

## EXPLANATORY STATEMENT

### ***Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018***

#### **Summary**

Section 35A of the ***Social Security Act 1991*** (the Act) allows the Minister to determine, in writing, that a scheme for the provision of personal care support is an “approved scheme” for the purposes of the Act. This instrument determines that Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) are approved for the purposes of section 35A of the *Social Security Act 1991*.

The effect of this instrument is that people who receive Attendance Allowance and/or Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)), will not have these payments taken into account for the purposes of the social security income test.

This determination replaces the previous determination for these payments to ensure that these payments continue to be exempt for social security income test purposes.

#### **Background**

Under the social security law all income earned, derived or received for a person’s own use or benefit, is generally counted as income. The only exceptions are items specifically exempted under the social security law.

In particular, section 35A of the Act allows the Minister to determine that a scheme for the provision of personal care support is an “approved scheme” for the purposes of the Act. Payments made under an “approved scheme” are exempt from the income test in relation to the person who is receiving care under paragraph 8(8)(zi) of the Act.

#### **Explanation of the instrument**

This Determination approves Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) as an “approved scheme” under section 35A of the Act.

Attendance Allowance under the Social Security Contributions and Benefits Act 1992 (UK) is paid to help people who have a physical and/or mental disability over the age of 65 with personal care needs. Disability Living Allowance under the Social Security Contributions and Benefits Act 1992 (UK) is paid to people with disability who need help with mobility or care costs.

Some people receiving the Disability Living Allowance will be gradually transitioned onto the Personal Independence Payment. The Personal Independence Payment is income test exempt under a determination which was previously put in place.

The effect of this Determination is to support recipients of social security payments who receive Attendance Allowance and/or Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)), so that their social security payments will not be reduced due to the payment of the allowance. Accordingly, these payments will not be regarded as income under the social security law.

## **Explanation of the provisions**

Section 1 states that the name of the determination is the *Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018* (the Determination).

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 provides that the authority for making this Determination is section 35A of the *Social Security Act 1991*.

Section 4 revokes the *Social Security Act 1991 – Notice under section 35A – Instrument 94/1*.

Section 5 provides that Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) are approved schemes for the purposes of section 35A of the *Social Security Act 1991*.

## **Consultation**

This Determination extends the approval of Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) for the purposes of section 35A of the *Social Security Act 1991*. This approval has been in place since 10 May 1994.

The Department of Human Services, the Department of Veterans' Affairs and the Department of Agriculture and Water Resources have been consulted.

The Determination is beneficial to customers because it exempts Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) from the social security income test. Public consultation was therefore seen as unnecessary.

## **Regulatory Impact Statement**

This Determination does not require a Regulatory Impact Statement, as it is not regulatory in nature, does not impact on business activity and will have no, or minimal compliance costs.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

This Legislative Instrument is the ***Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018***

The *Social Security (Personal Care Support – Attendance Allowance and Disability Living Allowance – United Kingdom) Determination 2018* (the **Determination**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the Legislative Instrument

This Determination is made under Section 35A of the *Social Security Act 1991* (the Act) and determines that Attendance Allowance and Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) are approved personal care support schemes for the purposes of the Act, thereby exempting payments received by a person under these schemes for personal care support services from the social security income test.

The Determination ensures that people receiving Attendance Allowance and/or Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) will not have this assistance assessed as income for social security purposes.

### Human Rights Implications

The Determination engages the right to social security.

Section 35A of the Act allows the Minister for Social Services to determine that when a person receives assistance provided by a personal care support scheme this assistance is exempt from the social security income test in relation to social security payments for which the Minister for Social Services is responsible. The Determination is therefore beneficial to persons who receive such a social security payment.

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## **Conclusion**

This Determination ensures that individuals receiving Attendance Allowance and/or Disability Living Allowance (payable under the Social Security Contributions and Benefits Act 1992 (UK)) do not have assistance under these schemes assessed for income test purposes. The Determination supports their human right to social security and is therefore compatible with human rights.

**The Hon Dan Tehan MP, Minister for Social Services**