

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (INFORMATION-SHARING**  
**AND SCOTTISH CHILD PAYMENT) (CONSEQUENTIAL PROVISION AND**  
**MODIFICATIONS) ORDER 2020**

**2020 No. 482**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) on behalf of the Office of the Secretary of State for Scotland (OSSS) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument creates a discretionary power that allows HMRC and the Scottish Ministers to share information with each other where that information is relevant to the exercise of devolved social security functions under the Social Security (Scotland) Act 2018<sup>1</sup> ("the 2018 Act"). This instrument also amends social security legislation for Great Britain as a consequence of the Scottish Child Payment, which is being introduced under the first Regulations made under section 79 of the 2018 Act. Section 79 of the 2018 Act allows the Scottish Ministers to provide by regulation for financial assistance to be given to any individual who is entitled to a reserved benefit, and who appears to require the top-up assistance in addition to the amount of reserved benefit being provided. A reserved benefit is a benefit which is to any extent a reserved matter within the meaning of schedule 5 to the Scotland Act 1998 ("the 1998 Act"). The changes in this instrument will ensure that the Scottish Child Payment is disregarded as income in reserved income-related benefits. Scottish Child Payment will also be disregarded as capital in instances where the payment is paid in arrears to a claimant.

**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 contingent upon the coming into force of Regulations made by the Scottish Ministers to introduce the Scottish Child Payment, which will be the first Regulations made under section 79 of the 2018 Act. This approach to commencement ensures that there is no gap in provision of Scottish Child Payment for Scottish residents. The Scottish Ministers intend to lay draft Scottish Child Payment Regulations before the Scottish Parliament. This instrument will come into force immediately after the Scottish Child Payment Regulations come into force.

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

<sup>2</sup> 1998 c. 46. <http://www.legislation.gov.uk/ukpga/1998/46/contents>.

*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 As the instrument is subject to negative resolution procedure 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 the United Kingdom, except where any provision amends legislation which has a different extent in which case the amending provision has the same extent as the provision being amended.

4.2 The territorial application of this instrument is the United Kingdom, except where any provision amends legislation which has a different territorial application, in which case the amending provision has the same territorial application as the provision being amended.

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

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

#### **6. Legislative Context**

6.1 Section 104 of the 1998 Act allows consequential modifications to be made to UK law where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.2 Section 79 of the 2018 Act allows the Scottish Ministers to provide for a top-up payment (the “Scottish Child Payment”) in respect of various reserved benefits.

6.3 This Payment is to be disregarded as income or, when it is paid in arrears to a claimant, as capital, in a range of income-related benefits. The following social security legislation needs to be amended:

- Income Support (General) Regulations 1987<sup>3</sup>,
- Jobseeker’s Allowance Regulations 1996<sup>4</sup>,
- State Pension Credit Regulations 2002<sup>5</sup>,
- Housing Benefit Regulations 2006<sup>6</sup>,
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>7</sup>,
- Employment and Support Allowance Regulations 2008<sup>8</sup>.

6.4 A direct legal gateway between HMRC and the Scottish Government is required to enable the sharing of information to support both Scottish Child Payment and other devolved benefits under the 2018 Act.

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<sup>3</sup> S.I. 1987/1967. <https://www.legislation.gov.uk/uksi/1987/1967>.

<sup>4</sup> S.I. 1996/207. <http://www.legislation.gov.uk/uksi/1996/207/contents>.

<sup>5</sup> S.I. 2002/1792. <http://www.legislation.gov.uk/uksi/2002/1792/contents>.

<sup>6</sup> S.I. 2006/213. <http://www.legislation.gov.uk/uksi/2006/213/contents>.

<sup>7</sup> S.I. 2006/214. <http://www.legislation.gov.uk/uksi/2006/214>.

<sup>8</sup> S.I. 2008/794. <http://www.legislation.gov.uk/uksi/2008/794/contents>.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Scotland Act 2016<sup>9</sup> devolved responsibility for certain welfare benefits, and employment support, to the Scottish Parliament. Section 79 of the 2018 Act confers powers on the Scottish Government to provide, by regulations, for top-up assistance to be paid in respect of various reserved benefits. 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.
- 7.2 The Scottish Government will introduce a new Scottish Child Payment for households with children up to the age of 16 and in receipt of a qualifying benefit. It will be paid at a rate of £10 per week, per child by Social Security Scotland.
- 7.3 In order to verify child eligibility there is a requirement for HMRC and the Scottish Ministers to share information which is relevant to the exercise of devolved social security functions under the 2018 Act. This includes sharing information with people who provide services to HMRC and the Scottish Ministers in appropriate circumstances.
- 7.4 Part 2 of this instrument contains a discretionary power to allow HMRC and the Scottish Ministers to share information with each other that is relevant to the exercise of devolved social security functions. This includes sharing information with people who provide services to HMRC and the Scottish Ministers in appropriate circumstances. Any information supplied must not be passed on without the authorisation of the information supplier. Once supplied, information may be used for any purposes for which information held for those purposes could be used. Part 2 of this instrument enables the information sharing to happen. Section 123 (unauthorised disclosure of information relating to particular persons) of the Social Security Administration Act 1992<sup>10</sup> applies to the disclosure of information under Part 2 of this instrument. This helps safeguard against inappropriate disclosure of information by any person who is or has been employed in social security administration or adjudication.
- 7.5 Section 55 of the Smith Commission agreement<sup>11</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 Part 3 of this instrument ensure that the Scottish Government’s Scottish Child Payment is disregarded as income and (in instances where Scottish Child Payment is paid in arrears) as capital in the following reserved income-related benefits: Income Support, Jobseeker’s Allowance (income-based), State Pension Credit, Employment and Support Allowance (income-related) and Housing Benefit. The Scottish Child Payment will already be disregarded in Universal Credit under current rules as it is not listed as unearned income.

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<sup>9</sup> 2016 c.11. <http://www.legislation.gov.uk/ukpga/2016/11/contents>.

<sup>10</sup> 1992 c.5. <http://www.legislation.gov.uk/ukpga/1992/5/contents>.

<sup>11</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)

## **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 No consolidation is planned.

## **10. Consultation outcome**

10.1 There has been no consultation on the specific proposals in this instrument. However, three position papers on the Scottish Child Payment have been published – in June and October 2019 and in January 2020. There has been extensive engagement with stakeholders, including the Scottish Commission on Social Security, which is an advisory non-departmental public body set up to provide independent scrutiny of the Scottish social security system (including benefit regulations) and hold the Scottish Ministers to account.

## **11. Guidance**

11.1 Guidance to DWP staff will cover procedures to deal with customer enquiries to DWP on the Scottish Government's Scottish Child Payment and also ensuring that it is disregarded in the calculation of reserved benefits.

## **12. Impact**

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

12.2 There is no impact on the public sector.

12.3 An Impact Assessment for the provisions in this instrument has not been carried out.

## **13. Regulating small business**

13.1 The amendments in this instrument do not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The Scottish Government has committed to reviewing the Scottish Child Payment during the course of the next Tackling Child Poverty Delivery Plan (2022-2026). At that point, the amendments made by this instrument will also be reviewed.

## **15. Contact**

15.1 Justine Hurst at the Office of the Secretary of State for Scotland, Telephone: 0207 270 6756 or email: [JUSTINE.HURST@SCOTLANDOFFICE.GOV.UK](mailto:JUSTINE.HURST@SCOTLANDOFFICE.GOV.UK), Dave Annison at the Department for Work and Pensions Telephone: 0207 449 5377 or email: [DAVE.ANNISON@DWP.GOV.UK](mailto:DAVE.ANNISON@DWP.GOV.UK), and Nikhil Rawell at Her Majesty's Revenue and Customs Telephone: 03000 568 222 or email: [NIKHIL.RAWELL@HMRC.GOV.UK](mailto:NIKHIL.RAWELL@HMRC.GOV.UK) can answer any queries regarding the instrument.

- 15.2 Rachel Irvine or Alison Evans (job share), Deputy Directors for Constitutional Policy at the Office of the Secretary of State for Scotland 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.