

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 2016 (TRANSITIONAL) (AMENDMENT) REGULATIONS
2019

2019 No. 1439

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions on behalf of 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 This instrument makes amendments to the Scotland Act 2016 (Transitional) Regulations 2017¹ to avoid early unintended transfer of executive competence for disability benefits to the Scottish Government. It also makes a minor consequential amendment to the transitional regulations which is described in more detail at 7.2 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 to the United Kingdom.
4.2 The territorial application of this instrument is to the United Kingdom.

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 The Scotland Act 2016 (Commencement No.5) Regulations 2017² commenced sections 22 and 23 in Part 3(welfare benefits and employment support) of the Scotland Act 2016³. Sections 22 and 23 insert exceptions 1, 2 and 4 in Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998⁴.

¹ <http://www.legislation.gov.uk/uksi/2017/444/contents/made>

² <http://www.legislation.gov.uk/uksi/2017/455/contents/made>

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

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

- 6.2 Transitional provisions in the Scotland Act 2016 (Transitional) Regulations 2017 (“the Transitional Regulations”) modified the application of section 53 of the Scotland Act 1998 so that Ministerial functions in relation to exceptions 1 and 2 remain with a Minister of the Crown until 31 March 2020.
- 6.3 In certain circumstances, the modifications to the application of section 53 may cease to apply earlier. This includes if, prior to 31 March 2020, a provision in an Act of the Scottish Parliament, which is within legislative competence by virtue of the exception in section F1 in Part 2 of Schedule 5 to the Scotland Act 1998, is commenced, in which case the transitional period would end and the related Ministerial functions would automatically transfer to Scottish Ministers.
- 6.4 Under sections 1,2, 21 and 22 and Schedule 1 of the Social Security (Scotland) Act 2018⁵, the Scottish Government has legislated for a Scottish Commission on Social Security⁶ which will provide independent scrutiny of the Scottish social security system.
- 6.5 Before the Commission can scrutinise the Scottish Government’s regulations for devolved disability benefits prior to them being considered by the Scottish Parliament, the provisions covering the Commission will need to be commenced.
- 6.6 As the Transitional Regulations were originally drafted, this commencement under the Social Security (Scotland) Act 2018 would have inadvertently triggered the transfer of Ministerial functions and ended the transitional period. The amendments in this instrument ensure that this does not happen.

7. Policy background

What is being done and why?

- 7.1 The provisions in regulation 2(1) and 2(2) are a technical amendment to ensure that executive competence for the devolved disability benefits does not inadvertently transfer before 31 March 2020.
- 7.2 It also makes a minor consequential amendment to the transitional regulations to reflect the fact that section 23(5) of the Scotland Act 2016 now comes into force for remaining purposes on 1 April 2022.
- 7.3 There is no change to policy. Both the UK and the Scottish Governments have, by prior agreement decided 31 March 2020 as the date that Ministerial functions will transfer to Scottish Ministers for the remaining disability and industrial injury benefits under section 22 of the Scotland Act 2016. This date was agreed by UK and Scottish Ministers at the Joint Ministerial Working Group on Welfare meeting on 11 October 2016⁷.

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.

⁵ <http://www.legislation.gov.uk/asp/2018/9/contents>

⁶ <https://www.gov.scot/groups/scottish-commission-on-social-security/>

⁷ <https://www.gov.uk/government/publications/minutes-of-the-joint-ministerial-working-group-on-welfare--3>

9. Consolidation

9.1 Consolidation is not required for this instrument.

10. Consultation outcome

10.1 Public consultation on this instrument was not necessary but it has been drafted with input from legal services in both the Scottish Government and the Office of the Advocate General.

11. Guidance

11.1 This instrument does not call for any guidance.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

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 transitional regulations which this instrument amends continue to be monitored to ensure they continue to deliver a secure basis for the transitional period.

15. Contact

15.1 Dave Annison at the Department for Work and Pensions. Telephone: 02074495377 or email: DAVE.ANNISON@DWP.GOV.UK can be contacted with any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits & Carer's Allowance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alister Jack at the Office of the Secretary of State of Scotland can confirm that this Explanatory Memorandum meets the required standard.