

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (DISABILITY ASSISTANCE, YOUNG CARER GRANTS, SHORT-TERM ASSISTANCE AND WINTER HEATING ASSISTANCE) (CONSEQUENTIAL PROVISION AND MODIFICATIONS) ORDER 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instrument

2. Purpose of the instrument

- 2.1 This instrument makes consequential amendments to social security legislation for Great Britain and Northern Ireland, and UK-wide taxation legislation to provide for the treatment of various social security payments to be made under the Social Security (Scotland) Act 2018¹ (“the 2018 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The coming into force of this instrument is the same calendar date as the coming into force of the Disability Assistance for Children and Young People Regulations made by the Scottish Ministers to introduce the Child Disability Payment, which will be the first regulations made under section 31 of the 2018 Act. This approach to commencement ensures that there is no gap in provision for recipients of Child Disability Payments. The Scottish Ministers laid draft Regulations before the Scottish Parliament on 12 February 2021, these regulations were revoked and re-laid on 26 February 2021². These regulations are due to come in to force on 26th July 2021.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 There are no matters relevant to Standing Orders Nos.83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland, except where otherwise specified.
- 4.2 The territorial application of this instrument is England and Wales, Scotland, and Northern Ireland, except where otherwise specified.

¹ 2018 asp 9. <http://www.legislation.gov.uk/asp/2018/9/contents>

² The Disability Assistance for Children and Young People (Scotland) Regulations 2021 <https://www.legislation.gov.uk/sdsi/2021/9780111049778/introduction>

5. European Convention on Human Rights

5.1 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 (Disability Assistance, Young Carer Grants, Short-term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1), 113(2), 113(3) and 113(5) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act allows consequential modifications to be made where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.
- 6.2 Under section 31 of the 2018 Act, the Scottish Government is introducing Disability Assistance for applicants ordinarily resident in Scotland, a form of financial assistance for disabled people, presently provided by the following reserved benefits: Disability Living Allowance, Personal Independence Payment and Attendance Allowance.
- 6.3 Disability Living Allowance for children (DLAC) will be replaced in Scotland by disability assistance for children and young people, known as Child Disability Payment (CDP) from July 2021.
- 6.4 Under section 30 of the 2018 Act, the Scottish Government has introduced Child Winter Heating Assistance (CWhA) for applicants ordinarily resident in Scotland. There is no corresponding provision in England, Wales or Northern Ireland.
- 6.5 Under section 28 of the 2018 Act, the Scottish Government has introduced the Young Carer Grant (YCG), which provides a new grant of £305.10 for young carers aged 16-18 who on average spend at least 16 hours per week over a 13 week period caring for someone normally paid a qualifying disability benefit.
- 6.6 Under section 36 of the 2018 Act, the Scottish Government is introducing Short-Term Assistance (STA) to individuals who have requested a redetermination of a decision under the 2018 Act to reduce or stop paying a form of ongoing assistance introduced under that Act. This provision also extends to individuals pursuing an appeal against a decision under the same circumstances. There is no equivalent in England, Wales or Northern Ireland.

Self-settlements by person expected to fall within definition of ‘disabled person’

- 6.7 The definition of a disabled person under the Inheritance Tax Act 1984³, for the purpose of post 21 March 2006 self-settlements by those expected to fall within that definition, is extended to include a person entitled to Disability Assistance.

Child Trust Funds and Individual Savings Accounts

- 6.8 The definition of a child with a terminal illness for the purpose of Individual Savings Account⁴ and Child Trust Fund⁵ withdrawals for terminally ill children is extended to

³ 1984 c. 51. <http://www.legislation.gov.uk/ukpga/1984/51/contents>

⁴ SI 1998 No. 1870 <https://www.legislation.gov.uk/uksi/1998/1870/contents>

⁵ SI 2004 No. 1450 <https://www.legislation.gov.uk/uksi/2004/1450/contents>

include a child who is regarded as terminally ill within the meaning of regulations for disability assistance for children and young people made under s. 31(2) of the 2018 Act.

Income tax and employer-provided childcare

- 6.9 The definition of a disabled child for the purposes of employer-provided childcare under the Income Tax Earnings and Pensions Act 2003⁶ is extended to include a child who is given disability assistance for children and young people.

Trusts for Disabled People

- 6.10 The definition of a disabled person for the purposes of the Finance Act 2005⁷ is extended to include people in receipt of disability assistance for children and young people, except the equivalents of the lowest rates of the care and mobility components of Disability Living Allowance.

Insurance Premium Tax

- 6.11 The exemption from Insurance Premium Tax (IPT) on insurance contracts for vehicles leased under certain conditions to disabled people for the purposes of the Finance Act 1994⁸ is extended to include people entitled to the mobility component of disability assistance for children and young people.

Vehicle Excise Duty (“road tax”)

- 6.12 The exemption from Vehicle Excise Duty (VED) for the purposes of Vehicle Excise and Registration Act 1994⁹ is extended to include a person in receipt of the higher rate of the mobility component of disability assistance for children and young people.
- 6.13 The current rules around eligibility of appointees for the purpose of exemption or discounting of VED should also apply to persons appointed by Scottish Ministers under sections 58, 85A and 85B of the Social Security (Scotland) Act 2018.

Value Added Tax

- 6.14 The zero rating of Value Added Tax (VAT) on a lease of a vehicle when certain conditions are met for the purposes of the Value Added Tax Act 1994¹⁰ is extended to include leases of vehicles to individuals entitled to the mobility component of disability assistance for children and young people.

Capital Allowances

- 6.15 For the purposes of the Capital Allowances Act 2001¹¹, hire cars for disabled persons are cars provided wholly or mainly for hire to, or the carriage of, disabled persons in the ordinary course of a trade. The definition of a ‘disabled person’ is extended to include a person in receipt of the mobility component of Disability Assistance.

⁶ 2003 c. 1. <https://www.legislation.gov.uk/ukpga/2003/1/contents>

⁷ 2005 c. 7. <http://www.legislation.gov.uk/ukpga/2005/7/contents>

⁸ 1994 c. 9. <http://www.legislation.gov.uk/ukpga/1994/9/contents>

⁹ 1994 c. 22. <http://www.legislation.gov.uk/ukpga/1994/22/made>

¹⁰ 1994 c. 23. <http://www.legislation.gov.uk/ukpga/1994/23/contents>

¹¹ 2001 c. 2. <https://www.legislation.gov.uk/ukpga/2001/2/contents>

Disability Assistance: income and capital disregards

- 6.16 As a recurring payment, Disability Assistance is to be disregarded as income and as capital (when paid as a lump sum, either by way of arrears, or as compensation for late payment) in the same way that current disability benefits in England and Wales are in a range of income-related benefits.
- 6.17 Equivalent provision is also made in respect of Northern Ireland to disregard Disability Assistance (as a recurring payment) as income and as capital (when paid as a lump sum, either by way of arrears, or as compensation for late payment), in the same way that current disability benefits in Northern Ireland are in a range of income-related benefits.

Provision in respect of Northern Ireland: income and capital disregards

- 6.18 The provisions relating to CWA, STA and YCG in respect of amendments made to the law of England and Wales and Scotland were made as part of the Social Security (Scotland) Act 2018 (Young Carer Grant, Short-Term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2020¹². This Order makes equivalent provision for Northern Ireland in respect of assistance to be given under powers conferred by sections 28, 30 and 36 of the 2018 Act.

7. Policy background

What is being done and why?

Disability Assistance

- 7.1 The Scottish Government intends that where a reserved disability benefit provides access to specialist tax treatment for trusts for disabled people, the devolved equivalent should do the same. Special provisions in the Inheritance Tax Act 1984 apply to trusts for disabled persons. The purpose of the provision is to enable trusts to be set up in lifetime for the benefit of individuals within various categories of disability without a charge to Inheritance Tax (IHT) arising. The transfer into the trust will be potentially exempt and the trust assets will be in the estate of the beneficiary for IHT purposes.
- 7.2 The special tax treatment broadly aims to tax the income and gains of the trust in the same way as if the individual beneficiary's own allowances, reliefs and rates applied (that is, as if it were a bare trust), and to ensure that for inheritance tax the 10-yearly tax charges that affect most other trusts do not apply. Essentially the aim is to reduce the tax payable by the trustees out of the trust so that funds are preserved in the trust for the benefit of the disabled person.

Accessible Vehicles and Equipment Scheme

- 7.3 The Scottish Government has developed the Accessible Vehicles and Equipment (AVE) Scheme, which permits individuals in receipt of a qualifying form of social security assistance to have that assistance paid directly to a provider of vehicles for disabled people. The Scottish Government must accredit the provider, and the intention is to ensure, as far as possible, disabled people can access affordable vehicles that support them to be independent and active citizens. It is intended that certain tax treatment of payments to providers of vehicles should be conferred under

¹² S.S.I 2020/989. <https://www.legislation.gov.uk/ukSI/2020/989/contents/made>

the AVE Scheme, as this lowers the cost of operating the scheme, and allows accredited providers to offer vehicles on affordable terms to disabled people.

- 7.4 Under the Value Added Tax Act 1994 and the Finance Act 1994, certain tax reliefs apply in relation to VAT on car leases and IPT on insurance contracts respectively to someone with a disability defined as an individual in receipt of certain mobility related payments under certain disability benefits, where the mobility payment is transferred directly to the provider.
- 7.5 The Vehicle Excise and Registration Act 1994 provides an exemption from vehicle excise duty where the registered keeper (or their appointee) of a vehicle is in receipt of a qualifying rate of a disability benefit.
- 7.6 The Capital Allowances Act 2001 provides certain benefits where cars are hired to disabled persons in that a car that falls within this definition can be treated as a short life asset (SLA). The SLA regime enables tax allowances to be brought into line with the actual depreciation of plant or machinery when an item is scrapped or sold within eight years of its acquisition. This ensures that, for providers of qualifying vehicles, the total allowances given by this point match the actual net cost to the business, providing an advantage where the allowances would otherwise be less than the net cost.

Child Winter Heating Assistance

- 7.7 The purpose of this Order is to make provision so that Child Winter Heating Assistance is not to be counted as capital for the purposes of reserved income-related benefits in Northern Ireland. It also includes provisions to ensure that these payments are not counted as income for the purposes of State Pension Credit, or Housing Benefit (for persons who have reached state pension age) in Northern Ireland. This is to ensure alignment with other provisions in these particular regulations, which include both capital and income disregards for similar types of payment. Similar provision has already been made in respect of Great Britain¹³.

Short Term Assistance

- 7.8 The purpose of this Order is to make provision so that payments of Short Term Assistance (STA) are not counted as income for the purposes of calculating reserved, income-related benefits in Northern Ireland. It also ensures that, where clients are paid a lump sum of STA (for example, by way arrears of STA, or as compensation for late payment) such payments are disregarded as capital in Northern Ireland. Similar provision has been made in respect of Great Britain¹⁴.

Young Carer Grants

- 7.9 The purpose of this Order is to make provision so that the Young Carer Grant is not to be counted as capital for the purposes of reserved income-related benefits in Northern Ireland. It also includes provisions to ensure that these payments are not counted as income for the purposes of State Pension Credit, or Housing Benefit (for persons who have reached state pension age) in Northern Ireland. This is to ensure alignment with other provisions in these particular regulations, which include both capital and income

¹³ SI 2020/989 <https://www.legislation.gov.uk/uksi/2020/989/contents/made>

¹⁴ SI 2020/989

disregards for similar types of payment. Similar provision has been made in respect of Great Britain¹⁵.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 There has been no consultation specifically on this Order. However, the Social Security in Scotland Consultation ran from 29 July to 30 October 2016¹⁶ prior to the introduction of the 2018 Act. There were 481 responses to the consultation and the majority were broadly supportive of the proposals set out in the accompanying consultation paper.

10.2 The Scottish Government consulted on the key eligibility criteria and the format of the devolved disability benefits and the Accessible Vehicles and Equipment (AVE) Scheme in the Consultation on Disability Assistance¹⁷ which ran from 5 March to 28 May 2019. The consultation received 263 responses, which were broadly supportive of the proposal set out in the accompanying consultation paper.

11. Guidance

11.1 This Order stands alone, and guidance is not necessary. The Scottish Government will publish further details about the administrative arrangements for each form of assistance. The Department for Work and Pensions (DWP) will produce guidance for reserved forms of assistance, such as guidance for local authority staff dealing with housing benefit.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order is consequential upon the 2018 Act. No formal monitoring or review is considered necessary.

¹⁵ SI 2020/989

¹⁶ <https://consult.gov.scot/social-security/social-security-in-scotland>

¹⁷ <https://consult.gov.scot/social-security/improving-disability-assistance>

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the Order does not regulate businesses”.

15. Contact

15.1 Ella Morrell at the Office of the Secretary of State for Scotland (telephone: 0207 270 6759 or email ella.morrell@scotlandoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine or Alison Evans (job share), Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.