

# **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**

May 2023

<b>Key Personnel</b>	<b>Name</b>	<b>Role</b>
Author	[Redacted]	[Redacted]
Approver	[Redacted]	[Redacted]
Owner	Barbara Bradley James Wallace	DWP Director General, Work and Health Social Security Scotland, Deputy Director, Finance and Corporate Services

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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 and the Scottish Ministers of St Andrew's House, Regent Road, Edinburgh EH1 3DG.
- 1.2 References to the Scottish Government (SG), 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 Personal Independence Payment to people resident in Scotland.

## **3. Duration**

- 3.1 The Initial Agreement which set out the agency arrangements ('the Initial Agreement') commenced on 1 April 2020 immediately upon transfer of executive competence for Personal Independence Payment 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 three (3) years, ending on 31 March 2023.
- 3.2 This Agreement shall be effective from 1 April 2023 ("the Commencement Date") and unless terminated earlier in accordance with its terms, will remain effective up to and including 31 March 2025 ("the Term").
- 3.3 This Agreement may be varied by mutual written agreement of both parties at any time during the Term. Both parties will review this Agreement twelve (12) months after the Commencement date and set out any changes in a revised Agreement.
- 3.4 No less than twelve (12) months before the end of the Term, DWP and the Scottish Ministers will have agreed a case transfer plan for the orderly transfer of all existing claims for Personal Independent Payments for claimants resident in Scotland from DWP to the Scottish Ministers or, in practice, Social Security Scotland which will deliver the services for the Scottish Ministers.

This case transfer plan must provide for all case transfers to have been completed at least three months prior to the end of the Term. No less than (12) months before the end of the Term DWP and the Scottish Ministers will have also agreed a business transition plan providing for the orderly transition of any other functions exercised under this Agreement from DWP to the Scottish Ministers and an orderly exit, at the end of the term, from the agency arrangements set out in this Agreement.

- 3.5 If either party wishes to terminate this Agreement before the end of 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 Secretary of 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 <b>(MoU on Devolution)</b>	October 2013
Memorandum of Understanding between the Scottish Ministers (SM) and Secretary of State for Work and Pensions (SSWP) joint working arrangements covering the implementation of devolved provisions in the Scotland Act 2016 relating to Social Security and Employment Support Services in Scotland <b>(SM/SSWP Single MoU)</b>	January 2023
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 the Personal Independence Payment Agency Agreement	September 2022
DWP and Scottish Government Joint Communications Framework	August 2021

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	TBC when signing date confirmed
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The agreement cited below was an annex to the 'SM/SSDWP 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 Personal Independence Payment for People Resident in Scotland	February 2022
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## 5. Delivery of Personal Independence Payment

- 5.1 Prior to the launch of Adult Disability Payment on 29 August 2022, DWP, on behalf of and as agreed with the Scottish Ministers, continued to process new claims to Personal Independence Payment for an interim period, whilst the Scottish Government prepared to take new applications to Adult Disability Payment for people resident in Scotland. This was consistent with the delivery of Personal Independence Payment and its related functions under the same procedures that cover the delivery of Personal Independence Payment to people resident in England and Wales and was subject to the terms of the Initial Agreement, including the provision of a functional assessment by a third party supplier.
- 5.2 From 29 August 2022, Scottish Ministers have processed and will continue to process new applications to Adult Disability Payment across Scotland, their replacement for DWP's Personal Independence Payment.
- 5.3 From 29 August 2022, and during the term of this Agreement, the existing claims of all Personal Independence Payment claimants resident in Scotland will transfer to Social Security Scotland from DWP, under an agreed programme of case transfer.
- 5.4 For the Term of this Agreement or until case transfer concludes, DWP will, on behalf of and as agreed with the Scottish Ministers, continue to deliver an operational service for people resident in Scotland with existing Personal Independence Payment claims made prior to 29 August 2022 and existing awards, on the basis of business as usual arrangements, subject to the terms of this Agreement.
- 5.5 The business as usual arrangements for delivery of Personal Independence Payment 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.

- 5.6 Information on DWP Personal Independence Payment claims, payments and associated processes can be found in the DWP Advice for Decision Making staff guide on [www.gov.uk](http://www.gov.uk) at: [Advice for Decision Making](#) (including any recent updates and/or amendments).
- 5.7 For the Term of this Agreement, the Scottish Government will maintain parity with the DWP rates of Personal Independence Payment as part of the normal up-rating cycle.
- 5.8 For the Term of this Agreement, the Scottish Government will maintain parity with DWP in terms of the eligibility criteria to all Personal Independence Payment claims.
- 5.9 There will be no difference in the application of debt policy to Personal Independence Payment 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.
- 5.10 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.
- 5.11 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 Personal Independence Payment**

- 6.1 Changes to the Personal Independence Payment Assessment Guide ([found here](#)) made within the legislative framework or as a consequence of ongoing improvement work under business as usual arrangements will not require mutual agreement prior to introduction, but DWP agrees to notify Social Security Scotland of those changes as soon as practicably possible.

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 Personal Independence Payment 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 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 Personal Independence Payment 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 tribunal by a claimant resident in Scotland, or where the claim relates to decisions or actions of DWP in relation to Personal Independence Payment 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 Personal Independence Payment 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 Personal Independence Payment 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 Personal Independence Payment 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 Personal Independence Payment:
- 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 Personal Independence Payment to people resident in Scotland, as detailed in the financial documents as 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 39 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 Personal Independence Payment. 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 Personal Independence Payment 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 any changes required in relation to the conditions applying to the transfer of claimants from DWP to Social Security Scotland referred to paragraph 5.3 and 5.4 of this Agreement or for the purposes of Data Subject Rights at Section 16 of this Agreement, DWP will not make any changes to Personal Independence Payment 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 cooperate 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 (Fol(S)A).

## **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 'Process' 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) DPA 2018,
  - (c) regulations made under the DPA 2018
  - (d) regulations made under section 2(2) of the European Communities Act 1972 which relate to the EU GDPR or the Law Enforcement Directive,
  - (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and
  - (f) 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 Personal Independence Payment, 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 Personal Independence Payment, 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 Personal Independence Payment 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 Personal Independence Payment 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 Personal Data 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: [Redacted]

Print name: **Margarita Morrison** on behalf of **Barbara Bradley**

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

Date: **14/03/2023**

Signed by: [Redacted]

Print name: **James Wallace**

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

Date **14/03/2023**



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