

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Personal Care Support) (United Kingdom and Scottish Government Payments) Determination 2024

Purpose

The *Social Security (Personal Care Support) (United Kingdom and Scottish Government Payments) Determination 2024* (the Determination) determines that certain personal care support schemes established by the United Kingdom and Scottish Governments are approved schemes under section 35A of the *Social Security Act 1991* (the Act). These schemes are Attendance Allowance, Disability Living Allowance and Personal Independence Payment in the United Kingdom, and Adult Disability Payment and Child Disability Payment in Scotland. These payments are intended to assist with the extra costs incurred by people with disability and are not intended to be income.

A person who receives one of these payments may also receive social security payments, if they meet all other eligibility requirements. The Determination has the effect that a person's personal care support payment is not taken to be income for the purposes of the income test under the social security law. This ensures that a person's entitlement to a social security payment is not affected as a result of receiving personal care support services through the specified schemes and the operation of the income test. Similarly, the Determination will also have the effect that a person's personal care support payment is not assessed as income for the purposes of means tested payments under the *Veterans' Entitlements Act 1986*.

Background

When determining a person's eligibility for a social security payment, an income and assets test applies. Income is defined in subsection 8(1) of the Act, and includes any income amount earned, derived or received for a person's own use or benefit, a periodical payment by way of gift or allowance or a periodical benefit by way of gift or allowance.

However, the Act specifically exempts some amounts that would otherwise be income for the purposes of the income test. Paragraph 8(8)(zi) of the Act provides that a payment towards the cost of personal care support services for a person, being a payment made under a scheme approved under section 35A, is not income for the purposes of the Act.

Section 35A of the Act allows the Minister to determine that a scheme for the provision of personal care support is an approved scheme for the purposes of the Act.

Where a personal care support scheme is approved under section 35A of the Act, a payment towards the cost of personal care support services for a person that is made under the approved scheme, is also excluded from the income test for the purposes of the *Veterans' Entitlements Act 1986* (paragraph 5H(8)(ya)).

Personal Independence Payment (PIP) scheme

The PIP scheme was established by the United Kingdom Government to assist with extra living costs incurred by people who have both:

- a long term physical or mental health condition or disability, and
- difficulty doing certain everyday tasks or getting around because of the condition.

The PIP is made up of two components, a daily living component and a mobility component. A person is eligible to receive the daily living component if they require help with tasks such as eating, washing, dressing, communicating, financial management or management of their medicines or treatments. A person is eligible to receive the mobility component if they require help with going out or physically moving around.

The PIP scheme has been an approved personal care support scheme under section 35A of the Act, in accordance with the current determination, the *Social Security (Personal Care Support) (United Kingdom Government Personal Independence Payment) Determination 2013*. This is due to sunset on 1 April 2024. The Determination repeals and remakes the previous determination in a similar form in relation to PIP, and includes some other schemes as discussed below.

Attendance Allowance and Disability Living Allowance

Attendance Allowance and Disability Living Allowance are schemes established by the United Kingdom Government.

Attendance Allowance is intended to assist people of State Pension age or older with extra costs, where they need someone to look after them due to a severe disability. The amount of payment depends on the level of care required. This payment does not cover mobility needs.

Disability Living Allowance has been paid to adults with disability, but is being replaced by other benefits such as PIP and Attendance Allowance. While no new applications can be made by adults for Disability Living Allowance, this payment continues to be paid to certain recipients.

Disability Living Allowance is also paid to children with disability. This payment is intended to assist with the extra costs of looking after a child who has difficulty walking or needs much more looking after than a child of the same age who does not have a disability. The payment amount depends on the level of help the child needs.

Attendance Allowance and Disability Living Allowance have been approved schemes under section 35A of the Act, as specified in the *Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018*. The Determination repeals this instrument and approves these schemes.

Adult Disability Payment and Child Disability Payment

As part of Scottish devolution, the Scottish Government has established the Adult Disability Payment. Relevant individuals who were previously receiving PIP or Disability Living Allowance from the United Kingdom Government have been or are being moved to Adult Disability Payment paid by the Scottish Government.

Adult Disability Payment in Scotland is similar to PIP, and is intended to assist people with disability or a long-term health condition that affects their everyday life. Adult Disability Payment has a daily living component and a mobility component, and individuals may qualify for one or both parts, depending on how their condition affects their ability to do everyday activities and get around.

As part of Scottish devolution, the Scottish Government has also established the Child Disability Payment. This is intended to replace Disability Living Allowance, paid by the United Kingdom Government, for children and young people living in Scotland. Relevant individuals who were previously receiving Disability Living Allowance from the United Kingdom Government have been or are being moved to Child Disability Payment paid by the Scottish Government.

Child Disability Payment in Scotland is similar to Disability Living Allowance, and is intended to provide support for the extra costs that a child with disability might have. This payment has a care component and a mobility component, and eligibility and payment rates depend on particular criteria, including the child's care and mobility needs.

The Determination approves these two Scottish payments, Adult Disability Payment and Child Disability Payment, as personal care support schemes so they are treated in the same way as similar payments made by the United Kingdom Government. This ensures all similar United Kingdom and Scottish schemes are approved schemes under this one Determination.

Commencement

The Determination commences on the day after it is registered on the Federal Register of Legislation.

Authority

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The Minister has the power under section 35A of the Act to repeal the current instruments and make the Determination.

Consultation

The Department of Social Services consulted with Services Australia, the Department of Veterans' Affairs and the Department of Agriculture, Fisheries and Forestry on the intention to make the Determination, given the effect of this instrument on income support recipients.

Impact Analysis

An Impact Analysis is not required, as the Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OIA24-06666).

Availability of independent review

A decision made under the social security law, as informed by the Determination, is subject to internal and external review under Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Explanation of the Provisions

Section 1 provides that the name of the Determination is the *Social Security (Personal Care Support) (United Kingdom and Scottish Government Payments) Determination 2024*.

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 provides that the authority for making the Determination is section 35A of the Act.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 provides that three personal care support schemes are approved schemes for the purposes of section 35A of the Act. These schemes have been established by the United Kingdom Government, and payments under these schemes are made by the United Kingdom Government. The approved schemes are:

- Personal Independence Payment – This scheme has been approved under the *Social Security (Personal Care Support) (United Kingdom Government Personal Independence Payment) Determination 2013*. The Determination ensures this scheme continues to be approved.

- Attendance Allowance and Disability Living Allowance – These schemes have been approved under the *Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018*. The Determination ensures these schemes continue to be approved.

Section 6 specifies two new personal care support schemes, Adult Disability Payment and Child Disability Payment, to be approved schemes for the purposes of section 35A of the Act. These schemes are established and paid by the Scottish Government and are intended to replace PIP and Disability Living Allowance in Scotland. The Determination ensures these Scottish schemes are approved, consistent with the treatment of similar payments paid by the United Kingdom Government, as specified in section 5 above.

Sections 5 and 6 have the effect that a payment towards the cost of personal care support services for a person, that is made under any of these approved schemes, will not be assessed as income for the purposes of the social security income test (paragraph 8(8)(zi) of the Act). Similarly, such payments will not be included in the income test for means tested payments under the *Veterans' Entitlements Act 1986* (paragraph 5H(8)(ya)).

Schedule 1

Item 1 repeals the whole of the *Social Security (Personal Care Support) (United Kingdom Government Personal Independence Payment) Determination 2013*. This determination is due to sunset on 1 April 2024. The Determination remakes this sunsetting determination in similar terms in relation to PIP. It is not intended that there are any changes to the approval of the PIP scheme.

Item 2 repeals the whole of the *Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018*. The schemes approved in this repealed determination are approved in the Determination, to ensure that all similar United Kingdom and Scottish personal care support schemes are approved together in this one instrument. It is not intended that there are any changes to the approval of the two schemes specified in the repealed determination.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

Social Security Act 1991

Social Security (Personal Care Support) (United Kingdom and Scottish Government Payments) Determination 2024

The *Social Security (Personal Care Support) (United Kingdom and Scottish Government Payments) Determination 2024* (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

The Determination determines that certain personal care support schemes established by the United Kingdom and Scottish Governments are approved schemes under section 35A of the *Social Security Act 1991* (the Act). These schemes are Attendance Allowance, Disability Living Allowance and Personal Independence Payment in the United Kingdom, and the Adult Disability Payment and Child Disability Payment in Scotland. These payments are intended to assist with the extra costs incurred by people with disability, and are not intended to be income.

The Determination ensures that people receiving payments under these schemes for the cost of personal care support services will not have these amounts assessed as income for the purposes of the social security law or veterans' entitlements law.

Human rights implications

The Determination engages the right to social security and the right to an adequate standard of living.

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to social security and requires a social security scheme to be established under domestic law that provides a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs. Article 26 of the Convention on the Rights of the Child requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.

Article 11 of the ICESCR recognises the right to an adequate standard of living, which provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

Section 35A of the Act allows the Minister for Social Services to approve a personal care support scheme, which means that payments provided to a person under such a scheme are exempt from the social security income test under the Act. The exemption also flows through to means tested payments under the *Veterans' Entitlements Act 1986*. The Determination is therefore beneficial to persons who receive income support payments as it ensures that individuals receiving payments for personal care support from the approved personal care support schemes do not have these payments assessed for income test purposes.

Conclusion

The Determination is compatible with human rights as it supports the right to social security and the right to an adequate standard of living.

The Hon Amanda Rishworth MP, Minister for Social Services