

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (INFORMATION-SHARING AND DISABILITY ASSISTANCE) (CONSEQUENTIAL PROVISION AND MODIFICATIONS) ORDER 2021

2021 No. 1188

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 The instrument makes provision in consequence of the Social Security (Scotland) Act 2018¹ (the 2018 Act) and regulations made under it. This instrument provides a legal gateway for the sharing of information relevant to devolved Scottish social security functions between the Scottish Ministers and the Secretary of State (in practice, the Secretary of State for Transport), and the Scottish Ministers and the Northern Ireland Department for Communities.
- 2.2 It also amends motor vehicles, electoral, and social security regulations as a consequence of the provision of disability assistance for children and young people in accordance with regulations made under section 31 of the 2018 Act.
- 2.3 The legal gateways and consequential modifications are necessary to ensure that devolved forms of social security across the UK can function properly and coherently for the continued benefit of individuals in Scotland and elsewhere in the UK, and to ensure the appropriate management of public funds.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 information-sharing provisions with the Secretary of State for Transport (in practice, the Driver and Vehicle Licensing Agency (DVLA)) extend to England and Wales and to Scotland.
- 4.3 The information-sharing provisions with the Northern Ireland Department for Communities (DfC) extend to Scotland and to Northern Ireland.
- 4.4 Where a provision is amended, the amending provision has the same extent as the provision being amended.
- 4.5 The territorial application of this instrument is the same as its extent.

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

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is made in exercise of the powers conferred by sections 104, 112(1), 113(2), 113(3) and 113(5) of the Scotland Act 1998² (the 1998 Act). Section 104 of the 1998 Act allows consequential modifications to be made where necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament. The Scotland Act 2016³ devolved responsibility for certain welfare benefits to the Scottish Parliament.
- 6.2 Scottish Ministers are introducing disability assistance for children and young people for applicants ordinarily resident in Scotland in accordance with regulations made under section 31 of the 2018 Act. Disability assistance for children and young people (known as Child Disability Payment) replaced Disability Living Allowance for children in July 2021.

Information-sharing with the Driver and Vehicle Licensing Agency

- 6.3 The DVLA is responsible for issuing driving licences and administering vehicle tax. Individuals in receipt of Disability Living Allowance at the higher rate component, or Personal Independence Payment which includes the mobility component at the enhanced rate, are eligible to apply to the DVLA for a driving licence for small vehicles at an earlier age (16 years) than others. Individuals may also be exempted from their vehicle tax liability if they are in receipt of Disability Living Allowance at the higher rate mobility component or Personal Independence Payment at the enhanced rate mobility component.
- 6.4 In order for individuals in Scotland who receive Scottish disability benefits to be able to continue having access to these DVLA benefits, it is necessary to amend relevant regulations to recognise disability assistance for children and young people as a qualifying benefit alongside Disability Living Allowance.
- 6.5 This instrument therefore amends regulation 9 of the Motor Vehicles (Driving Licences) Regulations 1999⁴ to include disability assistance for children and young people as a qualifying benefit.
- 6.6 Amendments to the Vehicle Excise and Registration Act 1994⁵ that are necessary for individuals in Scotland to continue accessing vehicle tax exemptions are made by the Social Security (Scotland) Act 2018 (Disability Assistance, Young Carer Grants, Short-term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2021⁶.
- 6.7 In addition to the necessary consequential modifications, legal gateways are needed to enable the DVLA to request confirmation from the Scottish Ministers about whether an individual who has applied for an early driving licence or vehicle tax exemption is

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

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

⁴ 1999 No. 2864. <https://www.legislation.gov.uk/uksi/1999/2864/contents>

⁵ 1994 c. 22. <https://www.legislation.gov.uk/ukpga/1994/22/contents>

⁶ 2021 No. 886. <https://www.legislation.gov.uk/uksi/2021/886/contents/made>

in receipt of the necessary component and level of disability assistance for children and young people.

- 6.8 This instrument therefore provides the Scottish Ministers with a legal gateway to share information about individuals with the DVLA, and vice versa, for the purpose of confirming the component(s) of disability assistance for children and young people of which an individual is in receipt, and the level at which they are paid.

Information-sharing with the Northern Ireland Department for Communities

- 6.9 DfC provides social security benefits to individuals in Northern Ireland in accordance with the Welfare Reform Act 2012⁷ and Welfare Reform (Northern Ireland) Order 2015⁸.
- 6.10 Legislation exists to enable DfC to share social security information with other relevant government departments, such as section 127 of the Welfare Reform Act 2012, which enables DfC to share information with HMRC for prescribed functions related to social security and taxes. However, no legal gateway currently exists for information sharing between DfC and the Scottish Ministers.
- 6.11 This instrument therefore provides for information sharing to take place between DfC and the Scottish Ministers for functions specifically related to social security. It will enable the exchange of information as to when an individual has stopped receiving benefits in Northern Ireland or, as the case may be, Scotland, or as to certain one-off payments which they may have had in either Scotland or Northern Ireland.

Consequential provisions for proxy votes and signing recall petitions by proxy

- 6.12 Under regulation 53 of the Representation of the People (Scotland) Regulations 2001⁹, an individual may apply to vote by proxy on grounds of blindness or any other disability. Applications for such generally require attestation from an individual who meets certain conditions set by the Regulations, however attestation is not required if the applicant is registered blind or in receipt of the higher rate mobility component of Disability Living Allowance. Equivalent provision is made by regulation 53 of the Representation of the People (England and Wales) Regulations 2001¹⁰ and regulation 57 of the Representation of the People (Northern Ireland) Regulations 2008¹¹.
- 6.13 Similar provision exists in regulations 64 and 65 of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016¹², enabling individuals in receipt of the higher rate mobility component of Disability Living Allowance to apply to sign a petition for recall of an MP by proxy, on grounds of their disability or blindness, without requiring attestation.
- 6.14 These Regulations require consequential modifications to ensure the voting rights of eligible individuals in Scotland, in relation to applying for proxy votes, and for signing recall petitions by proxy, are not diminished by the introduction of disability assistance for children and young people.
- 6.15 Eligible individuals include those who are 16 in relation to Scottish Parliament, Senedd Cymru, and local government elections in Scotland and Wales, those who are

⁷ 2012 c. 5. <https://www.legislation.gov.uk/ukpga/2012/5/contents>

⁸ 2015 No. 2006 (N.I. 1). <https://www.legislation.gov.uk/nisi/2015/2006/contents>

⁹ 2001 No. 497 (S. 2). <https://www.legislation.gov.uk/ukxi/2001/497/contents/made>

¹⁰ 2001 No. 341. <https://www.legislation.gov.uk/ukxi/2001/341/contents/made>

¹¹ 2008 No. 1741. <https://www.legislation.gov.uk/ukxi/2008/1741/contents/made>

¹² 2016 No. 295. <https://www.legislation.gov.uk/ukxi/2016/295/contents/made>

18 in relation to UK Parliament elections and local elections in England and Northern Ireland, and those who turn 18 before the end of the signing period in relation to signing the recall petition by proxy.

- 6.16 Although disability assistance for children and young people is only available to individuals who are under the age of 18, where an individual moves elsewhere within the UK whilst awaiting for their entitlement to another benefit to be determined, this individual will continue to receive disability assistance for children and young people for a period of 13 weeks from the date of move. Furthermore, individuals who are 17 are able to make an application to vote by proxy before the relevant election, so long as they are 18 on the day of the UK Parliament election or the local election in England or Northern Ireland.
- 6.17 This instrument therefore provides for eligible individuals to apply for proxy votes and signing recall petitions by proxy without attestation if they are in receipt of the mobility component of disability assistance for children and young people at the higher rate.

Consequential provisions for the benefit cap

- 6.18 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.
- 6.19 The changes in this instrument ensure that the Scottish replacement Child Disability Payment is treated in the same way as Disability Living Allowance elsewhere in the UK for children in relation to the exception to the benefit cap so that when an individual is entitled to Child Disability Payment, but is not in receipt of it because they are in a care home, the exception to the benefit cap continues to apply.

7. Policy background

What is being done and why?

- 7.1 The Scottish and UK governments are committed to ensuring the transfer of executive competence for social security to the Scottish Ministers does not cause any disadvantage to individuals in Scotland or elsewhere in the UK.
- 7.2 Information sharing between government departments is necessary for the proper functioning of social security and other services that rely on social security information to varying extents, and the appropriate management of public funds.
- 7.3 In the current social security landscape, necessary information sharing takes place between DWP and other relevant government departments to enable these bodies to deliver their services and manage public funds appropriately and lawfully.
- 7.4 Following the introduction of disability assistance for children and young people in July 2021, responsibility for information about individuals in Scotland receiving Scottish disability benefits transferred from DWP to the Scottish Ministers.
- 7.5 This instrument does not aim to introduce any novel information sharing. It only provides for the information sharing that already happens between DWP, DVLA and DfC to continue without interruption between the Scottish Ministers, DVLA and DfC in relation to delivering disability assistance for children and young people and other benefits under the 2018 Act.

7.6 Furthermore, the consequential modifications and provisions in this instrument do not introduce any novel entitlements or services. They only add disability assistance for children and young people to the eligibility criteria of relevant services and benefits to ensure that individuals in Scotland do not become ineligible for these services and benefits when disability assistance for children and young people is introduced.

7.7 Without legislative provisions to enable relevant information sharing within this context, the delivery of disability assistance for children and young people by the Scottish Ministers, to replace the equivalent DWP benefits, would cause an interruption in necessary information sharing, as the existing legal gateways for information sharing between DWP and other relevant government departments will not transfer to the Scottish Ministers. This would cause individuals in Scotland and individuals in Northern Ireland who move to Scotland to become disadvantaged, as the Scottish Ministers, DVLA and DfC would be unable to properly provide services that require information sharing between them, such as processing benefit applications from individuals who have recently moved to another part of the UK, or applications for a vehicle tax exemption on grounds of receipt of a disability benefit.

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 Not applicable.

10. Consultation outcome

10.1 A consultation on Social Security in Scotland¹³ ran from 29 July to 30 October 2016 prior to the introduction of the 2018 Act. There were 481 responses to the consultation and the majority were broadly supportive of the proposals set out in the accompanying consultation paper.

11. Guidance

11.1 This instrument stands alone and guidance is not necessary.

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 A full 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 monitoring or review is considered necessary.

¹³ <https://consult.gov.scot/social-security/social-security-in-scotland>

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: “There is no need for review or monitoring as the Order does not regulate businesses.

15. Contact

15.1 Ella Morrell at the Office of the Secretary of State for Scotland (telephone: 07827 254788 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.