

SD 228 AGENCY AGREEMENT
BETWEEN THE
SECRETARY OF STATE FOR WORK AND PENSIONS
AND
THE SCOTTISH MINISTERS
IN RESPECT OF
DISABILITY LIVING ALLOWANCE
FOR PEOPLE RESIDENT IN SCOTLAND

V1.0

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Document change control

Version	Date issued	Summary of changes
1.0	26.02.20	Agreement baselined

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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 Victoria Quay, Edinburgh EH6 6QQ.
- 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.

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.) 626/2018. 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 Disability Living Allowance¹ to people resident in Scotland.

3. DURATION

- 3.1 This Agreement will become effective immediately upon transfer of executive competence for Disability Living Allowance to the Scottish Ministers. In accordance with the Scotland Act 2016 (Transitional) Regulations 2017 – S.I. 444/2017, transfer of executive competence for Disability Living Allowance will take place on 1 April 2020. This Agreement will be effective for three (3) 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 31 March 2023.
- 3.2 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 its commencement and set out any changes in a revised Agreement, but any extension will be in accordance with the terms below.
- 3.3 Should the Scottish Ministers require DWP to continue to carry out functions in relation to Disability Living Allowance beyond the Term, the Term may be extended a maximum of two (2) times, each for a period of one (1) year on the same terms as set out in this Agreement. In the event the Scottish Ministers require the Term of this Agreement to be extended, the Scottish Ministers will

¹ Disability Living allowance includes DLA for children under the age of 16; DLA for young adults aged 16 and 17 in certain circumstances; working age adults (age 16 to State Pension age) and DLA for pensioners (State Pension age and over) including those who are still within scope of being invited to claim PIP because they were under the age of 65 and in receipt of DLA on 8 April 2013.

provide written notice to DWP at least twelve (12) months in advance of the Term end date.

- 3.4 No less than twelve (12) months prior to the end of the Term, or the end of any extension to the Term, DWP and the Scottish Ministers will have agreed an exit plan for the orderly transition of the delivery of Disability Living 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.
- 3.5 If either party wishes to terminate this Agreement before the end of the Term, or the end of any extension to the Term, 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 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 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	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)	October 2013
Memorandum of Understanding between the Scottish Ministers (SM) 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 (DWP/SM Single MoU)	January 2019
The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework	February 2016
Scottish Devolution: A Framework for Audit and Accountability	March 2019
Scottish Devolution: Financial Arrangements for Formal Agreements and Financial Summary to support Disability Living Allowance Agency Agreement	Date of signing of this Agreement
DWP and Scottish Government Joint Communications Framework	July 2017

Agency Agreement between the Secretary of State for Work and Pensions and the Scottish Ministers in respect of Personal Independence Payment for people resident in Scotland	Date of signing of this Agreement
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5. DELIVERY OF DISABILITY LIVING ALLOWANCE

- 5.1 DWP will, on behalf of and as agreed with the Scottish Ministers, continue to process new claims to Disability Living Allowance for an interim period, [REDACTED]
- 5.2 [REDACTED]
- 5.3 [REDACTED]
- 5.4 The delivery of Disability Living 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, settling, in part or in full, payments due under an arrangement for the hire or purchase of a vehicle to Motability, 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.
- 5.5 Information on DWP Disability Living Allowance can be found in the DWP Decision Makers Guide. This is an approved guide to help Disability Living 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](#)
 - [Decision Makers Guide Vol 10 Ch61 - Disability Living Allowance](#)
 - [Decision Makers Guide Vol 2, Ch7 Part 2 – International Subjects](#)
- 5.6 Any recent updates and/or amendments to the DWP Decision Makers Guide can be found [here](#).
- 5.7 [REDACTED]
- 5.8 [REDACTED]
- 5.9 For the Term of this Agreement, the Scottish Government will maintain parity with DWP rates of Disability Living Allowance as part of the normal up-rating cycle.

- 5.10 For the Term of this Agreement, the Scottish Government will maintain parity with DWP in terms of the eligibility criteria to all Disability Living Allowance claims.
- 5.11 There will be no difference in the application of debt policy to Disability Living 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.
- 5.12 For surveillance matters, the Scottish Government laid the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Amendment Order 2018 ('the 2018 Order'). This amended the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 ('the 2010 Order') which prescribes offices, ranks and positions for the purposes of section 8(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 ('the 2000 Act'). Under that section individuals holding such offices, ranks and positions as are prescribed, may grant authorisations under sections 6 and 7 of the 2000 Act for the use of directed surveillance and covert human intelligence sources respectively. Article 2(2) of the 2018 Order prescribes the person holding the position of Chief Executive of Social Security Scotland as being authorised to grant authorisations. Social Security Scotland is part of the Scottish Administration. The Scottish Administration is a relevant public authority for the purposes of section 8 of the 2000 Act.
- 5.13 A new operational process has been developed and agreed between both parties that reflects the 2018 Order (as in paragraph 5.12) that is now in force for benefits administered under Agency Agreements.

6. REVISIONS AND CHANGES TO DISABILITY LIVING ALLOWANCE

- 6.1 DWP agrees to inform the Scottish Ministers, as soon as practically possible, of any changes to Disability Living 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 will 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 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 DWP/SM 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 Disability Living 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 transfer of executive competence 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 agree 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 Disability Living 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 Disability Living 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 transfer of executive competence or during the Term of this Agreement.
- 8.5 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 Disability Living Allowance benefits which were made before the transfer of executive competence or during the Term of this Agreement.
- 8.6 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.

- 8.7 Where, as a result of a decision of a Tribunal or higher courts, or because DWP itself becomes aware of an administrative error which occurs prior to the transfer of executive competence or during the Term of this Agreement, a Legal Entitlement and Administrative Practices (LEAP) exercise is necessary, then, where the LEAP exercise relates to Disability Living Allowance and impacts claimants resident in Scotland, DWP agree to inform the Scottish Ministers of the need to conduct a LEAP exercise and how it will conduct any such LEAP exercise. DWP will plan, organise and administer any such LEAP exercise in accordance with business as usual arrangements.
- 8.8 DWP and the Scottish Ministers agree that cases will not be transferred from DWP to Social Security Scotland should there be any ongoing litigation, conducted in accordance with the above paragraphs, at the time that case was due to transfer during the Term of this Agreement.
- 8.9 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.
- 8.10 All writs should be served on OAG.

9. BUSINESS CONTINUITY

- 9.1 If the DWP business continuity plans are invoked which affect delivery of Disability Living 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]

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 Disability Living Allowance:
- DWP will not create new MI reports that detail performance specifically for claimants 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 Disability Living Allowance to people resident in Scotland.

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 39 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'.

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 Disability Living 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 Disability Living 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.
- Subject to the conditions applying to the transfer of claimants from DWP to Social Security Scotland at Section 5 of this Agreement and for the purposes of Data Subject Rights at Section 16 of this Agreement, DWP will not make any changes to Disability Living Allowance communications to distinguish between people resident in Scotland or England and Wales, and DWP will operate on the basis of business as usual arrangements.

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 and the Freedom of Information (Scotland) Act 2002.

16. RIGHTS OF DATA SUBJECTS

- 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 (EU) 2016/679 (GDPR).
- 16.2 The terms 'Personal Data', 'Controller', 'Processing' and 'Process' will have the same meaning as in Article 4 of the GDPR.
- 16.3 All current Data Protection Legislation and guidance will apply, including but not limited to:
- (a) the GDPR,
 - (b) Part 2, Chapter 3 of the DPA 2018 (the applied 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 GDPR or the Data Protection Directive (EU) 2016/680 (the 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 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 GDPR, concerning Disability Living 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 Disability Living 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 GDPR. A Joint Case Transfer Strategy will detail the data controllership during case transfer.

17.2 It is agreed between the Parties that DWP will administer Disability Living 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 Disability Living 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 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: John-Paul Marks

A duly authorised officer for and on behalf of the Secretary of State for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

Date: Signed by:

Print name: Emma Haddad

A duly authorised officer for and on behalf of the Secretary of State for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

Date: 02 March 2020

Signed by:

Print name: James Wallace

A duly authorised officer for and on behalf of the Scottish Ministers
Dundee House, 50 North Lindsay Street, Dundee DD1 9FW

Date: 02 March 2020