish Adult Disability Living Allowance has replaced Disability Living Allowance for adults.

5.2 The Department for Work and Pensions has been administering Disability Living Allowance, Personal Independence Payment, Carer's Allowance and Attendance Allowance in Scotland on behalf of Scottish Ministers under interim Agency Agreements on a business-as-usual basis until such time that the Scottish Government could deliver its own provision and all cases in Scotland had been transferred to Social Security Scotland (the delivery arm of the Scottish Government) and converted to an award of the relevant Scottish benefit. This transfer is now almost complete and these Agreements are due to end on 31 March 2026. Therefore, provision is needed for people moving from England or Wales to Scotland following the end of case transfer.

What was the previous policy, how is this different?

5.3 The process for transferring the relevant benefit cases within Scotland has been used to transfer cases moving from England or Wales to Scotland. This process is nearly complete and new provision for cross-border movers is being introduced from 6 November 2025 for Personal Independence Payment and Carer's Allowance, and by 23 February 2026 for Attendance Allowance and Disability Living Allowance.

[1] https://webarchive.nationalarchives.gov.uk/ukgwa/20151202171017/http:/www.smith-commission.scot/
[2] https://www.legislation.gov.uk/ukpga/2016/11/contents
[3] https://www.legislation.gov.uk/asp/2018/9/contents

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes changes to Carer's Allowance, Attendance Allowance, Disability Living Allowance and Personal Independence Payment consequential on this devolved landscape in the following ways;

- Regulations 2 to 5 of this instrument, each of which relate to one of the benefits listed above, make changes which mean a person:
    - is generally only entitled to the benefit if they are present in England and Wales (amended from Great Britian),
    - can continue to be entitled to the benefit, upon permanently moving to Scotland, for a period of up to 13 weeks and 6 days following their move (a "run-on period"),
    - can continue to receive their benefit for the duration of the run-on period where a fixed term award of the benefit would have been due to expire during that period, and
    - will receive a decision from the Secretary of State for the period relating to presence in England or Wales if they have an ongoing claim for a DWP benefit on the date of moving permanently to Scotland.
- Regulation 2 of this instrument also includes a clause which ensures that recipients of Carer's Allowance are entitled to payment for a bereavement period of eight weeks should the person they are caring for pass away shortly before or shortly after they move to Scotland. This means they are in the same position as they would have been had they not moved to Scotland.
- Regulation 6 of this instrument is a transitional provision which will allow those subject to the case transfer process to complete it. It also ensures that claimants of Carer's Allowance who moved before 6 November 2025 retain entitlement for the period of eight weeks should the severely disabled person for whom they care have died before they move to Scotland or before they become entitled to the replacement Scottish benefit. Without this provision, there would be no bereavement period for such cases.
- Regulation 7 is a saving provision preserving the current position for certain claimants of Disability Living Allowance for whom changes consequential upon the introduction of Child Disability Payment are already in force. This is needed because the transfer of child cases was completed in 2023, and provision similar in effect to that made in this instrument was introduced for children moving cross-border from 7 July 2023.
- Regulations 8 to 10 adjust existing temporary absence regulations relating to Attendance Allowance, Personal Independence Payment and Disability Living Allowance to change reference to Great Britain to references to England and Wales.
- Regulations 11 to 15 of this instrument make corresponding provision, where relevant, in Northern Ireland legislation.

Why was this approach taken to change the law?

6.2 Section 71 of the Scotland Act 2016[4] allows the Secretary of State to make consequential provision of this nature arising from the devolution of social security and certain other powers to the Scottish Parliament. It is a regulation-making power.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no consultation on these Regulations, which are consequential on the agreements made following the Scottish Independence Referendum to devolve the benefits which they cover.

8. Applicable Guidance

8.1 Operational guidance for Department for Work and Pensions and Department for Communities staff will be updated by 6 November 2025. For the Department for Work and Pensions, the Decision Makers' Guide and Advice for Decision Makers on Gov.UK will be updated.[5] For the Department for Communities, the Decision Makers' Guide and Advice for Decision Makers on communities-ni.gov.uk will be updated.[6]

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 this is not a regulatory provision as detailed in section two of the Better Regulation Framework.[7]

9.3 The legislation does not impact small or micro businesses.

9.4 There is a small impact on the public sector because of the costs of administering cross-border cases. The one-off implementation cost will be around £0.5 million, and the annual running costs less than £0.1 million.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Work and Pensions and Department for Communities will use existing mechanisms to ensure that social security payments are made in accordance with these provisions.

10.2 The instrument does not include a statutory review clause.

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[4] https://www.legislation.gov.uk/ukpga/2016/11/contents
[5] https://www.gov.uk/government/collections/decision-makers-guide-staff-guide
[6] https://www.communities-ni.gov.uk/topics/decision-making
[7] https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This SI contains both new and correcting provisions. With respect to the latter, the Department has consulted with the SI Registrar as to whether or not to provide free replacement copies, as is conventional with correcting provisions. Following this consultation, the Department decided not to apply the procedure for free issue, on the grounds of proportionality. Only two of the eight sets of regulations, specifically the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 32), are subject to correcting provisions. These provisions clarify the language around the mechanics of the run-on. Further, these correcting provisions constitute only a small proportion of the amendments being made to those two instruments.

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”).