

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (DISABILITY ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE) (CONSEQUENTIAL MODIFICATIONS) ORDER 2021

2021 No. 786

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Under the Scotland Act 2016¹, responsibility for disability benefits in Scotland is devolved to the Scottish Parliament. Under section 31 of the Social Security (Scotland) Act 2018² (“the 2018 Act”) the Scottish Government are to introduce Disability Assistance to replace the current UK-wide disability benefits. The Disability Assistance for Children and Young People (Scotland) Regulations 2021³ (“the 2021 Regulations”) provides for child disability payment which is the first of the Disability Assistance being introduced and will, in time, replace disability living allowance for children in Scotland.
- 2.2 Child disability payment is available to children and young people residing in Scotland. However, the Scottish Government will continue to make payment of child disability payment to any child or young person who relocates from Scotland to another part of the United Kingdom for a run-on period of 13 weeks, from the date of the move.
- 2.3 The changes in this instrument will ensure that the child disability payment is treated as a qualifying benefit for DWP premiums and other payments in Scotland and for the duration of the run-on period, in reserved income-related benefits in the same way as disability living allowance for children is currently treated. They will also cover equivalent exemptions from the benefit cap as currently exist.

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 of premiums and payments in reserved benefits for recipients of child disability payment for Scottish residents.

¹ 2016 c. 11. <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

² 2018 asp 9. <https://www.legislation.gov.uk/asp/2018/9/contents>

³ S.S.I. 2021/174. <https://www.legislation.gov.uk/ssi/2021/174/contents/made>

The 2021 Regulations were made on 24th March 2021 and 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 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, 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.

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 Scotland Act 1998⁴ (“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 Social Security (Scotland) Act 2018 allows the Scottish Ministers to provide Disability Assistance which will, in time, replace the extra-needs disability benefits which are currently paid by the UK Government in Scotland.
- 6.3 The UK extra-needs disability benefits, or components of them, can be qualifying benefits that provide entitlement to premiums or additional amounts payable in reserved income-related benefits.
- 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 premiums and other payments in reserved income-related benefits in the same way as disability living allowance for children is currently treated.
- 6.5 The following social security legislation needs to be amended:
- Income Support (General) Regulations 1987 (S.I. 1987/1967)⁵
 - Jobseeker’s Allowance Regulations 1996 (S.I.1996/207)⁶
 - Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991)⁷

⁴ 1998 c. 46. <http://www.legislation.gov.uk/ukpga/1998/46/contents>.

⁵ <https://www.legislation.gov.uk/uksi/1987/1967/contents>

⁶ <https://www.legislation.gov.uk/uksi/1996/207/contents/made>

⁷ <https://www.legislation.gov.uk/uksi/1999/991/contents>

- Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (S.I. 2001/1002)⁸
- State Pension Credit Regulations 2002 (S.I. 2002/1792)⁹
- Housing Benefit Regulations 2006 (S.I.2006/213)¹⁰
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I.2006/214)¹¹
- Employment and Support Allowance Regulations 2008 (S.I.2008/794)¹²Universal Credit Regulations 2013 (S.I. 2013/376)¹³Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I. 2013/381)¹⁴Jobseeker's Allowance Regulations 2013 (S.I. 2013/378)¹⁵
- Employment and Support Allowance Regulations 2013 (S.I. 2013/378)¹⁶

Northern Ireland

- 6.6 Section 87 of the [Northern Ireland Act 1998](#)¹⁷ (“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 England and Wales, 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. This instrument therefore amends the following social security legislation:
- the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)¹⁸
 - the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (S.R. 1996 No. 198)¹⁹
 - the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 162)²⁰

⁸ <https://www.legislation.gov.uk/uksi/2001/1002/contents/made>

⁹ <https://www.legislation.gov.uk/uksi/2002/1792/contents/made>

¹⁰ <https://www.legislation.gov.uk/uksi/2006/213/contents/made>

¹¹ <https://www.legislation.gov.uk/uksi/2006/214/contents/made>

¹² <https://www.legislation.gov.uk/uksi/2008/794/contents>

¹³ <https://www.legislation.gov.uk/uksi/2013/376/contents/made>

¹⁴ <https://www.legislation.gov.uk/uksi/2013/381/contents/made>

¹⁵ <https://www.legislation.gov.uk/uksi/2013/378/contents/made>

¹⁶ <https://www.legislation.gov.uk/uksi/2013/379/contents/made>

¹⁷ 1998 c. 47. <https://www.legislation.gov.uk/ukpga/1998/47/contents>

¹⁸ <https://www.legislation.gov.uk/nisr/1987/459/made>

¹⁹ <https://www.legislation.gov.uk/nisr/1996/198/contents/made>

²⁰ <https://www.legislation.gov.uk/nisr/1999/162/contents/made>

- the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 213)²¹,
- the State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No. 28)²²
- the Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)²³
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)²⁴
- the Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280)²⁵
- the Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216)²⁶
- the Jobseeker's Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 218)²⁷,
- the Employment and Support Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 219)²⁸,
- the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 221)²⁹

Child support

- 6.9 In the calculation of Child Support, provision is made for a child maintenance liability to be varied to reflect expenses 'necessarily incurred' by virtue of a qualifying child's disability and reference is made in the definition of "disabled" to disability living allowance for children. This regulation needs to be amended to also include child disability payment. Therefore, the provisions in this instrument amend regulation 64 of the Child Support Maintenance Calculation Regulations 2012³⁰ and regulation 63 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012³¹.

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 law relating to England, Wales and Northern Ireland is up-to-date, to help make devolution work.

²¹ <https://www.legislation.gov.uk/nisr/2001/213/contents/made>

²² <https://www.legislation.gov.uk/nisr/2003/28/contents/made>

²³ <https://www.legislation.gov.uk/nisr/2006/405/contents/made>

²⁴ <https://www.legislation.gov.uk/nisr/2006/406/contents/made>

²⁵ <https://www.legislation.gov.uk/nisr/2008/280/contents/made>

²⁶ <https://www.legislation.gov.uk/nisr/2016/216/contents>

²⁷ <https://www.legislation.gov.uk/nisr/2016/218/contents>

²⁸ <https://www.legislation.gov.uk/nisr/2016/219/contents/made>

²⁹ <https://www.legislation.gov.uk/nisr/2016/221/contents>

³⁰ S.I. 2012/2677. <https://www.legislation.gov.uk/uksi/2012/2677/contents/made>

³¹ S.R. 2012 No. 427. <https://www.legislation.gov.uk/nisr/2012/427/contents/made>

- 7.2 The Scotland Act 2016 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 Ministers to introduce Disability Assistance which will replace the UK-wide extra-needs disability benefits (Personal Independence Payment, Disability Living Allowance and Attendance Allowance) currently paid by the Department for Work and Pensions. Section 104 of the Scotland Act 1998 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. As child disability payment will operate in broadly similar terms as disability living allowance for children, the Secretary of State for Work and Pensions has agreed that it can attract the same additional payments in reserved benefits.
- 7.4 Disability living allowance for children is currently a qualifying benefit for the disabled child premium in Income Support, Housing Benefit and income-based Jobseeker's Allowance. An enhanced disabled child premium is payable when the highest rate care component is payable for the child. For Pension Credit, the additional amount for a child is increased if the child or qualifying young person is entitled to disability living allowance at any rate. A further increase of the child's additional amount can be paid if the child or qualifying young person is entitled to the higher rate care component. In Universal Credit, premiums are not paid as in other reserved benefits, but an extra amount is payable for a disabled child(ren) and severe disability – called the disabled child element and the limited capability for work and work-related activity element.
- 7.5 The benefit cap is a limit on the total amount of benefit a person can get. It applies to most people aged 16 or over who have not reached State Pension age. However, the benefit cap is not applied if a person, their partner or any children under 18 living with them get disability living allowance.
- 7.6 The changes in this instrument ensure that the Scottish replacement child disability payment is treated in the same way as the UK Government's disability living allowance for children in relation to premiums in reserved benefits and the exception to the benefit cap, avoiding financial disadvantage for eligible customers residing in Scotland.
- 7.7 In certain circumstances, where a qualifying benefit is awarded retrospectively and this results in an increase in an income-related benefit, the income-related benefit may be changed retrospectively so that the additional payment starts from when entitlement to the qualifying benefit started. Changes are being made in this instrument so that these provisions can also be applied where that qualifying benefit is child disability payment.

8. Consultation outcome

- 8.1 There has been no consultation on the proposals in this order.

9. Guidance

- 9.1 Guidance to DWP staff will be produced and cover procedures to ensure premiums are paid in reserved benefits to recipients of the Scottish child disability payment.

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 provisions 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 entitlement to, and payment of, premiums on income-related benefits is entirely a reserved matter. The UK Government retains the right to keep this policy under review in light of any significant policy or operational divergence in Scottish child disability payment.
- 12.2 As the Scottish Government introduces further Disability Assistance to replace the Personal Independence Payment and Attendance Allowance, further consequential amendments may also be needed to ensure that reserved law is up-to-date.
- 12.3 The UK Government and the Scottish Government will continue to work together to ensure the safe and secure transfer of devolved welfare benefits.

13. Contact

- 13.1 Dave Annison at the Department for Work and Pensions Telephone: 02074495377 or email: DAVE.ANNISON@DWP.GOV.UK and Helena Brice at the Office of the Secretary of State for Scotland Telephone: 07770 735992 or email: helena.brice1@ukgovscotland.gov.uk. Anne McCleary at the Department for Communities in Northern Ireland (anne.mccleary@communities-ni.gov.uk) can be contacted with any queries regarding the parts of this instrument relating to Northern Ireland.
- 13.2 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.
- 13.3 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.