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28 March 2025

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Convener  
Social Justice and Social Security Committee

By email only

Dear Convener,

I am pleased to provide a copy of the Scottish Commission on Social Security's scrutiny report on the draft Social Security (Cross-border Provision, Case Transfer and Miscellaneous Amendment) (Scotland) Regulations 2025, which has been laid in the Scottish Parliament today under section 97(8)(a)(ii) of the Social Security (Scotland) Act 2018.

This report has been completed in accordance with SCoSS's pre-legislative scrutiny function, conferred by sections 22(1)(a) and 97 of the Social Security (Scotland) Act 2018. Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 of the Act.

A copy of the report has been submitted to the Cabinet Secretary for Social Justice and will be published on our website.

We hope the Committee find this report helpful and we welcome your feedback.

Yours sincerely,

Ed Pybus  
Chair  
Scottish Commission on Social Security



Scottish  
Commission  
on Social  
Security

## **Scottish Commission on Social Security**

**Scrutiny report on draft Regulations:**

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

**Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 28 March 2025.**

**SCoSS/2025/04**

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## **Summary of recommendations and observations**

Recommendation 1: To reduce the additional administrative burden being placed on disabled people and carers as a result of the change in approach to data sharing, the Scottish Government should continue to work with the Department for Work and Pensions to reach an agreement to share the required data when they become aware that someone in receipt of disability benefits has moved to Scotland.

Recommendation 2: To ensure fairness in the system and reporting, Scottish Government should amend the draft regulations to include a good reason clause for a delay in telling Social Security Scotland that an individual in receipt of a UK disability benefit has moved to Scotland.

Recommendation 3: Social Security Scotland should monitor how helpful cross-border movers find the information they receive from the Department for Work and Pensions and the Department for Communities, and pass on feedback if it identifies areas where this can be improved.

Recommendation 4: To ensure clear and accurate information is given to cross-border movers affected by various backdating rules, Social Security Scotland should provide more training and guidance for staff on provisions that are less commonly encountered.

Recommendation 5: To avoid administrative error and additional burden on clients, Social Security Scotland's processes should be amended in order to ensure a client's information is not deleted within the timescale for a cross-border move.

Recommendation 6: To provide greater clarity about the process for transferring Adult DLA claimants to Scottish Adult DLA after they move to Scotland, the Scottish Government should publish full details of the likely client journey as soon as possible. This should include what evidence is likely to be required in support of a transfer request.

Recommendation 7: The Scottish Government should amend draft Regulation 9(9) and 9(10) to ensure the correct terminology is used to describe the rates of the Adult Disability Payment mobility component.

Observation 1: We welcome the Scottish Government's ongoing efforts to access evidence of terminal illness diagnoses held by the Department for Work and Pensions.

Observation 2: We welcome attempts to ensure rules around suspension are clarified.

## Summary

This report is on the draft Social Security (Cross-border Provision, Case Transfer and Miscellaneous Amendment) (Scotland) Regulations 2025.

The draft regulations make a series of revisions across a wide range of Scottish benefits, largely with the aim of amending and clarifying client journeys when they move to Scotland from another part of the UK – but are in receipt of an equivalent UK benefit.

Various provisions remove existing regulations allowing a determination without application when individuals in receipt of various benefits move to Scotland from elsewhere in the UK. To reduce administrative burdens arising from this change, we have recommended that the Scottish Government should continue to work with the Department for Work and Pensions to reach an agreement that allows the sharing of limited data when they become aware that someone in receipt of disability benefits has moved to Scotland.

The draft regulations will allow Social Security Scotland to accept late applications where they are satisfied there is a “good reason” why the application was late. We are concerned, however, that if ‘required data’ reaches Social Security Scotland after the specified 26 week period, even just by one day, they cannot get their award backdated, even with a good reason for delay. We have recommended that a good reason clause be included for a delay in telling Social Security Scotland that an individual in receipt of a UK disability benefit has moved to Scotland.

The change outlined in these draft regulations will create a new set of rules and procedures for both clients and Social Security Scotland staff which may be rarely used. To avoid doubt about the policy intention and any unintended consequence of misunderstandings arising from these rare circumstances, we have also recommended careful ongoing consideration of the impact of the change for clients and that specific training and guidance be developed for staff on less commonly encountered provisions.

The Scottish Government should also ensure flexibility for clients who have completed one part of the cross-border application processes for Adult Disability Payment or Pension Age Disability Payment to ensure they are allowed enough time before their data is deleted from Social Security Scotland’s systems for a cross-border move.

While a closed benefit, Scottish Adult Disability Living Allowance is also affected by Social Security Scotland’s inability to continue to access information on cross-border movers from the Department for Work and Pensions. We have recommended that full details of the client journey for people transferring to Scottish Adult DLA be published in order to provide greater clarity about the process for transferring Adult DLA claimants to Scottish Adult DLA after they move to Scotland.

Elsewhere in the report we have welcomed Scottish Government’s attempts to clarify suspension rules and ongoing attempts to access information about people with terminal illness from the Department for Work and Pensions.

We are grateful to officials for their detailed and prompt responses to our questions, which helped us better understand the policy behind the draft regulations.

# 1. Introduction

## 1.1 About the Scottish Commission on Social Security

The Scottish Commission on Social Security plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect by providing independent scrutiny of the Scottish social security system. Our full functions are set out in the Social Security (Scotland) Act 2018.<sup>1</sup>

We are separate from the Scottish Government, and carry out our work independently of both Scottish Ministers and the Scottish Parliament.

For more information about the Scottish Commission on Social Security visit:  
<https://socialsecuritycommission.scot/>

## 1.2 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present our report on the draft Social Security (Cross-border Provision, Case Transfer and Miscellaneous Amendment) (Scotland) Regulations 2025 (referred to in this report as the 'draft Regulations').

The draft regulations make a series of revisions across a wide range of Scottish benefits, largely with the aim of amending and clarifying client journeys when they move to Scotland from another part of the UK – but are in receipt of an equivalent UK benefit.

The Act requires us to undertake our scrutiny with regard to the Scottish social security principles<sup>2</sup> and relevant provisions of human rights law. This is quite a technical set of Regulations and not all of the amendments being made will greatly affect the realisation of the principles or people's enjoyment of their rights. Nonetheless, reference to these is made as appropriate throughout the report.

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<sup>1</sup> [Social Security \(Scotland\) Act 2018](#)

<sup>2</sup> [Social Security \(Scotland\) Act 2018](#), section 1.

## 2. Disability and carer benefits: cross-border moves

The Scottish disability benefits and the main Scottish carer benefit (Carer Support Payment) all have equivalent payments in the UK social security system. When someone who gets a disability or carer benefit from the Department for Work and Pensions in England and Wales (DWP) or the Department for Communities in Northern Ireland (DfC) moves to Scotland, they also need to move to the equivalent Scottish benefit.

Scottish benefit	UK benefit
Child Disability Payment	Disability Living Allowance for Children
Adult Disability Payment	Personal Independence Payment
Pension Age Disability Payment	Attendance Allowance
Scottish Adult Disability Living Allowance	Disability Living Allowance for Adults
Carer Support Payment <sup>3</sup>	Carer's Allowance

Up to now, these cross-border movers have been able to take advantage of a streamlined process for transferring to a Scottish benefit. Social Security Scotland can make a “determination without application” under the rules for devolved benefits. This means they can check if someone qualifies for a benefit without needing an application. If someone has moved to Scotland from elsewhere in the UK, Social Security Scotland can base their decision on the eligibility assessment already done by the Department for Work and Pensions or the Department for Communities for the equivalent benefit.

Various provisions within the draft Regulations remove the existing regulations that allow a determination without application when individuals move to Scotland from elsewhere in the UK, and they are paid Disability Living Allowance for children, Personal Independence Payment, Attendance Allowance or Carer's Allowance by the Department for Work and Pensions or Department for Communities.<sup>4</sup> This means that, for example, an individual who receives Personal Independence Payment in Northern Ireland but then moves to Scotland will in future have to apply for Adult Disability Payment.

In response to questions from SCoSS, the Scottish Government said that this change to the process for cross-border movers follows decisions made by the Department for Work and Pensions. The Scottish Government told us:

“Different options were explored with the Department for Work and Pensions, such as limited data sharing without forms and evidence, and receiving a notification of clients who have moved to Scotland, but these options were ruled out by the Department for Work and Pensions.”<sup>5</sup>

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<sup>3</sup> Carer's Allowance Supplement and Young Carer Grant have no equivalent payments in the UK system. Nor will Scottish Carer's Supplement or Carer's Additional Person Payment when introduced.

<sup>4</sup> Draft regulations 14(1) for Child Disability Payment, 15(1) for Adult Disability Payment, 16(1) for Carer Support Payment, 17(1) for Pension Age Disability Payment and 18(1) for Scottish Adult Disability Living Allowance.

<sup>5</sup> Scottish Government response to a question from SCoSS received 26 February 2025.

Instead, the Scottish Government will, in future, require people making a cross border move to make a new application to Social Security Scotland in order to establish their eligibility.

These changes will increase the administrative burden on disabled people and carers who move to Scotland from other UK countries, and on Social Security Scotland. This could appear to go against the intention of both social security principle g (i) which states that when changes are made the needs of those who require assistance are put first and social security principle (h), which states that the Scottish social security system is to be efficient.<sup>6</sup>

Given that the Department for Work and Pensions will no longer supply any information to Social Security Scotland when a claimant moves we understand the approach Social Security Scotland has taken. However, the information Social Security Scotland needs to start the disability benefit application process is very limited – just the name and date of birth of the individual who wishes to apply. This is known as the ‘required data’.<sup>7</sup> If the Scottish Government could reach an agreement that allows the DWP to share the ‘required data’ with Social Security Scotland this could be used to start a claim for disability benefits. There would still be some increase to the administrative burden on applicants compared to the present, but less than is currently envisaged.

**Recommendation 1: To reduce the additional administrative burden being placed on disabled people and carers as a result of the change in approach to data sharing, the Scottish Government should continue to work with the Department for Work and Pensions to reach an agreement to share the required data when they become aware that someone in receipt of disability benefits has moved to Scotland.**

The Scottish Government has told us that it is continuing to explore options with the DWP on the specific issue of access to supporting evidence the DWP holds from cross-border movers with terminal illnesses. It is important that this group to ensure that these transfers are being appropriately handled and that any administrative burden on individuals and their families are reduced and, therefore, these efforts are particularly welcome.

**Observation 1: We welcome the Scottish Government’s ongoing efforts to access evidence of terminal illness diagnoses held by the Department for Work and Pensions.**

The draft Regulations introduce new provisions that are designed to ensure people can move to Scotland and switch to the relevant Scottish benefit with no interruption in entitlement. This is in keeping with principle (b), which states that social security is a human right, and principle (e), which states that the Scottish social security system is to contribute to poverty reduction.<sup>8</sup>

For disability benefits, if someone supplies Social Security Scotland with their name and date of birth within 26 weeks of moving and completes their application within a further eight weeks (six weeks for Child Disability Payment), their entitlement to the

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<sup>6</sup> [Social Security \(Scotland\) Act 2018](#), section 1.

<sup>7</sup> See, for example, [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#) Reg 35(4).

<sup>8</sup> [Social Security \(Scotland\) Act 2018](#), section 1.



Scottish disability benefit will begin the day after entitlement to the equivalent UK benefit ends. That entitlement ends 13 weeks after the individual moves to Scotland.

In response to our questions, the Scottish Government clarified that the differences between application periods reflects the difference in complexity of information required for each form of assistance.

“Child Disability Payment and Adult Disability Payment have different criteria and therefore have different application forms which therefore request different types and levels of information. For example part 2 of the Adult Disability Payment application requires information on an individual’s ability to carry out a higher number of daily activities than the Child Disability Payment form; part 2 of the Adult Disability Payment application is also quite a bit longer. Therefore, more time is provided to complete the application. Of course, for both Child Disability Payment and Adult Disability Payment, more time is provided to clients to complete part 2 of the application if they have a good reason for needing it.”<sup>9</sup>

The draft regulations also allow Social Security Scotland to accept late applications where they are satisfied there is a “good reason” why the application was late.<sup>10</sup> As we have noted in our upcoming report on people with communication needs and the Scottish social security system, Social Security Scotland clients report fears that delays in getting the right support could delay their application or cause them to miss deadlines relating to their claim.<sup>11</sup>

However, the way the regulations<sup>12</sup> are drafted means that ‘good reason’ only applies if the claimant has supplied Social Security Scotland with their name and date of birth within 26 weeks of moving, but did not complete their application within the subsequent six or eight weeks. If the ‘required data’ reaches Social Security Scotland after that 26 week period, even just by one day, they cannot get their award backdated, even if there is a good reason for the delay.

The Scottish Government told us that it considers 26 weeks to be sufficient time for cross-border movers to supply Social Security Scotland with their name and date of birth, particularly given that their award from Department for Work and Pensions or Department for Communities will end 13 weeks after moving to Scotland. Nonetheless, we remain concerned that a strict 26-week cut-off could cause problems for some individuals, who either may not be aware of the need to make a new claim or have good reason for failing to supply Social Security Scotland with the required information with the 26-week time period.

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<sup>9</sup> Scottish Government response to a question from SCoSS received 18 March 2025.

<sup>10</sup> For example, draft Regulation 52(5) for Adult Disability Payment.

<sup>11</sup> SCoSS’s upcoming report “People with communication needs and the Scottish social security system: fulfilling the expectations of ‘Our Charter’”.

<sup>12</sup> For example in the amended The Child Disability Payment Regulations, Reg 35(5) only refers to Regs 35(3)(a)(ii) or (b)(ii), rather than also include Regs 35(3)(a)(i) and (b)(ii). The same applies to the Adult Disability Payment Regulations Reg 52(5), and The Pension Age Disability Payment Regulations Reg 44(5).

## EXAMPLE

Sarah gets the enhanced rate of both components of Personal Independence Payment. She moves to Scotland to live with her daughter. Sarah has significant care needs and it takes several months to get a suitable care package in place in Scotland. After 6 months Sarah's daughter realised she needs to inform the DWP that her mother has moved. She informs the DWP of her change of address. Her entitlement to Personal Independence Payment stops from the date she moves to Scotland. She has an overpayment of Personal Independence Payment to repay to the DWP. She makes a claim for Adult Disability Payment, but because she supplied Social Security Scotland with the required information after the 26 time limit she cannot get her Adult Disability Payment backdated. She has no opportunity to argue that she had a good reason for supplying her name and date of birth to Social Security Scotland.

The introduction of a further 'good reason' provision for individuals who miss the initial 26-week deadline for providing Social Security Scotland with this information would help reduce the risk of gaps in entitlement. This would be in keeping with social security principles g(i), b and e.<sup>13</sup>

**Recommendation 2: To ensure fairness in the system and reporting, Scottish Government should amend the draft regulations to include a good reason clause for a delay in telling Social Security Scotland that an individual in receipt of a UK disability benefit has moved to Scotland.**

People who move to Scotland having received Carer's Allowance in another UK country are also affected by the ending of the current data sharing arrangements with the DWP. The draft Regulations will require carers to apply for Carer Support Payment within 26 weeks of moving to Scotland for their entitlement to begin the day after their Carer's Allowance ends. A further new provision allows individuals to apply for Carer Support Payment up to 13 weeks before they fulfil the conditions of entitlement, which means applications can now be made before entitlement to Carer's Allowance ends.<sup>14</sup> In addition, Carer's Allowance recipients who move to Scotland will be able to claim Scottish Carer Supplement (formerly Carer's Allowance Supplement) and Carer's Additional Person Payment immediately, without having to wait until they move to Carer Support payment.<sup>15</sup>

Effective communication of the process to be followed on moving to Scotland will be critical to ensure that people can complete applications for their new Scottish benefits within the required period. The Scottish Government has told us that the Department for Work and Pensions or Department for Communities will write to

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<sup>13</sup> [Social Security \(Scotland\) Act 2018](#), section 1, (g(ii)) opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first; (b) social security is itself a human right and essential to the realisation of other human rights; (e) the Scottish social security system is to contribute to reducing poverty in Scotland.

<sup>14</sup> Carer's Allowance can be paid for a 13-week run-on period after leaving England, Wales or Northern Ireland.

<sup>15</sup> Broader issues related to the introduction of the Scottish Carer Supplement and the Carer Additional Person Payment are addressed in SCoSS's recent report on [the draft Carer's Assistance \(Young Carer Grant and Carer Support Payment\) \(Miscellaneous Amendment and Saving Provision\) \(Scotland\) Regulations 2025](#).

clients who tell them they have moved to Scotland telling them the name of the benefit they need to apply for, a telephone number for Social Security Scotland and a link to the MyGov page providing information on social security for cross-border movers. While the Scottish Government told us it did not have an opportunity to codesign this letter, we think it would be helpful for Social Security Scotland to monitor how helpful the information provided, and the way in which it is presented, is to the recipients and feed back to the Department for Work and Pensions or Department for Communities if there are clear opportunities for improvement.

Internally, this will be a new set of rules and procedures for Social Security Scotland staff – which will presumably be encountered relatively infrequently. As we noted in our recent report on the Draft Carer's Assistance (Young Carer Grant and Carer Support Payment) (Miscellaneous Amendment and Saving Provision) (Scotland) Regulations 2025 there is some risk that clear and accurate information may not be presented to clients when niche scenarios occur.<sup>16</sup> This means there is also a need to ensure that when cross-border movers do make contact, they receive the right guidance.

**Recommendation 3: Social Security Scotland should monitor how helpful cross-border movers find the information they receive from the Department for Work and Pensions and the Department for Communities, and pass on feedback if it identifies areas where this can be improved.**

**Recommendation 4: To ensure clear and accurate information is given to cross-border movers affected by various backdating rules, Social Security Scotland should provide more training and guidance for staff on provisions that are less commonly encountered.**

Once a client supplies their name and date of birth to Social Security Scotland in Part One of the application process for a cross-border move, they have 26 weeks to complete their application (Part 2).

There appears to be a risk that the new provisions for cross-border movers may clash with existing Social Security Scotland data protection processes. For example, at present, in order to protect a client's personal data, incomplete Adult Disability Payment applications are deleted 90 days after submission of Part One of the application is submitted.<sup>17</sup> Part One consists of the 'required data' of name and date of birth that cross-border movers will have to submit to Social Security Scotland within 26 weeks of moving to Scotland. However, the draft Regulations allow some cross-border movers longer than 26 weeks to complete their application. If their award is to commence the day after their Personal Independence Payment award ends, Adult Disability Payment Regulation 52(3)(b), as inserted by the draft Regulations, requires the cross-border mover to:

1. Submit the required data within 26 weeks of moving to Scotland
2. Complete the application within eight weeks of submitting the required data, or within 26 weeks of moving to Scotland, whichever is later.

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<sup>16</sup> [Scottish Commission on Social Security: Scrutiny Report: the Draft Carer's Assistance \(Young Carer Grant and Carer Support Payment\) \(Miscellaneous Amendment and Saving Provision\) \(Scotland\) Regulations 2025](#), Recommendation 13

<sup>17</sup> [mygov.scot - How to apply for Adult Disability Payment](#)

In principle, an individual in receipt of a disability benefit who moves to Scotland could supply Social Security Scotland with their name and date of birth the day they move, then in law they will have another 181 days in which they could complete the remainder of the application. However, if current processes are followed their application could be deleted after 90 days.

**Recommendation 5: To avoid administrative error and additional burden on clients, Social Security Scotland's processes should be amended in order to ensure a client's information is not deleted within the timescale for a cross-border move.**

The draft regulations revoke case transfer provisions for disability benefits and Carer Support Payment to reflect that the initial introduction of these benefits, and therefore the requirement for provisions allowing for this level of data sharing, comes to a conclusion. The Scottish Government note that “anyone who has started the transfer process before these regulations come into force will be able to complete the process” and that these regulations will come in force in a staggered fashion to take account of the different end dates of case transfer for each benefit. As we have endorsed in other reports, this is a welcome example of tidying up of redundant regulations.

### **3. Scottish Adult DLA**

Scottish Adult Disability Living Allowance (Scottish Adult DLA) is also affected by Social Security Scotland's inability to continue to access information on cross-border movers from the DWP. However, Scottish Adult DLA is a 'closed' benefit for which no new application are accepted. Instead, individuals will have to 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.”<sup>18</sup> Scottish Ministers must then make a determination of an individual's entitlement to Scottish Adult DLA.

This provision is rather ambiguous as to what the actual process for cross-border movers in receipt of Scottish Adult Disability Living Allowance will look like. In part this is because negotiations have been ongoing about what information the Department for Work and Pensions might be able to provide to Social Security Scotland in order to minimise the administrative burden on affected individuals. The Scottish Government has told us that the Department for Work and Pensions is unlikely to agree to supply the information Social Security Scotland needs and that it anticipates using a process similar to that set out by the Scottish Adult DLA Regulations for individuals whose Disability Living Allowance or Scottish Adult DLA award ended in the last 12 months and who want to request a new award.<sup>19</sup>

These provisions appear to offer a plausible means for transferring Adult DLA claimants to Scottish Adult DLA should they move to Scotland without further change to the draft Regulations – albeit one that will carry an increased administrative burden, in common with the changes to the other disability and carer benefits. However, greater clarity about what the client journey would look like for the

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<sup>18</sup> New Scottish Adult DLA reg 47(2), inserted by draft reg 12(5)

<sup>19</sup> Scottish Government response to a question from SCoSS received 26 February 2025.

(presumably small) number of DLA claimants who might move to Scotland in the future would be welcome.

**Recommendation 6: To provide greater clarity about the process for transferring Adult DLA claimants to Scottish Adult DLA after they move to Scotland, the Scottish Government should publish full details of the likely client journey as soon as possible. This should include what evidence is likely to be required in support of a transfer request.**

## **4. Suspension**

The draft regulations also include amendments to the suspension provisions for Child Disability Payment, Adult Disability Payment, Pension Age Disability Payment, Scottish Adult Disability Living Allowance and Scottish Child Payment. The amendments affect the end date for an award where information has been requested under s54 of the Social Security (Scotland) Act 2018 or paragraph 25 of the schedule to the SCP Regulations. If this information is not be supplied and cannot be obtained by Social Security Scotland by other means, a decision will at some point be made to end entitlement. At present a determination to end entitlement in these circumstances takes place on the date it is made, like most determinations in the Scottish social security system. The draft Regulations will change this so that the official end date for the award is the date of 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)). The change clarifies that no payment is due to the individual for the period of suspension.

**Observation 2: We welcome attempts to ensure rules around suspension are clarified.**

## **5. EU withdrawal agreement and related provisions**

The Scottish Government is also using these draft Regulations to make some minor changes to the residence and presence conditions for various devolved benefits. These changes are required because of a new agreement between the UK and Gibraltar on the exportability of social security benefits<sup>20</sup> and a case before the Independent Monitoring Authority (IMA), which oversees compliance with the terms of the UK's withdrawal from the European Union.

Being a person to whom the UK's new agreement with Gibraltar applies has now been added to the list of exemptions from the normal residence condition (being ordinarily resident in Scotland) for Child Disability Payment, Adult Disability Payment, Pension Age Disability Payment, Carer Support Payment, Young Carer Grant and Carer's Allowance Supplement.<sup>21</sup> The agreement with Gibraltar is not relevant to

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<sup>20</sup> [The Social Security \(Gibraltar\) Order 2024](#)

<sup>21</sup> Draft Regulations 8(2), 8(3), 8(4) for Child Disability Payment, 9(2), 9(3) and 9(4) for Adult Disability Payment, 10(2), 10(3) and 10(4) for Carer Support Payment, 11(2), 11(3) and 11(4) for Pension Age Disability Payment, 3(4) for Carer's Allowance Supplement and 6(c) for Young Carer Grant.

Scottish Adult Disability Living Allowance, as the benefit is closed to new applications, or to the devolved low income benefits, as they are not exportable.

The compliance case before the IMA concerned the ability of two groups of people to access best start foods: applicants to the European Union Settlement Scheme and family members of people with settled status who move to Scotland.<sup>22</sup> The draft Regulations amend both the Best Start Foods Regulations and the Best Start Grant Regulations to ensure that both groups are unambiguously entitled to the various payments if they meet the other conditions.<sup>23</sup> The Scottish Government has told SCoSS that it does not believe anyone has been wrongly denied either Best Start Foods or Best Start Grant as a result of the previous wording, but that it accepts that “the legislation would benefit from clarification... to put the matter beyond doubt.”<sup>24</sup>

While these amendments are likely to affect few people, they will help to ensure that the people concerned are able in practice to enjoy the social security rights they ought to have, in keeping with social security principle (b).<sup>25</sup>

## 6. Drafting issue

Draft Regulations 9(9) and 9(10) restrict people’s access to the mobility component of Adult Disability Payment when they are over pension age at the time of their move to Scotland. People in this position can receive the Adult Disability Payment mobility component at the same rate as they previously received the Personal Independence Payment mobility component (if this applies), but no higher. The draft Regulation incorrectly refers to the ‘lower rate’ and ‘higher rate’ of the mobility component, when this should read ‘standard rate’ and ‘enhanced rate’.

**Recommendation 7: The Scottish Government should amend draft Regulation 9(9) and 9(10) to ensure the correct terminology is used to describe the rates of the Adult Disability Payment mobility component.**

## 7. Approach to scrutiny

This report has been completed in accordance with the Commission’s pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018.<sup>26</sup> Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 or Section 79 of the Act. The draft Regulations are made under powers conferred by sections within this part and chapter.

This report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018,<sup>27</sup> as operationalised via Our Charter.<sup>28</sup>

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<sup>22</sup> [Independent Monitoring Authority for the Citizens' Rights Agreements - The Welfare Foods \(Best Start Foods\) \(Scotland\) Amendment Regulations 2023](#)

<sup>23</sup> Draft Regulations 4(2) for Best Start Grants and 5(2) for Best Start Foods.

<sup>24</sup> Scottish Government response to a question from SCoSS received 26 February 2025

<sup>25</sup> Social Security (Scotland) Act 2018, Section 1, Principle (b): social security is itself a human right and essential to the realisation of other human rights.

<sup>26</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

<sup>27</sup> [Social Security \(Scotland\) Act 2018 \(www.legislation.gov.uk\)](#)

<sup>28</sup> [Social Security Scotland - Our Charter](#)

The Cabinet Secretary for Social Justice referred the draft regulations to us,<sup>29</sup> along with a Policy Note,<sup>30</sup> on 3 January 2025. We were given a deadline for reporting of 28 March 2025.

An amendment to the regulations was referred to us on 7 February 2025 making changes to existing legislation around the date on which entitlement to assistance can be ended.<sup>31</sup>

We are grateful for the efforts made by officials to keep us apprised of developments.

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<sup>29</sup> [Referral – The Social Security \(Cross-border Provision, Case Transfer and Miscellaneous Amendment\) \(Scotland\) Regulations 2025](#)

<sup>30</sup> [Policy Note - The Social Security \(Cross-border Provision, Case Transfer and Miscellaneous Amendment\) \(Scotland\) Regulations 2025](#)

<sup>31</sup> [Draft Social Security \(Cross-border Provision, Case Transfer and Miscellaneous Amendment\) \(Scotland\) Regulations 2025: update from the Scottish Government](#)

## **Annex A: The Scottish social security principles**

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
  - (i) put the needs of those who require assistance first, and
  - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.



## Annex B: Scrutiny timeline

3 January 2025	Draft Regulations and Section 86A formally referred to SCoSS by the Cabinet Secretary for Social Justice.
7 February 2025	Amended regulations including changes to existing legislation around the date on which entitlement to assistance can be ended referred to SCoSS.
18 February 2025	SCoSS Board discuss draft report at ad hoc meeting.
27 February 2025	SCoSS Board discuss draft report at Board meeting.
11 March 2025	SCoSS Board discuss draft report at ad hoc meeting.
27 March 2025	SCoSS Board discussed and signed off report at Board meeting.
28 March 2025	SCoSS report laid.