

POLICY NOTE

The Social Security (Cross-border Provision, Case Transfer and Miscellaneous Amendment) (Scotland) Regulations 2025

SSI 20XX/XXX

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988, section 175(4) of the Social Security Contributions and Benefits Act 1992 and sections 28(2), 31(2), 32(2), 52, 81(8) and 95 of the Social Security (Scotland) Act 2018 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Summary Box

These regulations will amend the Child Disability Payment (CDP), Adult Disability Payment (ADP), Pension Age Disability Payment (PADP) and Carer Support Payment (CSP) regulations so that people moving to Scotland from the rest of the UK who have been in receipt of a corresponding benefit from the Department for Work and Pensions (England and Wales) or the Department for Communities (Northern Ireland) will need to make a new application for a corresponding Social Security Scotland benefit. [Scottish Adult Disability Living Allowance (Scottish Adult DLA) regulations will also be amended to provide a new system for awards to be made for eligible adults who move to Scotland from the rest of the UK while in receipt of DLA.] Anyone who moves to Scotland, and notifies Scottish Ministers of their move before these regulations come into force, can still be transferred without needing to make a new application. People who move before coming to force date, but notify Scottish Ministers after that date, have 26 weeks from the CIF date to make a new application

[These regulations will also revoke case transfer provisions for the above benefits. The case transfer provisions will still apply for anyone who has already started the case transfer journey when these regulations come into force, as will provisions which allow for post-transfer determinations on entitlement to be made.]

This instrument will also be used to make other miscellaneous amendments, primarily to residence and presence conditions, to update references to international social security coordination agreements and to revoke provisions relating to the initial period of applications.

Policy Objectives

New Cross Border Journey

The CDP, ADP, PADP and CSP regulations are being amended to remove the regulations requiring a determination without application when individuals move to Scotland from the rest of the UK, and they are paid a corresponding Department for Work and Pensions (DWP) / Department for Communities (DfC) benefit in the rest of the UK. Instead, we will require these individuals to make a new application. [For CSP, this will include amendments to ensure that support through Scottish Carer Supplement (SCS) and Carer Additional Person

Payment (CAPP) can be paid to eligible carers during the 13-week run on of Carer's Allowance]. [For Scottish Adult DLA, we will not require individuals to make a new application when they move to Scotland from the rest of the UK with an award of DLA. Instead, individuals will request that Scottish Ministers make a determination of their entitlement to Scottish Adult DLA. This request must be made to Scottish Ministers in such form, and accompanied by such evidence, as the Scottish Ministers require. Scottish Ministers must then make a determination of an individual's entitlement to Scottish Adult DLA. This different process is required because new applications are not available for Scottish Adult DLA.]

We have defined cross-border clients as individuals who submit their name and date of birth within 26 weeks of the date of move and then complete the application within 6 or 8 weeks of that. Clients in this position will be able to have their awards begin from the day after the end of entitlement date of their previous award. Those who don't meet that period will be treated in the same way as those making fresh applications. People over state pension age who were in receipt of PIP or DLA will be able to access the mobility component for ADP or Scottish Adult DLA at the rate of the mobility component the person received in PIP or DLA.

The aim of the proposed changes to the ADP, CDP, CSP, PADP [and Scottish Adult DLA] regulations for cross-border movers is to ensure that where applications are made within certain timescales, the transition between DWP/DfC and Social Security Scotland benefits will be smooth. While people moving to Scotland from the rest of the UK will no longer be able to receive a determination without application, we want to ensure that people have their awards set up accurately from the beginning, in the most straightforward way possible. We want to design the process to minimise the risk of gaps in payments for people, while also minimising the risk of continuing awards made in error by other bodies. We recognise that there are unintended consequences for SCS and CAPP with this solution, because carers require to be receiving CSP to access both SCS and CAPP. By applying a 13-week run on of Carers Allowance, this excludes carers who are living in Scotland from accessing support through these additional components. These provisions will therefore also provide for carers who have moved from the rest of the UK to Scotland, are/have received a 13-week run on of CA to access support through SCS and CAPP, if they apply within 26 weeks from the date in which they moved.

[Case transfer revocation

These regulations will revoke case transfer provisions for CDP, ADP, PADP, CSP and Scottish Adult DLA as the functionality to transfer data between the DWP and Social Security Scotland will no longer be available after these regulations come into force. Anyone who has started the transfer process before these regulations come into force will be able to complete the process. Coming into force is staggered to take account of the different end dates of case transfer for each benefit.

This instrument will also make amendments to cover the potential situation where an individual should have had their award transferred but did not. Anyone who remains on the equivalent DWP benefits after the CIF date, will be required to apply for the relevant Social Security Scotland benefit.

We have saved several case transfer provisions that will need to be maintained, such as provisions for review determinations after transfer, or those that require a determination without application where the previous DWP-administered award is retroactively changed.]

Miscellaneous amendments

Advance applications for Carer Support Payment

These regulations also amend the provision in CSP regulations regarding when an application is treated as made. Amendments provide that if, before making a determination on an application for CSP, it is considered that individual is not eligible on the date the application was made, but is likely to be entitled on a date within 13 weeks of that date, their application can be treated as having been made on that later date. This is intended to allow clients to apply in advance for CSP, including as part of the new cross-border process being introduced by these regulations. Clients will be able to apply for CSP/SCS and CAPP while still in receipt of CA to help reduce the risk of a gap in support between the two benefits.

In addition to cross-border [and case transfer] amendments, these regulations amend CDP, ADP, PADP, CSP, Young Carer Grant (YCG) and Carer's Allowance Supplement (CAS) to include references to the 2024 social security agreement between the UK and Gibraltar, to make clear that people covered by this agreement are covered by the regulations.

We have also made amendments to the Best Start Foods (BSF) and Best Start Grant (BSG) regulations to make clear that applicants to the EU settlement scheme and joining family members in the first three months of residence are entitled to apply. This is currently provided for by direct effect of the UK-EU Withdrawal Agreement. We have also amended the BSG regulations to revoke references to redundant EU law.

The regulations also include amendments for CDP, ADP, PADP and Scottish Adult DLA to ensure that where a person has continually disengaged with requests for information made under section 54 of the 2018 Act and is found to be no longer entitled to assistance following a period of suspension, the award can be ended at the date of the suspension. This will apply to both scheduled reviews and determinations on the basis of a change of circumstances, where an individual has continued to not engage with a section 54 request for information, leading to the suspension of their entitlement (under section 54(1A)) and subsequent ending of entitlement (under section 54(2)). This will mean that no payment is due to the individual for the period of suspension. Respective provision is also made to amend the Scottish Child Payment (SCP) Regulations for where information has been requested under paragraph 25 of the schedule.

Finally, we are revoking provisions relating to the initial period of applications for disability benefits, as these are no longer required.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

[statement to be added prior to laying]

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-

ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

[Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on a draft of these regulations. The Scottish Government provided SCoSS with the draft regulations and an accompanying policy note on 3 January 2025. The Scottish Government considered it appropriate to request SCoSS' scrutiny of the entirety of the draft Regulations, rather than limiting the request to the specific regulations that fall under section 97 of the 2018 Act. SCoSS published its scrutiny report on XX, making X recommendations and X observations in relation to the draft regulations. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.]

Impact Assessments

[Full Equality Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Business and Regulatory Impact Assessment, Data Protection Impact Assessment, and Children's Rights and Wellbeing Impact Assessment, were published at the same time as the principal regulations for each of the impacted benefits.

An Equality Impact Assessment, a Fairer Scotland Duty Assessment and a Children's Rights and Wellbeing Impact Assessment are to be published with laid regulations. An update to the Data Protection Impact Assessment was not undertaken because the impacts on the use of personal data are covered by considerations in the previously published assessments for the individual benefits.]

Financial Effects

The Cabinet Secretary for Social Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

[date]