

## EXPLANATORY MEMORANDUM TO

### THE SOCIAL SECURITY (DISABILITY ASSISTANCE FOR WORKING AGE PEOPLE) (CONSEQUENTIAL AMENDMENTS) ORDER 2022

2022 No. 177

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions 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 section 31 of the Social Security (Scotland) Act 2018<sup>1</sup> (“the 2018 Act”) the Scottish Government is to introduce Disability Assistance to replace Attendance Allowance, Disability Living Allowance (DLA) and Personal Independence Payment (PIP). The Disability Assistance for Working Age People (Scotland) Regulations 2022<sup>2</sup> (“the 2022 Regulations”) provide for an Adult Disability Payment (ADP) which will replace PIP in Scotland. It will also be payable to any 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.
- 2.2 This Order provides that reserved income-related benefits will take account of ADP in the same way as PIP for purposes such as giving rise to additional amounts in respect of disability, and exemption from the benefit cap. This Order also contains some technical amendments covering the introduction of ADP.
- 2.3 The instrument also corrects minor typographical errors in the Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) Order 2021 (SI 2021/786)<sup>3</sup>.
- 2.4 The procedure for free issue of this Order has been applied and this Order is being issued free of charge to all known recipients of the Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) Order 2021 (SI 2021/786).

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

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

- 3.1 This Order comes into force on the same day as the Scottish Government’s 2022 Regulations which will be 21 March 2022. This ensures continuity of provision for benefit recipients in Scotland.

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

<sup>2</sup> The Disability Assistance for Working Age People (Scotland) Regulations 2022 <https://www.legislation.gov.uk/ssi/2022/54/contents/made>

<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2021/786/contents/made>

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland.
- 4.2 The territorial application of this instrument is the same as its extent.

#### **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 1998<sup>4</sup> (“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-costs disability benefits which are currently delivered by the UK Government in Scotland. These disability benefits, or components of them, can be qualifying benefits to determine entitlement to premiums or additional amounts payable in reserved income-related benefits.
- 6.3 ADP will replace PIP from March 2022 in Scotland. Changes in UK legislation will need to be made to ensure that ADP is treated as a qualifying benefit for additional payments in reserved income-related benefits in the same way as PIP is currently treated.
- 6.4 The following social security legislation needs to be amended:
- Income Support (General) Regulations 1987<sup>5</sup>
  - Social Security (Claims and Payments) Regulations 1987<sup>6</sup>
  - Jobseeker’s Allowance Regulations 1996<sup>7</sup>
  - Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>8</sup>
  - Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>9</sup>
  - State Pension Credit Regulations 2002<sup>10</sup>
  - Housing Benefit Regulations 2006<sup>11</sup>
  - Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>12</sup>
  - Employment and Support Allowance Regulations 2008<sup>13</sup>

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

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

<sup>6</sup> <https://www.legislation.gov.uk/uksi/1987/1968/contents>

<sup>7</sup> <https://www.legislation.gov.uk/uksi/1996/207/contents/made>

<sup>8</sup> <https://www.legislation.gov.uk/uksi/1999/991/contents>

<sup>9</sup> <https://www.legislation.gov.uk/uksi/2001/1002/contents/made>

<sup>10</sup> <https://www.legislation.gov.uk/uksi/2002/1792/contents/made>

<sup>11</sup> <https://www.legislation.gov.uk/uksi/2006/213/contents/made>

<sup>12</sup> <https://www.legislation.gov.uk/uksi/2006/214/contents/made>

<sup>13</sup> <https://www.legislation.gov.uk/uksi/2008/794/contents>

- Universal Credit Regulations 2013<sup>14</sup>
- Jobseeker’s Allowance Regulations 2013<sup>15</sup>
- Employment and Support Allowance Regulations 2013<sup>16</sup>
- Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013<sup>17</sup>

### *Northern Ireland*

6.5 Social security is a transferred matter in Northern Ireland. However, an Order under section 104 of the 1998 Act allows for amendments to be made by the UK Government on behalf of the Northern Ireland Assembly. The relevant Northern Ireland Minister has asked that the UK Government make such provision. This instrument therefore makes corresponding changes to those being made for England and Wales in consequence of the 13-week run-on period of ADP. This instrument amends the following social security legislation:

- Income Support (General) Regulations (Northern Ireland) 1987<sup>18</sup>
- Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>19</sup>
- Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>20</sup>
- Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001<sup>21</sup>,
- State Pension Credit Regulations (Northern Ireland) 2003<sup>22</sup>
- Housing Benefit Regulations (Northern Ireland) 2006<sup>23</sup>
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006<sup>24</sup>
- Employment and Support Allowance Regulations (Northern Ireland) 2008<sup>25</sup>
- Universal Credit Regulations (Northern Ireland) 2016<sup>26</sup>
- Jobseeker’s Allowance Regulations (Northern Ireland) 2016<sup>27</sup>,
- Employment and Support Allowance Regulations (Northern Ireland) 2016<sup>28</sup>,
- 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)<sup>29</sup>

<sup>14</sup> <https://www.legislation.gov.uk/uksi/2013/376/contents/made>

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

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

<sup>17</sup> <https://www.legislation.gov.uk/uksi/2013/381/contents/made>

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

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

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

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

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

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

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

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

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

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

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

### *Child maintenance*

- 6.6 Child maintenance legislation allows for additional financial factors to be taken into account which are not captured in the usual maintenance calculation; this is known as a variation to the maintenance calculation. Where a non-resident parent (“NRP”) is liable to pay child maintenance for a qualifying child, the NRP can apply for a variation to have their child maintenance liability reduced on grounds that they have special expenses. Where the NRP has necessarily incurred certain expenses for a long-term illness or disability of a relevant other child (“ROC”), those expenses can be taken into account in the maintenance calculation. A ROC is a child other than a qualifying child, for whom the NRP or their partner receives child benefit. It can also include a child for whom the NRP or their partner would receive child benefit but for the fact that the rules about presence in Great Britain are not met, or the NRP or their partner have elected not to receive child benefit.
- 6.7 A ROC is considered disabled if the daily living component of PIP is paid in respect of the ROC or they would receive the PIP daily living component but for the fact that they are in hospital. This instrument amends child maintenance legislation to include ADP. The amendments apply to regulation 64 of the Child Support Maintenance Calculation Regulations 2012<sup>30</sup> and regulation 63 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012<sup>31</sup>.

### *Linking rules for Disability Living Allowance and Personal Independence Payment*

- 6.8 The changes in this instrument also ensure that claimants who move to England, Wales or Northern Ireland following a period in receipt of Child Disability Payment (which has replaced Disability Living Allowance for children) or ADP are treated in a similar way to those who return to DLA or PIP after a previous period in receipt of it. The changes also allow for a certain degree of recognition of an existing award of CDP or ADP in a claim to DLA or PIP. This instrument therefore amends the following social security legislation:

- Social Security (Disability Living Allowance) Regulations 1991<sup>32</sup>
- Social Security (Personal Independence Payment) Regulations 2013<sup>33</sup>

The equivalent Northern Ireland Legislation is also amended:

- Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992<sup>34</sup>
- Personal Independence Payment Regulations (Northern Ireland) 2016<sup>35</sup>

## **7. Policy background**

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

- 7.1 The Scotland Act 2016 devolved responsibility for certain social security benefits, and employment support, to the Scottish Parliament. Section 31 of the Social Security (Scotland) Act 2018 (the 2018 Act) confers powers on the Scottish Ministers to

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

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

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

<sup>32</sup> <https://www.legislation.gov.uk/ukxi/1991/2890/contents>

<sup>33</sup> <https://www.legislation.gov.uk/ukxi/2013/377/contents>

<sup>34</sup> <https://www.legislation.gov.uk/nisr/1992/32/contents/made>

<sup>35</sup> <https://www.legislation.gov.uk/nisr/2016/217/contents/made>

introduce Disability Assistance. ADP will replace PIP in Scotland. The policy intention is that for the immediate term ADP will be treated in the same way as PIP for reserved benefits. This instrument provides that ADP fulfils the same role as PIP in relation to the additional payments and exemptions in reserved benefits.

- 7.2 PIP is currently a qualifying benefit for the enhanced disability and severe disability premiums, as well as the disability and child disability equivalents, in Income Support, Housing Benefit and income-based Jobseeker's Allowance. In income-related Employment and Support Allowance PIP is currently a qualifying benefit for the enhanced and severe disability premium. The enhanced disability premium is payable when the claimant is in the Support Group or receives the enhanced daily living component of PIP. The severe disability premium is payable when the claimant lives alone or can be treated as living alone and receives the standard or enhanced rate of the daily living component of PIP and no one receives Carer's Allowance or the additional amount for caring in Universal Credit for looking after them. Pension Credit can include an extra amount for severe disability in its Guarantee Credit element where there is a qualifying benefit present. Currently this includes the daily living component of PIP for the claimant or partner. Where the claimant is responsible for a child or qualifying young person in receipt of PIP, an extra amount for a disabled child may be payable.
- 7.3 Provisions in the Universal Credit Regulations 2013 which refers to PIP are amended to include a reference to adult disability payment. For example, there is provision for a person who has reached State Pension age and receives PIP to be treated as having limited capability for work. There are also other aspects of Universal Credit which are linked to receipt of PIP, including the amount payable by way of child element and certain exceptions to the requirement not to be in education.
- 7.4 The benefit cap is a limit on the total amount of benefits a household can receive. The benefit cap aims to provide fairness for taxpayers, encouraging people to move into work, where possible. There are, however, exemptions where the cap is not applied, for example, where a member of the household is in receipt of certain other benefits, such as PIP. This ensures the most vulnerable are supported.
- 7.5 Other than for people who are terminally ill, entitlement to DLA or PIP is restricted to those who have needs arising from a long-term health condition or disability. To establish that someone's condition is long-term, people must have had needs arising from that condition for three months and be expected to have those needs for a further prospective period before they can begin to be paid. Where someone previously in receipt of DLA or PIP makes a new claim within two years (or one year if they are over State Pension age at the time they make their new claim) of the end of their previous award, they are not required to re-serve the three-month qualifying period (known as "the linking rule"). This is primarily to recognise conditions which can be subject to periods of remission followed by a deterioration. Changes in this instrument ensure that claimants who move to England or Wales following a previous period in receipt of ADP can access the linking rule for PIP.
- 7.6 For these recipients of ADP moving to England, Wales, or Northern Ireland with an existing award in place they will not be required to re-serve the three month qualifying period when they claim PIP.
- 7.7 The amendments in this Order also cover similar situations relating to a child or young person who has been receiving CDP if they need to claim DLA.

7.8 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 ADP.

## **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 The regulations will be consolidated in due course within the published legislation at [www.legislation.gov](http://www.legislation.gov). In Northern Ireland they will be informally consolidated in the Law relating to Social Security (Northern Ireland) or (“Blue Volumes”). It will be available to the public at no cost via the internet at: <https://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx>

## **10. Consultation outcome**

10.1 In March 2021, the Scottish Government carried out a consultation on ADP.<sup>36</sup> There has been no separate consultation on the amendments in this order as they ensure that receipts of ADP in Scotland are treated the same in reserved benefits as people in England and Wales.

## **11. Guidance**

11.1 Relevant guidance will be provided to DWP and local authority staff. Social Security Scotland will be responsible for providing guidance to its own staff.

## **12. Impact**

12.1 There is 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 as the amendments in this Order ensure that receipts of ADP are treated the same as people in England and Wales who are receiving PIP or DLA.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The entitlement to, and payment of additional amounts in income-related benefits is a reserved matter. The UK Government will keep this policy under review taking account of developments in both the reserved and devolved benefit landscapes.

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<sup>36</sup> <https://consult.gov.scot/social-security/adult-disability-payment-regulations/>

## **15. Contact**

- 15.1 Dave Annison at the Department for Work and Pensions ([DAVE.ANNISON@DWP.GOV.UK](mailto:DAVE.ANNISON@DWP.GOV.UK)) or, with respect to Northern Ireland, Anne McCleary at the Department for Communities ([anne.mccleary@communities-ni.gov.uk](mailto:anne.mccleary@communities-ni.gov.uk)).
- 15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and Carer's Allowance at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Disabled People, Health and Work at the Department for Work and Pensions, Chloe Smith MP, can confirm that this Explanatory Memorandum meets the required standard.