

Agency Agreement between The Secretary of State For Work and Pensions and the Scottish Ministers in Respect of Severe Disablement Allowance for People Resident in Scotland

April 2024

Key Personnel	Name	Role
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Table of Contents

1 The Agreement.....	4
2 Purpose	4
3 Duration	4
4 Derivation	5
5 Delivery of Severe Disablement Allowance.....	6
6 Revisions and Changes to Severe Disablement Allowance.....	7
7 Disputes.....	8
8 Litigation	8
9 Business Continuity	10
10 Management Information	10
11 Financial Arrangements	11
12 Audit	11
13 Operational Engagement	11
14 Communications.....	12
15 Freedom of Information Requests, Parliamentary Questions, Ministerial Correspondence and 'Treat Official' Correspondence	12
16 Data Subjects Rights	12
17 Data Controller Arrangements.....	13
18 Signatories	15

1. The Agreement

- 1.1 This Agency Agreement (hereafter referred to as `this Agreement`) is entered into between the Secretary of State for Work and Pensions of Caxton House, Tothill Street, London SW1H 9NA (DWP) and the Scottish Ministers of St Andrews House, Regent Road, Edinburgh EH1 3DG.
- 1.2 References to the Scottish Government, the Scottish Ministers or Social Security Scotland will, as appropriate, be read as also including reference to each of the other entities.
- 1.3 References to Secretary of State for Work and Pensions shall be read as including reference to the Department for Work and Pensions (DWP), as appropriate, and vice versa.

2. Purpose

- 2.1 Pursuant to section 93 of the Scotland Act 1998, the Secretary of State for Work and Pensions may perform on behalf of the Scottish Ministers functions specified under the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018 – Statutory Instrument (S.I.) 2018/626. The Scottish Ministers have asked, and the Secretary of State for Work and Pensions agrees, to perform those functions, in accordance with this Agreement, insofar as they relate to the delivery of Severe Disablement Allowance to people residing in Scotland.

3. Duration

- 3.1 The initial agreement which sets out the agency arrangements (“the Initial Agreement”) commenced on 1st April 2020 immediately upon transfer of executive competence for Severe Disablement Allowance to the Scottish Ministers, in accordance with the Scotland Act 2016 (Transitional) Regulations 2017 – S.I. 2017/444. The Initial Agreement had a term of five (5) years ending on 31st March 2025.
- 3.2 This Agreement replaces the Initial Agreement and shall be effective from 1st April 2024 (“the Commencement Date”) and unless terminated earlier in accordance with its terms, will remain effective up to and including 31st March 2026 (“the Term”).
- 3.3 This Agreement may be varied by mutual written agreement of both parties at any time during the Term or any extension to the Term. Both parties will review this Agreement twelve (12) months after the Commencement Date and set out any changes in a revised Agreement but any extension will be in accordance with the terms below.
- 3.4 Should the Scottish Ministers require DWP to continue to carry out functions in relation to Severe Disablement Allowance beyond the Term, the Term may be

extended by agreement between the parties. The parties may agree an unlimited number of extensions, with the duration of each extension to be agreed between the parties, until there are no further cases in Scotland where Severe Disablement Allowance is being paid.

- 3.5 Where any extension is required, both parties will review the Agreement and set out in a revised Agreement the arrangements for an extension. This revised Agreement will be completed at least twelve (12) months in advance of either the end of the Term or the end of any previous extension agreed under paragraph 3.3.
- 3.6 No less than twelve (12) months before the end of the Term or any extension under paragraph 3.3, DWP and the Scottish Ministers will, unless an extension (or further extension) to the Term has been agreed in accordance with paragraph 3.3, have agreed an exit plan for the orderly transition of the delivery of Severe Disablement Allowance to the Scottish Ministers or, in practice, Social Security Scotland, which will deliver the services for the Scottish Ministers. DWP and Social Security Scotland will maintain and update the exit plan throughout the Term or any extension to the Term.
- 3.7 If either party wishes to terminate this Agreement before the end of the Term, or any extension under paragraph 3.3, a period of twelve (12) months' written notice will be given to the other party.

4. Derivation

- 4.1 This Agreement forms an annex to the 'Memorandum of Understanding between the Scottish Ministers (SM) and Secretary of State for Work and Pensions (SSWP) 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 will be read in conjunction with the following documents and any subsequent arrangements which are agreed and support this Agreement, insofar as they are not replaced or terminated in the future:

Document	Date
Concordat between The Department for Work and Pensions and Scottish Government	March 2020
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)	October 2013
Memorandum of Understanding between the Scottish Ministers (SM) and Secretary of State for Work and Pensions (SSWP) 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 (SM/SSWP Single MoU)	January 2023

Memorandum of Understanding Between The Secretary of State for Work and Pensions and The Scottish Ministers acting through the Scottish Government and on behalf of Social Security Scotland in relation to benefit accounting and reconciliation services provided to the Scottish Ministers	March 2020
The Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework	August 2023
Scottish Devolution: A Framework for Audit and Accountability	March 2019
Scottish Devolution: Financial Arrangements for Formal Agreements and Financial Summary to support Severe Disablement Allowance Agency Agreement	October 2023
DWP and Scottish Government Joint Communications Framework	August 2021

The agreement cited below was an annex to the 'SM/SSWP Single MoU' as referenced above and should be consulted for details of the earlier arrangement agreed.

Initial Agency Agreement (including variations of that Agreement agreed from time to time) between the Secretary of State for Work and Pensions and the Scottish Ministers in respect of Severe Disablement Allowance for People Resident in Scotland	February 2022
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5. Delivery of Severe Disablement Allowance

- 5.1 DWP will, on behalf of and as agreed with the Scottish Ministers, continue to deliver an operational service for people resident in Scotland, consistent with the delivery of Severe Disablement Allowance and its related functions under the same procedures that cover the delivery of Severe Disablement Allowance paid to people resident in England and Wales.
- 5.2 DWP will continue to deliver Severe Disablement Allowance on the basis of business as usual arrangements. For the avoidance of doubt, this means that the Scottish Ministers will not be requesting change to DWP business as usual arrangements.
- 5.3 The delivery of Severe Disablement Allowance includes delivery of all associated functions such as administration of an existing award, notifying other parts of DWP that an existing award of benefit is in payment, handling queries on individual claims and general enquiries, debt recovery action and investigating information that would indicate fraud and/or error has occurred. This list is not exhaustive.
- 5.4 Information on the DWP Severe Disablement Allowance can be found in the DWP Decision Makers Guide. This is an approved guide to help Severe

Disablement Allowance Case Managers make decisions. It is a plain English representation of social security law and case law. It can be found on www.gov.uk at:

[Decision Makers Guide - Vol 10 Chapter 57 - Severe Disablement Allowance](#)

- 5.5 Severe Disablement Allowance is now a closed benefit and there will be no new claims. The parties will agree an exit plan, as required by paragraph 3.6 of this Agreement, at least twelve (12) months prior to the conclusion of the Term or of any extension agreed under paragraph 3.3 of this Agreement.
- 5.6 For the Term of this Agreement, the Scottish Government will maintain parity with DWP's rates of Severe Disablement Allowance as part of the normal up-rating cycle.
- 5.7 For the Term of this Agreement, the Scottish Government will maintain parity with DWP in terms of the eligibility criteria to all Severe Disablement Allowance claims.
- 5.8 There will be no difference in the application of debt policy to Severe Disablement Allowance as delivered in Scotland by DWP during the Term of this Agreement. This will include, but will not be limited to, recovery methods and rates, hardship considerations, priority order, write-off and waivers.
- 5.9 For surveillance matters, under section 8(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 ("the 2000 Act"), individuals holding such offices, ranks and positions as are prescribed, may grant authorisations under sections 6 and 7 of that Act for the use of directed surveillance and covert human intelligence sources respectively. Article 2(2) of, and Schedule 1 to, the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 ('the 2010 Order'), as amended in 2018 and 2020, prescribes the person(s) authorised to grant authorisations. The Scottish Administration, of which Social Security Scotland is a part, is prescribed as a relevant public authority for the purposes of section 8 of the 2000 Act.
- 5.10 An operational process has been developed and agreed between both parties that reflects the 2010 Order (as amended) that is in force for benefits administered under Agency Agreements.

6. Revisions and Changes to Severe Disablement Allowance

- 6.1 DWP agrees to inform the Scottish Ministers, as soon as practically possible, of any changes to Severe Disablement Allowance, including legislation, 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.

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

7. Disputes

7.1 The process for dispute resolution is outlined in Section 6 (Escalation) of the SM/SSWP Single MoU.

8. Litigation

8.1 The Scottish Ministers will notify DWP and Office of the Advocate General (OAG), by email, within three (3) working days of the receipt of any pre-action correspondence, initial writ, petition or claim in the Sheriff Court or any petition for judicial review in the Court of Session in relation to Severe Disablement Allowance or any other devolved benefit which is being administered by DWP, or any legal challenge in relation to data protection, which is raised by a person resident in Scotland and/or relates to a decision or action of DWP made before the Commencement Date or made during the Term of this Agreement. DWP will conduct any such litigation on the basis of business as usual arrangements.

8.2 DWP agrees to inform the Scottish Ministers, as soon as practically possible, on the progress of any judicial review or challenge in relation to data protection, or any decision in such litigation proceedings, which has an impact on the delivery of Severe Disablement Allowance or any other devolved benefit to people resident in Scotland which is being administered by DWP. DWP will conduct any such litigation on the basis of business as usual arrangements.

8.3 DWP and the Scottish Ministers agree in relation to any challenges brought in a tribunal by a claimant resident in Scotland, or where the claim relates to decisions or actions of DWP in relation to Severe Disablement Allowance that:

- DWP will conduct any such litigation at the First tier and Upper Tribunal in accordance with their business as usual arrangements,
- DWP will liaise, where necessary, with OAG to conduct any litigation conducted in the Upper Tribunal, and
- where appropriate OAG will instruct Standing Junior Counsel from the Advocate General's panel or Senior Counsel authorised by the Advocate General to appear on behalf of DWP and conduct litigation in accordance with DWP policy.

8.4 The decisions or actions of DWP mentioned at paragraph 8.3 are ones which are made by DWP before the Commencement Date or during the Term of this Agreement.

- 8.5 Where a judicial review claim or a challenge brought in the Upper Tribunal relating to a matter covered by paragraphs 8.1, 8.2 or 8.3 above raises a devolution issue as defined in Schedule 6 of the Scotland Act 1998, DWP will, as soon as practically possible, notify the Scottish Ministers and OAG of the devolution issue. DWP and/or OAG will normally retain conduct of the litigation in accordance with the arrangements under paragraphs 8.1, 8.2 and 8.3 above. The Advocate General has a statutory role in relation to devolution issues as does the Lord Advocate. Accordingly, OAG will discuss litigation strategy in such cases with DWP and the Scottish Government Legal Directorate on a case by case basis. OAG and DWP may agree that the Scottish Government Legal Directorate leads on the conduct of the litigation in cases where a Scottish court or tribunal has directed that they should do so, or where the Advocate General (in consultation with DWP) and the Scottish Ministers, consider that is appropriate. Nothing in this agreement affects either the Advocate General's or the Lord Advocate's statutory role in relation to devolution issues.
- 8.6 The Scottish Ministers agree to notify DWP, by email, within three (3) working days of any challenge which is brought in a tribunal by a claimant resident in Scotland which relates to decisions or actions of DWP in relation to Severe Disablement Allowance which were made before the Commencement Date or during the Term of this Agreement.
- 8.7 The Scottish Ministers agree that, within three (3) working days of initial receipt of any correspondence, initial writ, petition or claim referred to in paragraph 8.1 above, they will issue an acknowledgement to the pursuer or claimant noting that their correspondence, initial writ, petition or claim has been forwarded to DWP and OAG. DWP will respond to any such pre-action correspondence, initial writ, petition or claim in accordance with business as usual arrangements.
- 8.8 Where, as a result of a decision of a Tribunal or higher courts, or because DWP itself becomes aware of an administrative error which occurred prior to the Commencement Date or occurs during the Term of this Agreement, a Legal Entitlement and Administrative Practices (LEAP) exercise is necessary, or DWP suspects a LEAP exercise may be necessary then, where the LEAP exercise relates to Severe Disablement Allowance and impacts claimants resident in Scotland, DWP agrees to inform the Scottish Ministers as soon as is reasonably practicable of the need, or potential need, to conduct a LEAP exercise, the reason the exercise is required, or potentially required, the scale and scope of the exercise (if known), and how it will conduct any such LEAP exercise (if known). DWP will plan, organise and administer any such LEAP exercise in accordance with business as usual arrangements.
- 8.9 DWP and the Scottish Ministers agree that should there be any ongoing litigation or LEAP exercise conducted in accordance with the paragraphs above at the time the case was due to transfer, during the Term of this Agreement, that case will transfer from DWP to Social Security Scotland in accordance with the agreed case transfer process. In exceptional

circumstances, if the nature of the litigation means that it is necessary or appropriate not to transfer a case at the time the case was due to transfer then such case transfer may be delayed by agreement between DWP and Scottish Ministers.

- 8.10 When a case is transferred in circumstances described in paragraph 8.9, DWP and Scottish Ministers will co-operate until the conclusion of that litigation or LEAP exercise and Scottish Ministers will provide any documents or information as DWP may reasonably request to assist with the litigation or LEAP exercise. DWP will inform Scottish Ministers as soon as reasonably practicable of the outcome of the litigation or LEAP exercise and provide any documents or information used to support that outcome that may reasonably be required by Scottish Ministers to make any required consequential changes to a claimant's entitlement (subject to any applicable Scottish regulations governing such benefit) and Scottish Ministers and DWP will cooperate as necessary to implement any such changes.
- 8.11 DWP and the Scottish Ministers agree that any litigation which has not concluded at the end of the Term of this Agreement will continue to be administered by DWP, conducted in accordance with the above paragraphs, beyond the end of the Term until the conclusion of that litigation.

9. Business Continuity

- 9.1 If the DWP business continuity plans are invoked which affect delivery of Severe Disablement Allowance to people resident in Scotland, DWP will advise the Scottish Government Single Point of Contact (SPoC) of the issue, impact and resulting action as soon as reasonably practicable.

Scottish Government SPoC
[Redacted]
[Redacted]

10. Management Information

- 10.1 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 Severe Disablement Allowance:

- DWP will not create new MI reports that detail performance specifically for claimant's resident in Scotland.
- MI will only be supplied showing performance, at a Great Britain 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 is outside of the scope of this Agreement.

11. Financial Arrangements

- 11.1 DWP will recharge the Scottish Ministers agreed Delegated Expenditure Limit costs associated with the delivery of Severe Disablement Allowance to people resident in Scotland, as detailed in the financial documents referenced in Section 4 (Derivation) of this Agreement.

12. Audit

- 12.1 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 as referenced in Section 4 (Derivation) of this Agreement.
- 12.2 DWP and the Scottish Ministers remain subject to their overall existing accountabilities to the UK and Scottish Parliaments, and their associated audit bodies.
- 12.3 DWP and the Scottish Ministers will abide by the principles in the Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework as referenced in Section 4 (Derivation) of this Agreement: Paragraph 29 of which states that 'All costs incurred by the UK Government where the Scottish Government is expected to meet the costs will be subject to audit'.
- 12.4 In 2020/21 a new audit approach was adopted and agreed by DWP, Social Security Scotland, National Audit Office and Audit Scotland; the Special Purpose Audit Framework will be used going forward as set out in the 'Financial Arrangement for Formal Agreements' document as referenced in Section 4 (Derivation) of this agreement.

13. Operational Engagement

- 13.1 Both parties will work in a practical way to promote a positive shared claimant experience. A link between Service Delivery colleagues in Social Security Scotland and DWP will be established to provide an opportunity for ongoing communication and shared understanding between officials on the operational delivery of Severe Disablement Allowance. Both parties will act in the spirit of co-operation, trust, respect and confidentiality.

14. Communications

14.1 DWP, Social Security Scotland and the Scottish Ministers have agreed a communications approach ensuring a seamless claimant experience. Communications in relation to Severe Disablement Allowance will be as in the agreed document DWP and Scottish Government Joint Communications Framework as referenced in Section 4 (Derivation) of this Agreement. DWP, Social Security Scotland and the Scottish Ministers have agreed the following principles:

- Social Security Scotland and the Scottish Ministers will notify DWP if they are to issue any communication related to this Agreement, and of any related issues, at the earliest possible opportunity prior to publication/issue.
- DWP will notify Social Security Scotland and the Scottish Ministers if they are to issue any communication related to this Agreement, and of any related issues, at the earliest possible opportunity prior to publication/issue.
- DWP will not make any changes to Severe Disablement Allowance communications to distinguish between people resident in Scotland or England and Wales, other than for the purposes of Data Subject rights as noted in Section 16 of this Agreement. For the avoidance of doubt DWP will be operating on the basis of business as usual arrangements with regards to communications for Severe Disablement Allowance.

15. Freedom of Information Requests, Parliamentary Questions, Ministerial Correspondence and 'Treat Official' Correspondence

15.1 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 the Scottish Government both as referenced in Section 4 (Derivation) of this Agreement.

15.2 Each party will assist and co-operate with each other where appropriate to enable each to meet its obligations.

15.3 This Agreement does not supersede any legal obligations under the Freedom of Information Act 2000 (FOIA) and the Freedom of Information (Scotland) Act 2002 (FOIS).

16. Data Subjects Rights

16.1 For the purposes of this Agreement, the term 'Data Subject' will have the same meaning as in section 3(5) Data Protection Act 2018 (DPA) and as referred to in the definition of Personal Data under Article 4(1) General Data Protection Regulation (UK GDPR).

- 16.2 The terms 'Personal Data', 'Controller', 'Processing' and 'Processor' will have the same meaning as in Article 4 of the UK GDPR.
- 16.3 All current Data Protection Legislation and guidance will apply, including but not limited to:
- (a) the UK GDPR,
 - (b) Part 2, Chapter 2 of the DPA 2018 (the applied UK GDPR),
 - (c) the DPA 2018,
 - (d) regulations made under the DPA 2018,
 - (e) regulations made under section 2(2) of the European Communities Act 1972 which relate to the UK GDPR or the Data Protection Directive (EU) 2016/680 (Law Enforcement Directive),
 - (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and
 - (g) the guidance and codes of practice issued by the Information Commissioner.
- 16.4 Requests regarding rights of a Data Subject under Chapter 3 of the UK GDPR will be dealt with by DWP as a Controller in accordance with DWP policies.
- 16.5 When the Scottish Ministers receive a request pertaining to rights of a Data Subject under the UK GDPR, concerning Severe Disablement Allowance, the Scottish Ministers will acknowledge the request and will forward the said request to DWP within three (3) working days of initial receipt. The acknowledgement will inform the Data Subject that their request has been forwarded to DWP. DWP will then respond on behalf of both DWP and the Scottish Government, in accordance with its business as usual arrangements.
- 16.6 All other functions exercisable to comply with the current Data Protection Legislation, in relation to Personal Data being processed by DWP for Severe Disablement Allowance, will be exercised by DWP in accordance with its existing practices.

17. Data Controller Arrangements

- 17.1 DWP and the Scottish Ministers will be Joint Controllers within the meaning of Article 26 of the UK GDPR.
- 17.2 It is agreed between the Parties that DWP will administer Severe Disablement Allowance on the basis of business as usual arrangements as set out under Section 5 of this Agreement.

- 17.3 The Processing of all Personal data subject to this Agreement which is necessary for administering Severe Disablement Allowance by DWP, will be under DWP's existing data policies. DWP's Personal Information Charter can be found via the following link - [DWP Personal Information Charter](#), and it contains more information about how DWP handles/processes Personal Data.
- 17.4 For the avoidance of doubt, Scottish Ministers' responsibilities under Article 26(3) of the UK GDPR, will be fulfilled by referring the matter to DWP, which will respond to the Data Subject in accordance with its existing practices.
- 17.5 DWP in their capacity as a Joint Data Controller, as per this Agreement, will take all reasonable steps to ensure that all information is up to date and accurate. This will be done in accordance with DWP's business as usual arrangements, as detailed in Section 5 of this agreement.
- 17.6 Each party will be responsible for ensuring that their organisation and the data processing they are responsible for is fully compliant with all current Data Protection Legislation.

18. Signatories

Signed by:

Print name: Barbara Bradley

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

Date: 26/02/2024

Signed by:

Print name: James Wallace

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

Date: 23/02/2024



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