

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (CONSEQUENTIAL**  
**MODIFICATIONS) ORDER 2018**

**2018 No. 872**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument amends social security legislation to allow the carer's allowance supplement which is newly introduced by the Social Security (Scotland) Act 2018 (asp 9) ("the 2018 Act") to be disregarded in relation to claims for income-related benefits.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Section 104 of the Scotland Act 1998 allows consequential modifications to be made to reserved law in consequence of an Act of the Scottish Parliament.
- 4.2 Under section 81 of the 2018 Act, the Scottish Government are to pay a carer's allowance supplement.
- 4.3 This supplement is to be disregarded as income in a range of income-related benefits. The following social security legislation needs to be amended:
- Income Support (General) Regulations 1987 (S.I. 1987/1967)
  - Jobseeker's Allowance Regulations 1996 (S.I.1996/207)
  - State Pension Credit Regulations 2002 (S.I. 2002/1792)
  - Housing Benefit Regulations 2006 (S.I. 2006/213)
  - Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)
  - Employment and Support Allowance Regulations 2008 (S.I. 2008/794)

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to England, Scotland, Wales and Northern Ireland, except where otherwise specified.
- 5.2 The territorial application of this instrument is to England, Scotland, Wales and Northern Ireland, except where otherwise specified.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The Scotland Act 2016 devolved responsibility for certain welfare benefits, and employment support, to the Scottish Parliament. Section 104 of the Scotland Act 1998 allows for consequential modifications to be made to reserved law in consequence of an Act of the Scottish Parliament. This power allows UK Government to ensure that reserved law is up-to-date to make devolution work.
- 7.2 The Scottish Government has made a commitment to increase the allowance paid to carers to the same as a single person's rate of Jobseeker's Allowance for people aged not less than 25. In order to deliver the increase as soon as possible, the Scottish Government will pay a carer's allowance supplement to people in receipt of carer's allowance and living in Scotland.
- 7.3 Under the 2018 Act, the carer's allowance supplement will be paid twice-yearly to qualifying individuals in respect of each of the following periods of each financial year (a) 1 April to 30 September, and (b) 1 October to 31 March. The qualifying date in respect of each six-monthly period will be determined by the Scottish Ministers and will be a date which falls within the period to which the payment relates.
- 7.4 This supplementary payment mechanism is designed to deliver additional payments to carers as a temporary measure, during a period when DWP will deliver carer's allowance on behalf of Scottish Ministers under an agency agreement. The Scottish Government will only make these additional, supplementary payments to carers in Scotland until it makes regulations for and delivers a scheme for carer's assistance, which will replace carer's allowance for carers resident in Scotland. At that point, carers in Scotland will receive a single Scottish carer's assistance payment which will include the increase.
- 7.5 Section 55 of the Smith Commission agreement<sup>1</sup> states that "Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment."
- 7.6 Therefore the amendments in this Order ensure that the Scottish Government's carer's allowance supplement is disregarded as income in the following reserved income-related benefits: Income Support, Jobseeker's Allowance (income-based), State

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<sup>1</sup> [http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf)

Pension Credit, Employment and Support Allowance (income-related) and Housing Benefit.

- 7.7 The carer's allowance supplement will already be disregarded in Universal Credit under current rules as it is not listed as unearned income.

## **8. Consultation outcome**

- 8.1 The Scottish Government proposals to increase carer's allowance were consulted on during July to October 2016 and the analysis report of the consultation was published in March 2017<sup>2</sup>.

## **9. Guidance**

- 9.1 Guidance to DWP staff will cover procedures to deal with customer enquiries to DWP on the Scottish Government's carer's allowance supplement and also ensuring that it is disregarded in the calculation of reserved benefits.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment for the amendments in this Order has not been carried out.

## **11. Regulating small business**

- 11.1 The amendments in this Order do not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The carer's allowance supplement will cease to be paid once a scheme for carer's assistance is introduced, which will replace carer's allowance for people resident in Scotland, as that will provide for payments at the increased rate. At that point, the amendments made by these Regulations will be reviewed.

## **13. Contact**

- 13.1 Dave Annison at the Department for Work and Pensions. Telephone: 0207 449 5377 or email: [DAVE.ANNISON@DWP.GSI.GOV.UK](mailto:DAVE.ANNISON@DWP.GSI.GOV.UK) can answer any queries regarding the instrument.

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<sup>2</sup> <https://consult.gov.scot/social-security/social-security-in-scotland/>