

AGENCY AGREEMENT
BETWEEN THE
SECRETARY OF STATE FOR WORK AND PENSIONS
AND
THE SCOTTISH MINISTERS
IN RESPECT OF CARER'S ALLOWANCE FOR
PEOPLE RESIDENT IN SCOTLAND

V2.0

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Document change control

Version	Date issued	Summary of changes
V2.0	08.11.18	Update to Para 5: Amendment order laid to the Regulation of Investigatory Powers (Scotland) Act.

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THE AGREEMENT

1. This Agreement is entered into between the Secretary of State for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA and the Scottish Ministers of Victoria Quay, Edinburgh EH6 6QQ.

PURPOSE

2. Pursuant to section 93 of the Scotland Act 1998, the Secretary of State may perform on behalf of the Scottish Ministers functions specified under the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018 – Statutory Instrument no.626 of 2018. The Scottish Ministers have asked and the Secretary of State agrees to perform those functions, in accordance with this Agreement, insofar as they relate to the delivery of Carer's Allowance to people residing in Scotland.

DURATION

3. This Agreement shall become effective immediately upon transfer of executive competence for Carer's Allowance to the Scottish Ministers. In accordance with the Scotland Act 2016 (Transitional) Regulations 2017, transfer will take place on the date on which section 81 of the Social Security (Scotland) Act 2018, which provides for Carer's Allowance Supplement, is commenced (the "**commencement date**"). At present the commencement date is anticipated as 3 September 2018. This Agreement shall be effective for two (2) years from the commencement date (the "**Term**"). Accordingly, and, subject to earlier termination in accordance with its terms, it is anticipated that this Agreement will remain effective until 3 September 2020.

This Agreement may be varied, or the Term extended, by mutual written agreement of both parties at any time during the Term. At the latest twelve (12) months prior to the initial termination date (anticipated to be 3 September 2020) the Department for Work and Pensions ("DWP") and the Scottish Ministers shall have agreed an exit plan for the orderly transition of the delivery of carers benefits to the Scottish Ministers or, in practice, Social Security Scotland, which will deliver the services for Ministers. DWP and Social Security Scotland shall maintain and update the exit plan throughout the Term.

DERIVATION

4. This Agreement forms an annex to the Memorandum of Understanding between Scottish Government (SG) and Department for Work and Pensions (DWP) on joint working arrangements covering the implementation of devolved provisions in the Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland, and shall be read in conjunction with the following documents, insofar as they are not replaced or terminated in the future;

Document	Version/Date
Concordat between The Department for Work and Pensions and Scottish Government	01 July 2010
Memorandum of Understanding and Supplementary Agreements on Devolution between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee (MoU on devolution)	2013
Memorandum of Understanding between Scottish Government (SG) and Department for Work and Pensions (DWP) on joint working arrangements covering the implementation of devolved provisions in the Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland (the “DWP/SG Single MoU”)	25 October 2016
The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government’s fiscal framework Annex C - Operation and Governance of the Scottish Government’s Fiscal Framework	26 February 2016
Scottish Devolution: A Framework for Audit and Accountability	Summer 2018
Scottish Devolution: Financial Statement to support Carer’s Allowance Agency Agreement	Date of signing of this Agreement
DWP and SG Joint Communications Framework	July 2017

DELIVERY OF CARER’S ALLOWANCE

5. DWP will, on behalf of the Scottish Ministers, continue to deliver an operational service for people resident in Scotland, consistent with the delivery of Carer’s Allowance and its related functions under the same procedures that cover the delivery of Carer’s Allowance paid to people resident in England and Wales.

For the avoidance of doubt, this means that the Scottish Ministers will not be requesting change to the DWP business as usual procedures and processes.

The delivery of Carer’s Allowance includes delivery of all associated functions such as administration of the award, notifying other parts of DWP that an award of benefit has been made, handling queries on individual claims and general enquiries, debt recovery action and investigating information that would indicate fraud and error has occurred on a claim.

Information on the DWP Carer's Allowance claims, payments, and associated processes can be found in the DWP Decision Makers Guide on Gov.UK at:

[Decision Makers Guide](#)

[Decision Makers Guide – Vol. 10 Chapter 60 – Carer's Allowance](#)

Any recent updates and/or amendments to the guide can be found [here](#).

DWP and SG will work together on any annual increases to the rate of Carer's Allowance as part of the normal up-rating cycle to ensure parity is maintained.

There will be no difference in the application of debt policy to Carer's Allowance as delivered in Scotland, during the period of the agreement. This will include but will not be limited to recovery methods and rates, hardship considerations, priority order, write-off, and waivers.

Where functions are needed to maintain Business as Usual, but are not able to be covered by the S93 Order, the DWP and the Scottish Ministers have agreed the appropriate remedy. For surveillance matters, the Scottish Government laid an amendment order to the Regulation of Investigatory Powers (Scotland) Act (RIP(S)A), adding its new agency Social Security Scotland to the list of bodies that may authorise covert surveillance when it is deemed necessary. A new operational process has been developed and agreed between both parties that correctly reflects the RIP(S)A Order that is now in force for benefits administered under Agency Agreements.

REVISIONS AND CHANGES TO CARER'S ALLOWANCE

6. DWP agrees to inform the Scottish Ministers as soon as practically possible of any changes to Carer's Allowance or supporting legislation that may impact on or require changes to the functions carried out on behalf of the Scottish Ministers. Both parties would need to agree whether a revision to this Agreement is required.

Both parties shall act transparently and will work in a practical way in resolving any issues that may arise, in the spirit of co-operation, trust, respect and confidentiality. This Agency Agreement will be reviewed through the Joint Ministerial Working Group on Welfare.

DWP and the Scottish Ministers will consider proposed future delivery of carer's benefits for people resident in Scotland following the end date of this Agreement. Should the Scottish Ministers require DWP to continue to carry out functions relating to Carer's Allowance beyond the end date of this Agreement, both parties will need to agree, and set out in a revised agreement, the arrangements at least twelve (12) months in advance of the end of this Agreement.

DISPUTES

7. The process for dispute resolution is outlined in Section 5 (Escalation) of the DWP/SG Single MoU.

LITIGATION

8. The Scottish Ministers will inform DWP promptly of any judicial review challenge brought in relation to Carer's Allowance, or legal challenge in relation to data protection, where the benefit is delivered to a person resident in Scotland. The Scottish Ministers will discuss with DWP whether the challenge is to be resisted, if so what policy arguments are to be presented and will keep DWP informed of progress in any challenge. DWP will inform the Scottish Ministers promptly of any judicial review challenge or decision, or legal challenge in relation to data protection, which could impact the delivery of Carer's Allowance to people resident in Scotland and keep the Scottish Ministers informed of its progress. DWP and Scottish Ministers will discuss and agree handling arrangements for tribunal litigation on Carer's Allowance, in so far as it relates to people resident in Scotland.

BUSINESS CONTINUITY

9. If the DWP business continuity plans are invoked which affect delivery of Carer's Allowance to people resident in Scotland, DWP will advise the Scottish Government of the issue, impact and resulting action as soon as reasonably practicable via the Single Point of Contacts (SPoCs) below.

SG SPoC	DWP SPoC
[REDACTED]	[REDACTED]

MANAGEMENT INFORMATION

10. DWP and the Scottish Ministers have agreed Management Information (MI) will be supplied to Social Security Scotland to enable them to discharge accountabilities on the following principles relating to the delivery of Carer's Allowance:

- DWP will not (for this interim solution) create new MI reports that detail performance specifically for customers resident in Scotland.
- MI will only be supplied showing performance, at a GB level, of delivering the functions discharged on behalf of the Scottish Ministers. (DWP will not supply data specific to Scotland unless it is currently available and easy to access).
- MI required to inform future delivery are outside of the scope of this Agreement.

FINANCIAL ARRANGEMENTS

11. DWP will recharge the Scottish Ministers agreed costs associated with the delivery of Carer's Allowance to people resident in Scotland, including both relevant Annually Managed Expenditure and Delegated Expenditure Limit expenditure.

AUDIT

12. DWP and the Scottish Ministers will abide by the principles of audit and accountability as set out in the jointly agreed document Scottish Devolution: A Framework for Audit and Accountability to be published in summer 2018.

DWP and the Scottish Ministers remain subject to their overall existing accountabilities to the UK and Scottish Parliaments, and their associated audit bodies.

COMMUNICATIONS

13. DWP and Social Security Scotland have agreed a communications approach ensuring a seamless customer experience. Communications in relation to Carer's Allowance will be as in the agreed document DWP and SG Joint Communications Framework. Social Security Scotland and DWP have agreed the following principles:

- Social Security Scotland will notify DWP if they are to issue any communication, and of any related issues, at the earliest possible opportunity.
- DWP will not make any changes to Carer's Allowance communications to distinguish people residing in Scotland, England and Wales, other than for the purposes of data subject rights as noted in paragraph 15. For the avoidance of doubt DWP will be operating Business as Usual with communications for Carer's Allowance.

FREEDOM OF INFORMATION REQUESTS, PARLIAMENTARY QUESTIONS, MINISTERIAL CORRESPONDENCE AND 'TREAT OFFICIAL' CORRESPONDENCE

14. Each party is to follow existing processes and obligations for requests to that party, and having regard to the MoU on devolution as well as the Concordat between DWP and SG.

Each party will assist and cooperate with each other where appropriate to enable each to meet its obligations.

This agreement does not supersede any legal obligations under the Freedom of Information Act 2000 (FoIA) and the Freedom of Information (Scotland) Act 2002 (Fol(S)A).

DATA SUBJECT RIGHTS

15. Rights of the data subject under chapter 3 of the General Data Protection Regulation (“GDPR”) will be dealt with by DWP in accordance with DWP policies.

When the Scottish Ministers receive any such requests which are identified as pertaining to Carer’s Allowance, the Scottish Ministers will acknowledge the data subject request and shall forward said request to DWP within 3 working days of initial receipt. The acknowledgement shall inform the data subject that their request has been forwarded to DWP. DWP will then respond on behalf of SG in accordance with business as usual arrangements.

All other functions exercisable under the current data protection legislation, in relation to personal data being processed by DWP for Carer’s Allowance, will be exercised by DWP in accordance with its existing practices (but DWP’s correspondence with data subjects in relation to Carer’s Allowance under this Agreement will acknowledge Joint Data Controllership).

JOINT DATA CONTROLLER ARRANGEMENTS

16. Both the Scottish Ministers and DWP will be Joint Controllers for the purposes of the GDPR.

The processing of all data held by each party respectively will be under each party’s respective data policies.

For the avoidance of doubt, Scottish Ministers’ responsibilities under Article 26(3) of the GDPR will be fulfilled by referring the matter to DWP, who will respond to the data subject in accordance with its existing practices.

SIGNATORIES

Print name: Susan Park

Date:

A duly authorised officer for and on behalf of the Secretary of State for Work and Pensions

Signed by:

[REDACTED]

Print name: Stephen Kerr

Date:

A duly authorised officer for and on behalf of the Scottish Ministers

Signed by:

[REDACTED]

Print name: David Wallace

Date:

A duly authorised officer for and on behalf of Social Security Scotland

Signed by:

[REDACTED]