

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (DISABILITY ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE) (CONSEQUENTIAL MODIFICATIONS) (NO. 2) ORDER 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) on behalf of the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision in consequence of the Social Security (Scotland) Act 2018¹ (“the 2018 Act”), under which Scottish Ministers are to provide Disability Assistance. The Disability Assistance for Children and Young People (Scotland) Regulations 2021 (“the DACYP Scotland Regulations 2021”)² provide for a Child Disability Payment in Scotland and come into force on 26 July 2021. This instrument is required to ensure that the Child Disability Payment is treated as a qualifying benefit for Christmas Bonus, Carer’s Allowance and Carer Credit, which are reserved matters, in the same way as Disability Living Allowance for children is currently treated.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

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 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is:

- England and Wales for Part 2
- England and Wales, and Scotland for Part 3
- Northern Ireland for Part 4.

- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

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

² S.S.I. 2021/174. <https://www.legislation.gov.uk/ssi/2021/174/contents/made>

“In my view the provisions of the Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Provision and Modifications)(No. 2) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 104 of the Scotland Act 1998³ (“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 Section 31 of the 2018 Act allows the Scottish Ministers to provide Disability Assistance which will, in time, replace the disability benefits which are currently paid by the UK Government in Scotland.
- 6.3 The UK disability benefits, or components of them, can be qualifying benefits that provide entitlement to Christmas Bonus, Carer’s Allowance and carer’s credits.
- 6.4 The first of the Scottish disability benefits that the Scottish Government is to introduce is Child Disability Payment which will replace Disability Living Allowance for children. Changes in UK legislation will need to be made to ensure that the Child Disability Payment is treated as a qualifying benefit for Christmas Bonus, Carer’s Allowance and carer’s credits in the same way as Disability Living Allowance for children is currently treated
- 6.5 The following social security legislation needs to be amended:
 - The Social Security Contributions and Benefits Act 1992⁴
 - The State Pension Regulations 2015 (S.I. 2015/173)⁵

Northern Ireland

- 6.6 Section 87 of the Northern Ireland Act 1998⁶ (“the NI 1998 Act”) places a statutory duty on the Minister for Communities and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the NI 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 6.7 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rate.
- 6.8 In accordance with the parity principle, this instrument makes, for Northern Ireland, corresponding changes to those being made for England and Wales in consequence of the run-on period of Child Disability Payment set out in regulation 36 of the DACYP (Scotland) Regulations 2021. This instrument therefore amends the following social security legislation:
 - Social Security Contributions and Benefits (Northern Ireland) Act 1992⁷
 - The State Pension Regulations (Northern Ireland) 2015⁸

³ 1998 c. 46. <http://www.legislation.gov.uk/ukpga/1998/46/contents>.

⁴ 1992 c. 4. <https://www.legislation.gov.uk/ukpga/1992/4/contents/enacted>

⁵ <https://www.legislation.gov.uk/ukdsi/2015/9780111123669>

⁶ 1998 c. 47. <https://www.legislation.gov.uk/ukpga/1998/47/contents>

⁷ 1992 c. 7. <https://www.legislation.gov.uk/ukpga/1992/7/contents>

⁸ <https://www.legislation.gov.uk/nisr/2015/315/contents>

7. Policy background

What is being done and why?

- 7.1 Section 104 of the 1998 Act allows for modifications to be made where necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament. This power ensures that reserved law and law relating to England, Wales and Northern Ireland-only is up-to-date, to help make devolution work.
- 7.2 The Scotland Act 2016⁹ devolved responsibility for certain social security benefits, and employment support, to the Scottish Parliament. Section 31 of the 2018 Act confers powers on the Scottish Government to introduce Disability Assistance which will replace the UK-wide disability benefits (Personal Independence Payment, Disability Living Allowance and Attendance Allowance) currently paid by the Department for Work and Pensions. Section 104 of the 1998 Act allows for provision to be made by UK statutory instrument in consequence of any provision made by or under an Act of the Scottish Parliament.
- 7.3 The first of the Scottish Disability Assistance support to be introduced will be the Child Disability Payment which will, in time, replace Disability Living Allowance for children in Scotland.
- 7.4 Disability Living Allowance for children is currently a qualifying benefit for the £10 Christmas Bonus which remains reserved throughout GB and is paid by DWP.
- 7.5 To be entitled to Carer's Allowance, the person being cared for must be getting a disability benefit, one of which is Disability Living Allowance. There is the possibility that a carer could be living in England or Wales and wishes to claim Carer's Allowance but the person in need of care lives in Scotland and is receiving Child Disability Payment, the Scottish replacement for Disability Living Allowance for children.
- 7.6 A Class 3 Credit towards the National Insurance contributions needed for State Pension and Bereavement Benefit is awarded to people if they are looking after one or more people for at least 20 hours a week and the person being cared for is getting a disability benefit, one of which is Disability Living Allowance.
- 7.7 The changes in this instrument ensure that the Scottish replacement Child Disability Payment can be treated as a qualifying benefit for Christmas Bonus, Carer's Allowance and carer's credit in the same way as the UK Government's Disability Living Allowance for children is currently treated.

8. European Union Withdrawal and Future Relationship

- 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 Consolidation is not required.

10. Consultation outcome

- 10.1 There has been no consultation on the proposals in this instrument.

⁹ 2016 c. 11. <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

11. Guidance

- 11.1 Guidance to DWP staff will be produced and cover procedures to ensure payment of reserved benefits to recipients of the Scottish Child Disability Payment.

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 No formal approach to monitoring or review is considered necessary.

15. Contact

- 15.1 Dave Annison at the Department for Work and Pensions, telephone 02074495377 or email: dave.annison@dwp.gov.uk or Ella Morrell at the Office of the Secretary of State for Scotland, telephone 07827254788 or email: ella.morrell@ukgovscotland.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Irvine, 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.