

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (YOUNG CARER GRANT, SHORT-TERM ASSISTANCE AND WINTER HEATING ASSISTANCE) (CONSEQUENTIAL PROVISION AND MODIFICATIONS) ORDER 2020

2020 No. 989

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 Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes consequential amendments to social security legislation for Great Britain 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 instrument is to be made in exercise of the powers conferred by sections 104 and 113(5) of the Scotland Act 1998² (“the 1998 Act”). The instrument is, by virtue of section 115 of, and Schedule 7 to, that Act, subject to Type G procedure, and is subject to negative resolution procedure in each House of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament.

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 England and Wales and Scotland except where otherwise specified.

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

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

4.2 The territorial application of this instrument is England and Wales and Scotland except where otherwise specified.

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 (Young Carer Grant, Short-Term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2020 are compatible with the Convention rights.”

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 This instrument amends social security legislation in Great Britain as a consequence of sections 24 (duty to give assistance), 28 (carer’s assistance), 30 (winter heating assistance), and 36 (short-term assistance) of the Social Security (Scotland) Act 2018 (asp 9) (“the 2018 Act”), and regulations made under section 28 of the 2018 Act. The regulations in relation to which consequential provision is made in this Order are the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 (S.S.I. 2019/324), made under section 28 of the 2018 Act.

Winter Heating Assistance (WHA)

6.3 The Scotland Act 2016³ (“the 2016 Act”) devolved responsibility for certain welfare benefits to the Scottish Parliament. Exception 4(c) of Reservation F1 in Schedule 5 of the 1998 Act, as inserted by section 23 of the 2016 Act, provides that the Scottish Parliament may also legislate to provide financial assistance for the purposes of meeting or reducing expenses for heating in cold weather.

6.4 Under section 30 of the 2018 Act, the Scottish Government are introducing Winter Heating Assistance for applicants ordinarily resident in Scotland. There is no corresponding provision in UK law.

Short-Term Assistance (STA)

6.5 Exception 7 of Reservation F1 in Schedule 5 of the 1998 Act, as inserted by section 26 of the 2016 Act, provides that the Scottish Parliament may legislate to provide financial or other assistance to or in respect of individuals who appear to require it for the purposes of meeting, or helping to meet, a short-term need that requires to be met to avoid a risk to the well-being of an individual.

6.6 Under section 36 of the 2018 Act, the Scottish Government are introducing short-term assistance to individuals who have requested a redetermination or appeal against a determination under the 2018 Act to reduce or stop paying another form assistance introduced under that Act. There is no corresponding provision in UK law.

³ 2016 c. 11. <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

Young Carer Grant (YCG)

- 6.7 Exception 2 of Reservation F1 in Schedule 5 of the 1998 Act, as inserted by section 22 of the 2016 Act, provides that the Scottish Parliament may legislate to provide financial assistance for carers benefits, other than a benefit which is, or which is an element of, an excluded benefit.
- 6.8 Under section 28 of the 2018 Act, the Scottish Government has introduced the Young Carer Grant, 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. There is no corresponding provision in UK law.

Income and Capital Disregards

- 6.9 Short term assistance is to be disregarded as income in a range of income-related benefits. Where claimants are paid a lump sum of short term assistance (for example, by way of arrears of short term assistance, or as compensation for late payment) such payments are also to be disregarded as capital. This instrument therefore amends the following social security legislation to provide for appropriate disregards:
- the Income Support (General) Regulations 1987⁴;
 - the Jobseeker's Allowance Regulations 1996⁵;
 - the State Pension Credit Regulations 2002⁶;
 - the Housing Benefit Regulations 2006⁷;
 - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁸;
 - the Employment and Support Allowance Regulations 2008⁹.
- 6.10 Young Carer Grant and Winter Heating Assistance are to be disregarded as capital under the same provisions. The instrument also provides for Young Carer Grants and Winter Heating Assistance to be disregarded as capital under the Universal Credit Regulations 2013¹⁰. The instrument also provides for Young Carer Grant and Winter Heating Assistance to be disregarded as income for the purposes of the State Pension Credit Regulations 2002, and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. This is to ensure alignment with other provisions in these particular regulations, which include both capital and income disregards for similar types of payment.

⁴ S.I. 1987/1967. <http://www.legislation.gov.uk/uksi/1987/1967>

⁵ S.I. 1996/207. <http://www.legislation.gov.uk/uksi/1996/207/contents>

⁶ S.I. 2002/1792. <http://www.legislation.gov.uk/uksi/2002/1792>

⁷ S.I. 2006/213. <http://www.legislation.gov.uk/uksi/2006/213/contents>

⁸ S.I. 2006/214. <http://www.legislation.gov.uk/uksi/2006/214/contents>

⁹ S.I. 2008/794. <http://www.legislation.gov.uk/uksi/2008/794>

¹⁰ S.I. 2013/376. <http://www.legislation.gov.uk/uksi/2013/376/contents>

7. Policy background

What is being done and why?

- 7.1 Section 104 of the 1998 Act allows for modifications to be made to UK law 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.

Winter Heating Assistance

- 7.2 The purpose of this instrument is to make provision so that Winter Heating Assistance is not to be counted as capital for the purposes of reserved income-related benefits. 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). As noted above, this is to ensure alignment with other provisions in these particular regulations, which include both capital and income disregards for similar types of payment.

Short Term Assistance

- 7.3 The purpose of this instrument is to make provision so that payments of short term assistance are not counted as income for the purposes of calculating reserved, income related benefits. It also ensures that, where claimants are paid a lump sum of short term assistance (for example, by way arrears of short term assistance, or as compensation for late payment) such payments are disregarded as capital.

Young Carer Grant

- 7.4 The purpose of this instrument 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. 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). As noted above, this is to ensure alignment with other provisions in these particular regulations, which include both capital and income disregards for similar types of payment.

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 instrument.

- 10.2 However, for general background it is worth noting that the Scottish Government has previously asked questions about the high level principles for the devolution of social security in the Social Security in Scotland Consultation which ran from 29 July to 30 October 2016¹¹. There were 481 responses to the consultation.
- 10.3 The Scottish Government consulted on the key eligibility criteria and the format of short-term assistance and Winter heating assistance in the Consultation on Disability Assistance¹² 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.
- 10.4 The Scottish Government also carried out a full public consultation¹³ prior to the drafting of the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019¹⁴. No consultation will be required for this instrument in respect of the Grant, as it does not change how any existing regulations work.

11. Guidance

- 11.1 This instrument stands alone, and guidance is not necessary. The Scottish Government will publish further details about the administrative arrangements for each form of assistance.

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 As the Scottish Government take on responsibility for further forms of social security benefits and payments, as set out in the 2016 Act, further consequential amendments will be made to ensure that reserved law and law relating to England, Wales and Northern Ireland only is up-to-date, to help make devolution work.
- 14.2 The UK Government and the Scottish Government will continue to work together to ensure the safe and secure transfer of devolved social security benefits.
- 14.3 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

¹¹ <https://consult.gov.scot/social-security/social-security-in-scotland>

¹² <https://consult.gov.scot/social-security/improving-disability-assistance>

¹³ <https://consult.gov.scot/social-security/consultation-on-young-carer-grant-regulations>

¹⁴ S.S.I. 2019/324. <http://www.legislation.gov.uk/ssi/2019/324/contents/made>

Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the instrument does not regulate businesses”.

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.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dave Annison at the Department for Work and Pensions Telephone: 0207 449 5377 or email dave.annison@dwp.gov.uk can be contacted with any queries regarding the DWP elements of this instrument.
- 15.3 David George at the Scottish Government Telephone: 0131 244 6212 or email david.george@gov.scot can be contacted with any queries regarding the Scottish Government elements of this instrument.
- 15.4 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.
- 15.5 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.