

Social Security

A Consultation on Disability Assistance in Scotland

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Scottish Government
Riaghaltas na h-Alba
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Ministerial Foreword



**Cabinet Secretary
Shirley-Anne Somerville**

Delivering Disability Assistance is the next big step in creating a social security system in Scotland. It follows the successful delivery of the first new benefits and the delivery of the first payments by our new public service Social Security Scotland.

Delivering Disability Assistance offers us an opportunity to have a positive impact on a huge number of people who contribute significantly to our communities, adding talent, diversity and richness to our society. Many are restricted in their life choices because of the barriers put in their way. Delivering Disability Assistance offers us the opportunity to remove some of these barriers and help people secure the financial support that they need to aid day-to-day life.

I am under no doubt that this is a huge challenge, marking the first time that the Scottish Government will make regular payments to assist people with disabilities. Within a programme which is already the largest transfer of powers since devolution, these forms of assistance are incredibly complex. I would therefore like to offer my sincere thanks to the Disability and Carers Benefits Expert Advisory Group (DACBEAG), the Ill Health and Disability Benefits Stakeholder Reference Group and also those individuals who have provided their time in sharing their experiences of navigating the disability benefits system through our Experience Panels which you have all worked with us constructively during this process to inform our work and it is vital to ensure we provide the right kind of assistance for the people of Scotland.

We consulted in 2016 on what a Social Security system in Scotland should look like and a great deal of work has been undertaken since then as a result of what people told us including informing the Social Security (Scotland) Act 2018. Building on the advice of DACBEAG and our Experience Panels which followed, this consultation is the next step on our journey of co-design and engagement, with potential recipients of disability benefits, the people who support them and those with expertise in this area.

I want to ensure that there is real trust placed in our social security system in Scotland. To gain this trust we must uphold our values of treating people with dignity, fairness and respect. I hope that through the commitments we have made to date that we are gaining that trust and that you will see throughout this consultation an embedded ethos of treating people in line with these values.

I recognise that some of the barriers faced by ill and disabled people has been caused by recent changes in disability benefits by the UK Government. We have repeatedly heard about the stress and anxiety caused by the current system. We will ensure that the system in Scotland is different. We will create a fair, transparent system which respects the needs of individuals and works for people, not against them.

I am of course mindful of the delivery implications which come with implementing these principals and introducing the changes to the current system which we have already committed to. That is why this consultation is so important. Your response will influence our approach and help to ensure that the system we are creating reflects the needs and views of the people who will use Disability Assistance.

We now need your views to inform our thinking further and to check that the detail of what we are proposing is right before we progress to developing regulations. I encourage you to respond to the consultation, and thank you in advance for taking the time to give us your views.

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1. Introduction

Policy Development and Engagement

In line with the principles of dignity, fairness and respect, the Scottish Government sought the views of people with lived experience of engaging with the current benefit system to ensure that people's views and needs are embedded in both the policy and the operations of all aspects of social security. Whilst engaging users we have also engaged groups of experts in the Social Security system who have advised and made recommendations in response to Scottish Ministers proposed approach to delivering Disability Assistance. The policy approach outlined within this consultation document has therefore been established in conjunction with users of the system, our Ill Health and Disability Benefits Stakeholders Reference Group and the newly established independent Disability and Carers Benefits Expert Advisory Group.

In July 2016 the Scottish Government launched a public consultation to inform the content of the Social Security (Scotland) Act 2018. The consultation set out a vision and key principles for social security in Scotland. The consultation was in three parts, covering:

- A Principled Approach;
- The Devolved Benefits; and
- Operational Policy.

Some of the themes highlighted by respondents on Disability Benefits included:

- The holistic and fair approach to Disability Benefits was deemed to be positive.
- The complex and stressful application and assessment processes - particularly for DLA and PIP, and also the perception that the eligibility criteria for DLA, PIP and AA discriminated against certain groups.
- The Scottish social security system should be more flexible, accessible and person-centred.
- Applicants should be able to decide how to engage with the system, choosing from a range of options that suited them best, whether paper-based, online, by telephone, face to face, or using other types of technology.
- The importance of applicants being treated with dignity and respect throughout their dealings with the new social security agency.
- The importance of advice and advocacy.
- The importance of transparency and fairness in relation to eligibility criteria.
- The importance of ensuring that the eligibility criteria took account of a wide range of conditions or illnesses, including mental health, other fluctuating conditions, and also learning disabilities.
- Strong support for the 'special rules' that currently apply to terminally ill people, to be extended to a wider range of conditions and illness.
- Responsive, streamlined and fair processes.
- The current assessment processes for disability benefits could be simplified relying on evidence from a range of key stakeholders.
- Minimise stress and anxiety, particularly in those relation to reassessments.

The Scottish Government set up the innovative Social Security Experience Panels in 2016. The Experience Panels are made up of over 2,400 people across Scotland who have recent experience of claiming at least one of the benefits devolved to Scotland. Those people are instrumental in shaping the policy and design of Disability Assistance in Scotland, providing input to our research, providing views and opinions, which will inform our processes from end to end. Some areas the Experience Panels have advised on to date include:

- Personal Independence Payment Discovery
- Best Start Grant
- Design of the Social Security Charter
- Agency Opening Hours
- Young Carers Grant
- Disability Assistance: Automatic Entitlement & Award Duration
- Branding and Wording
- Universal Credit Scottish Choices
- Website Use
- Complaints, Redeterminations and Appeals

All reports can be found on the Scottish Government website at <https://www.gov.scot/publications/social-security-experience-panels-index-of-publications/>.

The independent Disability and Carers Benefits Expert Advisory Group, chaired by the Joseph Roundtree Foundation's Associate Director for Scotland Dr Jim McCormick, was established to advise Scottish Ministers on specific policy options for Disability Assistance and Carers Benefits due to be delivered in Scotland.

To date the group has advised on:

- automatic entitlement of Disability Assistance
- duration of Disability Awards
- the evidence base for policy decisions
- suitably qualified assessors, Case Managers and relevant training

Details of the group membership and the work carried out by the group to date can be found on the Scottish Government website at <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/>

Legislative Powers

Section 31 of the Social Security Act (Scotland) 2018 will enable the Scottish Government to provide for non-means tested Disability Assistance, equivalent to that currently provided for through Disability Living Allowance, Personal Independence Payment and Attendance Allowance. This document sets out the Scottish Government's proposed policy approach to our new benefits in these areas.

The Scotland Act 2016 devolves power over a number of non-work related disability benefits to the Scottish Government, as well as other benefits to support people on low incomes.

Following the Scotland Act 2016, the Social Security Act (Scotland) 2018 creates the legal framework under which social security assistance will be given to people by the Scottish Government, including Disability Assistance. The Act allows for Disability Assistance to be provided to an individual on account of their disability (which can be physical or mental). It also provides for Disability Assistance to be paid to people who are terminally ill.

Eligibility for Disability Assistance depends on the disability having a significant adverse effect on the person's daily activities, and not a short-term effect. There are different rules for people who are defined as terminally ill. Chapter 3 of the schedule to the Act provides four special rules that apply in those circumstances. In terminal illness cases a diagnosis by a registered medical practitioner, having regard to guidance that is produced by the Chief Medical Officer, will be sufficient evidence that a person qualifies for assistance.

The Scottish Government has committed to delivering Disability Assistance safely and securely, ensuring that people's payments are protected during this transition period as we commence delivering Disability Assistance. We must ensure that people continue to receive payments with minimal disruption and we must ensure we are implementing a challenging but realistic timetable. With this in mind, we are making a number of significant changes to both policy and to the administrative aspects of the delivery of Disability Assistance, to ensure that the Scottish social security system better meets the needs of the people of Scotland.

2. About the Consultation

What are we consulting about?

This consultation asks questions on whether the policy intent set out in the Scottish approach to Disability Assistance will meet the needs of the children and adults it is intended to help. We would like to gather views to ensure we have identified the best possible approach to delivering this assistance before we draft the benefit regulations.

Building on our work with Experience Panels we are now keen to gather further views of people with a working knowledge of social security, including disability benefits, and experience of applying for disability benefits. The Scottish Commission on Social Security (SCoSS) has been established and will scrutinise the Disability Assistance regulations which will be drafted in accordance with feedback from this consultation.

Who might be affected by the approach proposed within the consultation document?

Any child or adult living in Scotland who is currently receiving Disability Living Allowance for children, Personal Independence Payment or Attendance Allowance from DWP will be affected by the approach set out in this consultation document. In addition, any child or adult living in Scotland who meets the eligibility criteria may also be affected by the proposals. Welfare rights agencies, Disabled People's Organisations, local authorities and rights organisations may also want to consider the impact of the proposed policy intent both on their organisations as well as on any client groups they support.

How will my response be taken forward?

The responses to the consultation will be analysed and, taking these into account, policy decisions will be made. The regulations will then be drafted and scrutinised by SCoSS. Following this scrutiny they will be laid in draft for approval by the Scottish Parliament. They will then need to complete the parliamentary process before delivery of Disability Assistance in Scotland can take place.

What comments are requested and by when?

We are inviting responses to this consultation paper by 28th May 2019. To submit your response online please visit: <https://consult.gov.scot/social-security/improving-disability-assistance/>. If you would prefer, you can email your response to disabilitybenefitsconsultation@gov.scot or send to:

*Social Security Policy Division
Disability and Carers Benefits Policy
Area 2C South
Victoria Quay
Edinburgh
EH6 6QQ*

If you have any comments about how this consultation exercise has been conducted please send them to ross.trotter@gov.scot or to the address above.

3. Safe and Secure Transition

Through our ongoing consultation with people with lived experience of the current benefits system we have learned that the main concern is that Scottish Government ensure the delivery of disability benefits safely and securely. An Experience Panel survey undertaken in January 2019 about people's priorities as Social Security Scotland takes over cases from DWP showed that 57% of the 400 participants said they wanted the Scottish Government to strike a balance between transferring cases quickly, and making sure there are no mistakes. A further 29% would rather we took still more time to avoid errors.

In responding to people's concerns we will ensure the continued payments of disability benefits with minimal disruption. We are also committed to maintaining the level of the disability benefits paid to individuals, once the powers are transferred, and to uprating them annually by inflation, as set out in sections 77 and 78 of Social Security (Scotland) Act 2018.

We will deliver three forms of Disability Assistance which are based around the criterion of age entitlement for people with longer term disabilities or conditions which have an impact on their day-to-day life. We do not intend to make significant changes to the rules and structure of the benefits to ensure that people continue to receive payments with minimal disruption. Making significant changes to the way Disability Assistance is delivered would require further significant developmental work potentially resulting in a delay to the date on which we can commence delivering Disability Assistance. Making significant rule changes may also result in difficulties in transferring clients to the Scottish system, creating a risk that clients were not paid correctly or on time. Therefore our safe and secure approach will allow us to protect the entitlement to these forms of assistance for those who are currently receive them from DWP.

However, it is important that we ensure that while this structure is maintained, that we ensure people will be treated fairly, with dignity and respect. We must ensure that the process is open and transparent and that communication from Social Security Scotland is clear and in accessible format. That means making realistic changes to the current system which reflects the wants and needs of people accessing it. With this in mind, we are making a number of changes to both policy and to the administrative aspects of the delivery of Disability Assistance, to ensure that the Scottish social security system better meets the needs of the people of Scotland.

Some of the changes we have committed to already are outlined in the table below:

You said:	We listened:
<i>Assessments</i> The private sector should not be paid to undertake assessments to assess entitlement to Disability benefits.	The private sector will not undertake assessments. Social Security Scotland will deliver assessments to determine eligibility for Disability Assistance, fully

<p>People are given little choice about how and when their assessment takes place. They have had to travel for hours to get to assessments, those who are too ill to leave the house have been refused home assessments</p> <p>There are too many unnecessary assessments - even when it is clear that a condition or disability will not improve.</p> <p>There is no clear guidance on the role of companions.</p> <p>People are expected to gather their own supporting evidence, often at a cost to them. It is not clear what evidence people should provide to support their claim.</p> <p>Assessors are not given enough time to consider evidence before an assessment begins.</p> <p>Assessment reports are often inaccurate and do not reflect what happens at assessment.</p> <p>Recordings should be available for audit purposes</p>	<p>supported by public sector health and social care professionals.</p> <p>We want to ensure that people with disabilities can access a flexible, person centred assessment service across the length and breadth of the country.</p> <p>People will be offered a choice of an appointment date and time that suits them, home visits will be available when they are required.</p> <p>We are committed to significantly reducing face-to-face assessments. This will only happen when it is the only practicable way to gather additional information to make a decision about entitlement.</p> <p>People will have the right to be accompanied to an assessment, and to have that person participate in the assessment. This right is included in the Social Security (Scotland) Act.</p> <p>The Agency will be pro-active in collecting evidence and provide clear guidance on what evidence will support a claim, being open and transparent about what information is necessary.</p> <p>By reducing the number of face-to-face assessments being undertaken, we will reduce time constraints on assessors, allowing them more time to fully consider the evidence provided.</p> <p>As part of our commitment to trust and transparency, audio recording of assessments will be provided as standard.</p> <p>The appeal tribunal will be given the recording and they may choose to use it to inform their determination.</p>
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<p><i>After an assessment</i></p> <p>A copy of the assessor's report is not sent alongside the initial decision.</p> <p>People are not informed about whether/how each piece of evidence has been used</p>	<p>Social Security Scotland will send a copy of the assessment report alongside the decision letter.</p> <p>The decision letter will explain how the decision has been reached, and what evidence has been used in doing so.</p>
<p><i>Application</i></p> <p>The application process is not accessible.</p> <p>Guidance on filling in application forms and preparing for assessments is not available in accessible formats</p> <p>It is not made clear that information from previous assessments will not be re-used</p> <p>Employment should not disadvantage a person's entitlement.</p>	<p>We will ensure that the application process for Disability Assistance is inclusive, accessible, provided in a range of formats, can be completed in a range of routes (online, phone, post) and is simple, transparent and works for those making claims to Social Security Scotland.</p> <p>A review is on-going of current content and communication products, and we will ensure that all information is accessible.</p> <p>We are exploring the range of health and social care evidence which could be used to support decision making. We will use information held by the Agency when undertaking a review.</p> <p>Disability Assistance will not be means-tested and in line with this a person's employment status will have no influence in relation to their entitlement.</p>
<p><i>Young People 16-18</i></p> <p>Young people are expected to transfer to PIP when they are approaching 16. This is at an age where young people may undergo a number of transitions into adult services, which can cause anxiety.</p>	<p>We will automatically extend awards of Disability Living Allowance and Disability Assistance for Children and Young People to age 18, to ensure that they don't have to apply for a new working age benefit at a time when they are transitioning between children and adult services in other areas of their lives.</p>

<p><i>Terminal Illness</i></p> <p>The current definition for accessing disability benefits is too restrictive, resulting in some people not getting access to the right support, when they need it most.</p>	<p>We will provide a new definition of terminal illness so that medical practitioners can use their clinical judgement to decide when an individual is regarded as terminally ill and eligible for Disability Assistance under special rules. Under special rules, an individual's application will be fast-tracked, and they will be entitled to the highest level of the award component(s) to which they are entitled.</p>
<p><i>Advocacy Services</i></p> <p>Concern that Advocacy support is not sufficient to assist people with disabilities to engage sufficiently when applying or being assessed for disability benefit eligibility.</p>	<p>People will have a right to independent advocacy, if owing to a disability they require the help of an advocate to engage effectively with the Scottish social security system.</p> <p>We are developing 'advocacy service standards'. We are working closely with advocacy organisations to ensure that those organisations delivering advocacy services are delivering their services in line with these standards.</p>
<p><i>Accessible Communication</i></p> <p>The current system is inaccessible for some people with a disability.</p>	<p>Inclusive communication will be considered in all that we do.</p> <p>To ensure that this happens, the requirement in the Act has also been <u>reflected in the Social Security Charter</u>.</p> <p>We are developing communication channels which will allow for a more inclusive, personalised and efficient process that meets the expectations of applicants.</p>

Making significant changes to the benefit rules and structures will mean longer delivery timescales. We want to avoid delays because people have told us that they would like the Scottish Government to take responsibility for these benefits as soon as possible. When developing our approach set out in this document, it was our aim to prioritise this safe and secure approach to safeguard people's rights to assistance

but to also consider new policies and processes to ensure that Disability Assistance meets the needs of the children and adults who will apply for and receive it.

For example, a consistent theme that has emerged from our engagement with users of the current system has been that there should be a transparent and easy-to-access process of application, assessment, decision-making and award for people requiring assistance. That is what we want to achieve. We want to make sure that the process from start to finish is clear, inclusive and accessible, and that people understand how and when their claim will be dealt with.

The following part of the document will set out our intended approach to the safe and secure transition of Disability Assistance in Scotland and seek your views on this approach.

4. Section 1 - Disability Assistance in Scotland

The broad purpose of Disability Assistance is to recognise the impact of living with a disability or health condition and the additional costs this can incur. Disability Assistance helps ensure that disabled children and adults are able to purchase the care and mobility support they need.

The sections of this consultation document seek views on aspects of delivering Disability Assistance in Scotland which are relevant across Disability Assistance for children and young people, people who are working age and older people.

Following this, there will be an opportunity to provide views on sections which are specific to each individual benefit.

4.1 Disability Assistance for Children and Young People

We intend to replace what is currently delivered by DWP in the form of Child Disability Living Allowance (Child DLA) with a form of assistance to be known as Disability Assistance for Children and Young People (DACYP). We intend that this form of assistance will support children and young people and their families to access appropriate support and care associated with their long term disability or condition.

The rate of award of DLA depends on how an individual is affected by their condition. There are two components to DLA:

- The “care” component which relates to the level of assistance a child requires (more than a child of the same age who does not have a disability)
- A “mobility” component which relates to the help a child needs in getting around.

Either or both can be awarded depending on the child’s needs. Under current arrangements, in advance of their 16th birthday, recipients of the benefit are notified by DWP that they will be required to claim PIP when they turn 16.

To remain consistent with the terminology used by the Act and to reduce the risk of confusion between benefits being delivered by both UK and Scottish Governments, we intend to refer to our replacement as Disability Assistance for Children and Young People (DACYP).

Question 1. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 0-18 years old Disability Assistance for Children and Young People (DACYP)?

Question 2. If you disagreed, please could you explain why.

4.2 Disability Assistance for Working Age People

We intend to replace what is currently delivered by DWP in the form of PIP with a form of assistance to be known as Disability Assistance for Working Age People (DAWAP). PIP is a payment to help with the costs of everyday life for people with a long-term illness, disability or mental health condition. To be eligible an individual must be aged 16 to state pension age and need help with everyday tasks or getting around. PIP can be claimed in addition to other income-related, reserved disability benefits such as Employment and Support Allowance (ESA). PIP was introduced by the UK Government in 2013 and is replacing Disability Living Allowance (DLA) on a phased basis for existing recipients.

The rate of any award of PIP depends on how an individual is affected by their condition. There are two components to PIP:

- The “daily living” component (where the condition makes it harder for the person to carry out everyday activities like eating or washing).
- The “mobility” component (where a condition limits the person’s ability to move around or plan and follow journeys)

Depending on the nature of an individual’s condition, they may be eligible for one or both of these components at either the standard or enhanced rate.

As with Disability Assistance for Children and Young People we intend to adopt consistency across Scottish legislation to reduce the risk of confusion between benefits being delivered by both UK and Scottish Governments. We will refer to this form of assistance as DAWAP.

Question 3. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 16 years old to state pension age Disability Assistance for Working-Age People (DAWAP)?

Question 4. If you disagreed, please could you explain why.

4.3 Disability Assistance for Older People

Disability Assistance for Older People is currently delivered by DWP in the form of Attendance Allowance (AA), a benefit for people over 65. It is awarded to help with extra costs if a person has a disability severe enough that they need someone to help look after them.

It is our intention to link the entitlement age for this benefit with changes to the state pension age which will be age 66 by 2020.

The rate of any award of AA depends on how an individual is affected by their condition. There are two components to AA:

- A “lower” rate where a person requires frequent help or supervision during the day **or** night

- A “higher” rate where a person requires help or supervision throughout both day and night or if they are terminally ill.

As with DACYP and DAWAP we intend to remain consistent with Scottish legislation and want to reduce the risk of confusion between benefits being delivered by both UK and Scottish Governments. We therefore intend to refer to the benefit as Disability Assistance for Older People (DAOP).

Question 5. Do you agree or disagree with the proposal to name Disability Assistance for clients who are state pension age or older Disability Assistance for Older People (DAOP)?

Question 6. If you disagreed, please could you explain why.

4.4 Commencement

Legal responsibility for all forms of Disability Assistance will be assumed by the Scottish Government from 1 April 2020. We intend to deliver the different forms of assistance in stages to allow for a safe and secure transition and implementation of each form of Disability Assistance. Our engagement with users of the current system has informed this approach – ensuring that we test all our systems and processes thoroughly.

Our incremental approach to the devolution of social security demonstrates clearly we have learned, and will continue to learn, lessons from other public sector programmes (both in Scotland and more widely). We have developed the timetable outlined below to include fire breaks between the launch of each form of assistance. This will ensure that we have the time to test systems, undertake lessons learned and that each launch of a new form of assistance is improved by the lessons learned from previous launches.

Many people on DWP disability benefits have been subjected to new systems and processes. While we are determined to deliver all forms of Disability Assistance as soon as we can, we will not rush to deliver a system which is not fit for purpose or puts benefits at risk.

Our intended commencement dates for Disability Assistance are

- Disability Assistance for Children and Young People in Summer 2020
- Disability Assistance for Older People by the end of 2020
- Disability Assistance for Working Age People early in 2021

Between taking responsibility in April 2020 and the dates outlined above, the Scottish Government will negotiate agreements with DWP to continue to carry out some of the administration of these benefits on our behalf. Agency Agreements are a normal part of the machinery of devolution which allow one Government to carry out the administrative functions for the other Government. Scottish Government retains competency over policy and funding.

4.5 Applying for the Benefit

Through our engagement with people who have applied for the benefits in the past we know that the current paper application forms for disability benefits are considered to be too long, with fragmented supporting guidance and sections which are not considered to be relevant to all applicants. Those with experience of applying for PIP have said that the current 2 stage application process including phone call and completion of a paper form is unsuitable for many clients. They have also told us that the guidance is unclear, the application form is repetitive and that there is no clear information about what is being assessed.

We are developing an online application channel which will allow for a more inclusive, personalised and efficient process. It is our intention that a choice of application channels will be available and that application forms will be available in accessible formats.

It is intended that Social Security Scotland will actively gather supporting information to support applications, to ensure that the claim and decision making process is as transparent and simple for clients as possible. We are currently exploring a range of options for other public agencies to provide supporting documentation for client claims, lessening the administrative burden on families and ensuring that Social Security Scotland is able to make decisions that take into account the needs of the client.

We have listened to feedback about the application process and guidance available to clients and others who support them. We are therefore redesigning the application process from beginning to end to make it more person centred, and to remove repetition and unnecessary complexity. We will also ensure that there is clear, transparent and accessible guidance available for each form of Disability Assistance to ensure that individuals and others are clear about the process.

Question 7. Do you agree or disagree with the proposal to enable multiple application channels for Disability Assistance?

Question 8. If you disagreed, please could you explain why.

4.6 Conditions Relating to Residence and Presence

The initial policy intention is for the Scottish system to broadly replicate the residency rules used by DWP. This would mean three main residency and presence conditions that would require applicants to:

- Have been present in Great Britain for two out of the last three years (often referred to as the 'presence condition')
- Be habitually resident in the Common Travel Area (CTA) (i.e. the United Kingdom, Republic of Ireland, Isle of Man or the Channel Islands) and ordinarily resident in Scotland.
- Not be subject to immigration control.

The main advantage of this approach is consistency with the UK system; meaning easier transitions for people moving between jurisdictions and reducing the risk of unintentional eligibility gaps.

The proposed approach to residency conditions is intended to be as simple as possible whilst also broadening the evidence base that an applicant is able to draw on to establish eligibility in Scotland. Ordinary residence is a relatively straightforward test to meet, requiring applicants to demonstrate that they are currently living in Scotland. The habitual residence element is consistent with practice across the CTA where periods of residence in one jurisdiction can be relied upon to establish eligibility for social security in another. In practice this will help people who have recently arrived in Scotland from other parts of the CTA to establish eligibility.

The presence condition applies to Great Britain rather than Scotland specifically. This avoids people moving from other parts of Great Britain to Scotland having to wait a minimum of two years to access benefits.

The proposed condition relating to immigration control flows from immigration law which is reserved to the UK Government. We will continue to work closely with key stakeholders and local authorities on these issues and where there are actions or policy changes we can undertake to mitigate these issues, we will seek to implement them.

In addition to these main conditions we also intend to broadly replicate UK provisions in relation to **temporary absence** from Great Britain which prevent people from losing eligibility if they are away from home for relatively short periods for example to receive medical treatment. This also extends to special rules relating to the absence of people employed in the armed forces and people who work for extended periods offshore.

The Scottish Government intends to broadly replicate these rules to offer the same protection to people in receipt of Scottish forms of social security assistance.

Question 9. Do you agree or disagree with the proposal to broadly replicate the current temporary absence rules?

Question 10. If you disagreed, please could you explain why?

4.7 Terminal Illness

At the moment across the current disability benefits delivered by DWP, an individual is regarded as terminally ill if they suffer from a progressive disease and their death as a consequence of that disease can be reasonably expected within 6 months. We are providing a new definition of terminal illness in Scotland.

We know that the issue of terminal illness is an extremely complex area for clinicians and conversations between clinicians, the individual and their carers can be very challenging. Following extensive consultation with medical professionals and wider stakeholders we were told that the same condition may have different impacts on individuals, sometimes resulting in significant needs due to deteriorating function. In

these instances individuals who are not likely to die within 6 months may still require support much earlier than the normal application route for disability benefits allows. The new approach to terminal illness in Scotland will allow medical professionals to use their clinical judgement on a case by case basis to ensure that those individuals who need support will receive it when they need it.

The rules which apply to entitlement to Disability Assistance where a person has a terminal illness are set out in Chapter 3 of schedule 5 of the Social Security (Scotland) Act 2018.

For the purpose of determining entitlement to Disability Assistance, the Act requires the Chief Medical Officer (CMO) to prepare guidance which sets out when a progressive disease can reasonably be expected to cause an individual's death. A decision on whether an individual is to be regarded as having a terminal illness is to be based on the clinical judgement of a registered medical practitioner. This decision must take regard of the CMO Guidance and the definition set out within this.

If an individual is regarded as terminally ill, their claim for Disability Assistance will be processed under 'special rules' for terminal illness as laid out in the Social Security (Scotland) Act 2018. These rules will do four things:

- No qualifying period for the benefit will apply. An individual will not be required to satisfy the relevant qualifying periods for each benefit to get Scottish Disability Assistance. Further details on the relevant qualifying periods are contained within section 2. This means that an individual will not be required to have the progressive disease for any period of time in order to be eligible for assistance.
- There will be no assessment by Social Security Scotland. All that will be needed is verification that an individual has been diagnosed by a registered medical practitioner as being terminally ill for the purposes of entitlement to Disability Assistance. This means that they will not be required to undergo any assessment to establish the impact of a terminal illness on care and mobility needs.
- Awards will be calculated, at the latest, from the date of application. This approach allows awards to be made based on an earlier date than when the application is made, namely the date on which an individual is verified by a registered medical practitioner as being terminally ill.
- An individual will get the highest rate(s) of the financial support to which they are entitled. At present, individuals regarded as terminally ill get the highest rate for the care component but the mobility component of an award is not automatic. Our new approach will ensure that individuals regarded as terminally ill will be fast-tracked to both highest rate care and mobility components for Disability Assistance.

Where an individual has a progressive disease but is not terminally ill for the purposes of entitlement to Disability Assistance they will be required to complete the standard application process.

If an individual who has received Disability Assistance under special rules lives longer than expected they will continue to receive these benefits under the special rules. There will be no review period.

In addition, in cases of terminal illness, a 3rd party will be able to make an application on the person's behalf with or without their knowledge. Where possible this should be done with the knowledge and consent of the person or their representative. However, in certain situations, such as where the representative is a child or has learning disabilities, it may be permissible to send the form without the knowledge and consent of either the person or their representative. This should be done only where there is a clear view that disclosing to the patient the nature of their condition could cause them harm which ought to be avoided.

We have not asked any questions relating to the terminal illness rules in this consultation, since these are laid out in legislation. We are currently undertaking a targeted consultation on the structure and content of the CMO's guidance on terminal illness with clinicians and wider stakeholders. The final version of the CMO's guidance will be published on the Scottish Government and Social Security Scotland websites ahead of the launch of Disability Assistance for Children and Young people in April 2020, and will be accompanied by a Plain English summary, aimed at practitioners and clients.

4.8 Making Decisions About Entitlement

Social Security Scotland will staff three particular roles to make decisions about entitlement to Disability Assistance.

In relation to DACYP and DAOP

Case Managers will be responsible for:

- reading an individual's application and any supporting information provided;
- obtaining supporting information from various sources;
- considering the individual's account of how their disability or condition impacts them and whether there is sufficient information to support that account;
- seeking information and advice from Specialist Advisors when required;
- deciding whether the individual meets the criteria for the relevant form of Disability Assistance.

Using their professional experience in the provision of health and social care **Specialist Advisors** will be responsible for:

- providing Case Managers with information and advice on a broad range of matters, for example: the side effects of a particular medication; how a specific disability generally impacts people; the way in which two different conditions may interact.

In relation to DAWAP

Case Managers will **additionally** be responsible for:

- deciding when an individual should be invited to attend a face to face assessment;
- taking into account the report provided by the assessor to inform a determination on whether the individual meets the criteria for DAWAP.

Assessors:

- Carrying out a face to face assessment of how an individual's disability or condition impacts their functional abilities;
- Providing a report detailing their findings from the assessment to the Case Manager.

It is our intention to enable Case Managers to make robust, person centred decisions. We want consideration to be given to how an individual's condition affects them taking into account all of their circumstances. This holistic approach will enable Case Managers to consider all of the information relating to an individual and make sound judgements about the functional impact their condition has on them. For example: if an individual provides supporting information explaining why they lack motivation to shower regularly, the Case Manager can reasonably infer that they require prompting to attend to their personal hygiene, in spite of the fact they have not stated such a need.

Social Security Scotland Case Managers will therefore require the skills necessary to interpret a range of information from numerous sources and to understand specific conditions in order to put together a clear picture of how an individual's disability is likely to affect them. Our training will ensure that Case Managers carry out their roles in accordance with the Social Security Scotland values of dignity, fairness and respect.

Question 11. Do you agree or disagree with the proposal to implement a person-centred approach to making decisions about entitlement for Disability Assistance?

Question 12. If you disagreed, please could you explain why?

For Disability Assistance for Children and Young People, and Disability Assistance for Older People, it is our intention to make decisions about entitlement using existing supporting information only and not through face-to-face assessments.

Case Managers working on all forms of Disability Assistance will have access to information and advice provided by Specialist Advisors within Social Security Scotland who have professional experience in the provision of health and social care, which may include experience gained within the third sector.

It is anticipated that Specialist Advisors will provide information and advice on a broad range of matters, for example: the side effects of a particular medication; how a specific disability generally impacts people; the way in which two different

conditions may interact. In some instances that may involve the Specialist Advisor answering a specific question that the Case Manager has or may require the advisor to provide more comprehensive input, for example, by reviewing the application and supporting information or suggesting what further supporting information should be obtained. Social Security Scotland will ensure that Case Managers feel empowered to make autonomous decisions where they can do so. When they seek expertise from a Specialist Advisor it will be approached as a discussion between colleagues who both want to make the right decision for the person concerned.

We intend that Case Managers will take into account a number of factors when deciding when to refer a case to a Specialist Advisor. This approach would require Case Managers to consider matters such as:

- the complexity of the application, for example if it includes conflicting information or relates to the combined impact of two conditions;
- whether the person has a particularly complex or rare condition; or
- if the person has a condition which fluctuates.

Question 13. Do you agree or disagree with our proposed approach to the involvement of Specialist Advisors in Decision Making?

Question 14. If you disagreed, please could you explain why.

Question 15. What factors should Case Managers take into account in deciding when a Specialist Advisor should be involved?

Question 16. Do you agree or disagree that the decision making process for Disability Assistance for Children and Young People, and for Older People should use existing supporting information and not through face-to-face assessments?

Question 17. If you disagreed, please could you explain why.

In exceptional circumstances the Case Manager may be unable to reach a decision using existing information available for children, young people and older people. In this situation we intend for the Agency to take a person-centred approach, contacting the person or their parents or guardians to discuss any gaps and to source further information where necessary.

For Disability Assistance for Working Age People the same approach to decision making will apply but face-to-face assessment may also be needed. We propose that Social Security Scotland can decide that a face-to-face assessment is necessary only in the following circumstances:

1. Where there are inconsistencies in the information provided. This could be where the functionality described in the account is not consistent with the diagnosis or condition;
2. To fill a significant gap in the individual's account of their condition and its impact, where this gap cannot be filled by other supporting information;

In these two cases a face-to-face assessment may only be required to provide specific information to Case Managers in order to fill a gap;

3. If the individual or representative requests a face to face assessment. We think that this form of engagement could be beneficial for a client who is more confident and articulate detailing their account in person;
4. The Agency may identify other circumstances where a face-to-face assessment is required for the purposes of robust decision making and auditing. These could include claims that fall into a category that means there is a high risk that an incorrect award is made without a face-to-face assessment.

4.9 Decision Making role, skills and training

Following discussion with key stakeholders we have decided on the following approach to ensure effective decision making. We propose that all Case Managers will behave in accordance with the values of the Agency and given a full understanding of the Charter and the Principles of the Social Security (Scotland) Act 2018. Following engagement with our Disability and Carers Benefits Expert Advisory Group we also propose that all Case Managers undertake the following training and hold the relevant skills:

Training

- Training in the impact of common health conditions;
- Disability awareness and equality training. Such training should be co-produced and wherever possible delivered by professional trainers with lived experience of health conditions and disabilities;
- Training on the relevant legislation;
- Telephony skills training to help elicit pertinent information from clients in an appropriate manner, ensuring dignity and respect is paramount;
- Training on dealing with vulnerable clients, their friends and relatives.

Skills

- All Case Managers should be able to demonstrate excellent communication skills;
- All Case Managers should be able to demonstrate a focus on individual needs;
- All Case Managers should be able to demonstrate excellent analytical skills;

4.10 “Suitably Qualified” Assessors and Specialist Advisors

The Social Security (Scotland) Act 2018 (‘the Act’) requires that assessments for Disability Assistance must be carried out by people who are ‘suitably qualified’ to do so.

This requirement was included in the Act due to significant concerns that people who had applied for Personal Independence Payment (PIP) because of mental health conditions, and some other conditions, were not appropriately assessed by DWP

contractors. It is intended to ensure that under the Scottish social security system people with mental health and other complex conditions are assessed by people with an appropriate understanding of their condition or disability.

Skills, Experience and Training

Specialist Advisors providing advice to Case Managers will undertake the same training as provided to Case Managers, set out above at section 4.9.

In addition, following engagement with the Disability and Carers Benefits Expert Advisory Group we propose that in order to ensure they are suitably qualified, assessors and Specialist Advisors should meet the following requirements:

- Have professional experience in the provision of health and social care, which may include experience gained within the third sector;
- Be able to evidence time working within a relevant role;
- A proportion of assessors should be trained specifically in the impact of mental health conditions and learning disabilities, to enable them to carry out face-to-face assessments of people with these conditions;
- We may require assessors to undertake training in other conditions, but this will be based on evaluation of the accuracy of assessments and on the demonstrated value of mental health and learning disability-specific assessors.

By virtue of this approach we anticipate that Social Security Scotland will employ assessors with a range of specialisms.

4.11 Approach to supporting information

The intention is for Case Managers to use existing information where possible to support decision making. Where possible, the Agency will assume responsibility for gathering information unless the individual chooses to do so. Following advice from the DACBEAG, we propose that there should be no 'hierarchy' of information. This means that the Agency will give equal weight to supporting information that is most relevant in individual cases. Where individuals choose to gather information we are keen to ensure that the Agency can provide clear and transparent guidance to individuals and the people supporting them about what information will be helpful in supporting an application and what information is not as useful. We would like to understand what kind of information people applying for Disability Assistance feel explains their condition in the best way and what information individuals and those who support them consider would therefore be most useful to Case Managers. This will help the Scottish Government to prioritise what information sources to test.

Question 18. What types of supporting information would be relevant in assessing an application for Disability Assistance eg. social work report, medical report?

In the 2016 Consultation on Social Security in Scotland there was strong support for the 'special rules' that currently apply to terminally ill people, to be extended to a wider range of conditions and illness. As a result the Scottish Government carried

out work with stakeholders, our Experience Panels and the Disability and Carers Benefits Expert Advisory Group to establish how we could deliver this type of system. However, it was established that to remain consistent with our intention to enable Disability Assistance Case Managers to make robust, person centred decisions, that consider the child or person concerned holistically, that we should not introduce this type of automatic entitlement to Disability Assistance. Such an approach would also be in tension with our intention to focus on the impact of conditions on a person's day to day life. Rather, Case Managers will have the skills necessary to interpret a range of information from numerous sources and to understand specific conditions in order to put together a clear picture of how a disability is likely to affect a person. Our training will ensure that Case Managers carry out their roles in accordance with the Social Security Scotland values of dignity, fairness and respect.

4.12 Duration of Awards

We are committed to introducing longer-term disability benefit awards for conditions that are unlikely to change, recognising the need to strike a balance between lengthy awards and implementing a flexible system that recognises the role of medical advances and that conditions can fluctuate. This will remove the need for unnecessary re-assessments which are often distressing and frustrating for people and for their families.

We have engaged with users of the current system via our Experience Panels, a dedicated short-life working group on award duration made up of key stakeholders, and the Disability and Carers Benefits Expert Advisory Group. In addition the Disability and Carers Benefits Expert Advisory Group considered this issue and made recommendations to the Cabinet Secretary for Social Security and Older People. As a result of this advice we have received we have concluded that the introduction of "rolling awards" recognises the needs of individuals in receipt of assistance. This will mean that awards are allocated a review point rather than a set end point and payments will continue during the review period. It is our intention that this approach will reduce the number of awards which are stopped as a result of clients having to reapply within a set period following the award ending.

We will adopt a person-centred approach to the awarding of a benefit and therefore the Case Manager will consider the child, young person or adult holistically, including the impact any condition or disability has on the individual. Case Managers will be given clear guidance and training on establishing appropriate award lengths. For a person with a condition unlikely to change it is proposed that Case Manager's Guidance will recommend that an award review date is set that is between 5 and 10 years from the initial date of award. However, Social Security Scotland may review the award within that period where there have been a reported change of circumstances. Exceptions to this rule will of course apply, particularly in the case of children who will require to be reviewed at significant developmental milestones.

In the circumstances where a condition has deteriorated Social Security Scotland may need to consider further supporting information concerning the condition or disability.

Question 19. Do you agree or disagree with the proposal to have no set award durations but to set an award review date when a decision on a Disability Assistance application is made?

Question 20. If you disagreed, please could you explain why.

Question 21. Do you agree or disagree with the proposal to set an award review date 5-10 years in the future for a person with a condition unlikely to change

Question 22. If you disagreed, please could you explain why.

We intend to advise that a **change of circumstances**, as far as requesting a “light-touch” review, should be considered as a change which has an impact on the level of assistance a person already receives. Therefore, there would be no requirement for a review where there has been any change in employment status or where any personal details are reported, for example, a change of address (within Scotland) or bank details.

It is our intention that a review date will be set by a Case Manager at a point in the future where it is considered likely that there could be a significant change in the person’s needs, with the review point set at an appropriate length.

Question 23. Do you agree or disagree with the proposal that a change of circumstances should be defined as a change which has an impact on the level of assistance a person receives?

Question 24. If you disagreed, please could you explain why.

For clients with fluctuating conditions, it is intended that the impact of the condition will be considered over an agreed timeframe and an award decision will take this into account. Clients with fluctuating conditions will not have their award reviewed more often but instead will be encouraged to notify the Agency of a change of circumstances should their condition change to a point where their day-to-day impact has changed.

Our approach towards reviews will be “light-touch” ensuring the review is supportive, person-centred and will minimise stress and anxiety. We anticipate that “light-touch” reviews will be carried out by Social Security Scotland without having to see the person in the majority of cases.

4.13 Rate of Benefits

It is our intention that the rate of benefits for all forms of Disability Assistance will remain at current rates and be annually uprated by inflation. Remaining consistent with the current rates will prevent a two-tier system existing between Scottish cases being provided by Social Security Scotland against those not yet transferred to the Scottish system.

Based on 2018/19 rates the weekly amounts will be:

Disability Assistance for Children and Young People

Care Component

Highest £83.10
Middle £55.65
Lowest £22.00

Mobility Component

Higher £58.00
Lower £22.00

Disability Assistance for Working Age People

Daily Living Component

Standard Rate 57.30
Enhanced rate £85.60

Mobility Component

Standard rate £22.65
Enhanced rate £59.75

Disability Assistance for Older People

Lower rate £57.30

Higher rate £85.60

4.14 Access to Accessible Vehicle Leases and Equipment

People currently in receipt of the higher rate of mobility component of DLA or the enhanced rate mobility component of PIP are able to transfer either the whole or part of their mobility component to lease a new car, scooter or powered wheelchair through the Motability Scheme.

The 2016 Consultation on Social Security in Scotland asked correspondents if the new Scottish social security system should continue to support access to this scheme, 97% of 200 respondents answered 'Yes'. The scheme was particularly praised for its benefits in promoting independence, reducing social isolation and improving employment opportunities. These benefits were especially pronounced in rural areas.

Therefore, in line with the principle of safe and secure transition, it is our intention to ensure that there will be an equivalent Scottish scheme in place in advance of the delivery of Disability Assistance.

4.15 Appointees

Parents or guardians have the legal right to act for a child in relation to social security until the age of 16. Over the age of 16 some adults will need additional help due to their disability. Where necessary, appointees will be put in place to ensure that people are able to access and receive assistance, and that appropriate protections are in place to ensure that assistance paid is used in the interests of the individual.

We intend to design a process that is simple and does not place a disproportionate burden on prospective appointees whilst promoting the person's independence and only intervening where necessary.

In the current DWP system a referral for a new appointee is most often instigated by a Case Manager dealing with a claim for PIP or AA. The appointee is confirmed only after a successful face to face visit by a DWP officer to both the client (to establish their needs), and the prospective appointee (to establish suitability to act).

Recognising that this system is already in place and that many adults over 18 may have an existing appointee, it is important that we do not disrupt these arrangements unnecessarily or place an undue administrative burden on carers. We therefore intend to honour existing appointees through a simple administrative process, without the need for another face to face visit from Social Security Scotland.

Where Social Security Scotland wishes to make a new appointee we propose that the existing DWP model for establishing an appointee should be largely replicated. It is a relatively simple and straightforward process and the face to face element provides an opportunity for Social Security Scotland officers to make an in-person assessment of the circumstances and individuals involved, which is an important safeguard to protect the client.

Due to our proposed extension of the maximum age of eligibility for DLA and DACYP, entitlement may span the period when a young person reaches their 16th birthday. The assumption is that Social Security Scotland will pay the funds to the young person for them to manage independently from the age of 16, unless there is an appointee, guardian, attorney or other legal acting body in place who would receive the funds and direct their use. We recognise that the transition to adulthood may be more complicated for young adults with a disability and their parent/guardian. Where it is decided that an appointee is needed, the process will be in place by the first payment of assistance post 16.

4.16 Redetermination and Appeal

The Social Security Act (Scotland) 2018 provides a right for an individual to challenge a decision made by Social Security Scotland if they believe it is not right. The individual will be able to ask for a redetermination without having to supply further evidence, but Social Security Scotland will take into consideration any new evidence provided. The redetermination will be carried out by a different officer who will look at the case independently from the original Case Manager.

Section 41 (4) of the 2018 Act includes provision to set out the timescales for requesting a redetermination in regulations. In line with the approach taken for Best Start Grant and for Funeral Expense Assistance, we are proposing that a redetermination request relating to Disability Assistance should be made within 31 calendar days of being notified of the determination. This timescale is the same as the timescale for bringing an appeal to the First-tier Tribunal.

If a request is not made within the 31 days allowed, a request for a redetermination can still be considered at any point up to a year after being notified of the original determination, if there is a good reason for the request being made late. In the first

instance the Agency will decide whether the reason provided is acceptable. If the request for a late redetermination is refused, the individual will have a right of appeal against this decision to the First-tier Tribunal. Social Security Scotland will take a supportive role during this late request process and will assess every request individually, on a case by case basis.

Question 25. Do you agree or disagree with the proposal that clients have 31 days to request a redetermination?

Question 26. If you disagreed, please could you explain why.

Timescales for carrying out a redetermination may vary depending on the form of assistance and the additional supporting information required, the Act provides that the timescale should be set out in regulations. It is likely that additional evidence may need to be obtained during the redetermination stage. Our proposal is therefore that we will establish a timescale of between 40 to 60 working days for a redetermination of Disability Assistance.

Once the outcome of the redetermination is known the individual is entitled to appeal to the First-tier Tribunal for Scotland (“the Tribunal”) if they are dissatisfied with the outcome of the redetermination. Alternatively, if there is a failure by Social Security Scotland to carry out the redetermination within the timescales set out in the regulations, the individual will have a right to take their case to the Tribunal.

An appeal must be made within 31 calendar days of the day on which the individual is informed of the outcome of the redetermination. Appeals may be made after 31 days only if the Tribunal gives permission. No appeal may be made more than one year after the day on which the individual is informed of the outcome of the redetermination.

Social Security Scotland will have a duty to provide the individual with the necessary form for initiating an appeal should they wish to do so. Upon receipt of the completed form Social Security Scotland will forward the form and the documents used in making the determination to the Tribunal within 7 working days. Social Security Scotland will also inform the individual when they have taken this action.

A new chamber of the First-tier Tribunal for Scotland came into being on 22nd November 2018. This is known as the Social Security Chamber and will hear devolved assistance appeals. It will always have three members when matters related to Disability Assistance are being considered: a legal member, a medical member and a member with disability experience. The Tribunal is administered by the Scottish Courts and Tribunal Services which is independent of the Scottish Government.

Question 27. We have proposed that Social Security Scotland have a period of between 40 and 60 days to consider a redetermination of Disability Assistance. Do you agree or disagree with this proposal?

Question 28. If you disagreed, please explain why.

4.17 Short-term Assistance

The Scottish Government has committed to providing Short-term assistance (STA) where Social Security Scotland has made a decision to reduce or stop an on-going benefit (such as disability, carer's and employment injury assistance), and that decision is subject to a request for redetermination or an appeal. The policy intention is to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice by having to manage, for a period, with a reduced income. STA is not available in the reserved system and providing support in this way is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system.

Provision for STA is set out in Section 36 of the Social Security (Scotland) Act (the 2018 Act), along with Schedule 10 as follows:

- STA will be available if a continuing payment has been reduced or stopped and that is subject to a challenge;
- STA will be available until the First-tier Tribunal (FtT) has made a determination;
- Where a person is eligible for STA, the value of STA will be the difference between the amount prior to the reduction and what it was reduced to; and
- Scottish Ministers can set further eligibility criteria in the regulations which an individual has to meet to be able to receive STA (Schedule 10 Part 1, para 1(1)(d)).

The Scottish Government is now seeking views to inform the detailed design and operation of how STA will operate.

Scope of STA

The Scottish Government will make STA available for devolved assistance types where on-going payments are made. This includes disability, carer's and employment injury assistance. As the Scottish Government has no control over UK Government policy, processes and decision making, STA cannot be used to support people whose reserved benefit is reduced or stopped. Similarly, people would not be able to access any passporting entitlements to the reserved system or those that are not controlled by the Scottish Government in the devolved system during the period that STA is being paid.

However, where there is a successful appeal, an individual's entitlement record would be adjusted from the point at which it was reduced or stopped or from the point as decided by the tribunal. The Scottish Government would expect they would also be eligible for any benefit that entitlement would have passported them to.

The 2018 Act also allows Scottish Ministers to provide assistance for housing costs, known as Housing Assistance. However, the Scottish Government position is that STA is not available for Housing Assistance as the reasons for stopping assistance would either relate to a change in a person's circumstances or that housing costs were no longer being incurred.

Residence

As the principal assistance type (e.g. disability assistance for children and young people) would have required an individual to meet clearly stated residence requirements, the Scottish Government proposes that STA should not be available if the individual is no longer living or present in Scotland. Where a person leaves Scotland to take-up residence elsewhere in the UK their claim would normally be transferred from Scotland to the relevant jurisdiction, subject to meeting eligibility requirements. The Scottish Government will work closely with the DWP and NISSA (Northern Ireland's Social Security Agency) to ensure that transition between jurisdictions are as seamless as possible and that people do not experience unnecessary gaps in payments or administrative burdens.

Question 29. Do you agree or disagree that STA should not be paid to people who are not living or present in Scotland?

Question 30. If you disagreed, please could you explain why.

Availability

Following a determination, there is no certainty that an individual may or may not accept the decision until such time as they request a redetermination. Similarly, once they get a redetermination and until they intimate an appeal, or seek late leave to appeal, there's the same lack of certainty. The 2018 Act already sets out that STA can only be made available once the request for a redetermination or an appeal is made and that the period between the decision being made and the individual deciding whether to dispute it, no payment would be made. STA will be available until the First-tier Tribunal (FtT) has made a determination. For successful appeals, the individual's entitlement will be adjusted to the point as decided by the tribunal and any sums owed to them would be paid.

In line with a rights based approach, the Scottish Government believes that a person should have a right to choose whether they want STA, but that its availability will be as seamless as possible without the need to complete complicated forms. Furthermore the availability of STA will not be dependent on meeting conditions of hardship as it would be inconsistent with the policy approach to the principal assistance types which are not subject to means-testing. This would introduce additional complexity both for the individual and Social Security Scotland. The Scottish Government envisages that a request for STA would be processed when an individual requests a redetermination or an appeal and this will be explored further with users as part of the service design process.

Recovery of STA

During Stage 1 of the Social Security (Scotland) Bill process, an emerging consensus amongst stakeholders was that STA should not be recoverable as that may discourage individuals from pursuing an appeal if they thought they could be faced with debt or increased hardship if the appeal was not successful. As the purpose of STA is to ensure an individual is not discouraged from challenging a

decision or face hardship whilst doing so, the Scottish Government proposes that STA should not be recoverable.

The exception to this would be where the principal assistance type had been found to have been claimed fraudulently and Social Security Scotland was not aware at the time STA was awarded. This would ensure the government's approach of supporting individuals is balanced against its obligations under the Scottish Public Finance Manual.

Question 31. Do you agree or disagree that STA should not be recoverable except where it is later established that the principal assistance type was claimed fraudulently when STA was awarded?

Question 32. If you disagreed, please could you explain why.

Fraud investigations

During a fraud investigation, the overarching principle is a presumption of innocence and an individual's payments will not be reduced or stopped unless Social Security Scotland has investigated and obtained evidence that, on the balance of probabilities, show the assistance has been paid incorrectly. It is important that where this is the case payments are stopped as quickly as reasonably practicable so as not to result in large overpayment liabilities that could be difficult to recover. Where fraud has been identified, a new determination would therefore be made. This determination would carry redetermination and appeal rights. The Scottish Government proposes that, in these circumstances, STA would not be payable even if the individual has requested a redetermination or an appeal.

Question 33. Do you agree or disagree that STA should not be available where an investigation by Social Security Scotland has determined that the original payment was claimed fraudulently?

Question 34. If you disagreed, please could you explain why.

Servicing an overpayment liability

There may be situations where deductions are being made from an individual's on-going assistance to service an overpayment liability. The Scottish Government proposes that these deductions should also apply to STA.

For example if an individual's entitlement was £100 per week and they had agreed to pay £20 per week to service an overpayment liability, their net amount would be £80 per week. If a new determination changed this from £100 per week to £0 per week, and this decision was subject to redetermination and appeal, STA would provide the difference to bring payments back up to the original entitlement i.e. £100 p/w. The Scottish Government proposes that the same arrangement for servicing an overpayment liability should remain in place until the outcome of the appeal is known, that is that £20 would be paid from the STA payment to service the overpayment liability, resulting in a net payment of £80 per week to the individual. A

new arrangement may be required for any outstanding overpayment liability following the outcome of the appeal.

Question 35. Do you agree or disagree that any deductions being made from an on-going assistance type to service an overpayment liability should also be applied to STA?

Question 36. If you disagreed, please could you explain why.

Process decision appeals

The 2018 Act also provides appeal rights for what are termed as process decisions. There are two types of process decision appeals that relate to redetermination. The first is provided for in Section 41(3), where the agency refuses a request for a redetermination which it views is not made validly. The other is provided for in Section 42; a late request for a redetermination which is refused by the agency as it views the reason for the late request is not valid.

Process decisions are not routed via the agency and the individual is responsible for lodging the appeal themselves with the tribunal within the timeframes that the Act sets out in Section 61. Where a late request for a redetermination is rejected by Social Security Scotland and the tribunal rules in favour of the individual, this would require Social Security Scotland to carry out a redetermination. In these situations, the Scottish Government proposes that STA would be payable from the date the tribunal overturns that decision.

Question 37. Do you agree or disagree that for successful process decision appeals where the tribunal has overturned Social Security Scotland's decision, STA should become available at the point the decision is overturned rather than the date of the original request?

Question 38. If you disagreed, please could you explain why.

4.18 Links to other Benefits

When Social Security Scotland begins delivering Disability Assistance, the UK Government will continue to deliver benefits for which they retain responsibility (reserved benefits – e.g. Employment and Support Allowance, Universal Credit) and the Scottish Government does not have any powers to change reserved policy. The DWP can determine whether or not a person is entitled to receive associated benefits or premiums which they are responsible for. Therefore, DWP will continue to determine if someone in receipt of Disability Assistance in Scotland is entitled to receive a benefit or premium delivered by DWP.

The Scottish Government will work closely with DWP and other organisations, with a view to ensuring that any existing form of assistance arising as a consequence of being in receipt of Disability Assistance continue to be paid. Once regulations have been finalised, the Scottish Government will confirm to DWP and other organisations in Scotland the legal approach being adopted by the Scottish Government with

respect to delivering Disability Assistance - DWP will then take the decision on clients continued eligibility to passported benefits.

4.19 Breaks in Disability Assistance

We propose that breaks in Disability Assistance will continue to impact on eligibility. This means that generally, where there is a break in a person's eligibility to receive the benefit after 28 days, whether that is due to residency or other issues, they will cease to receive the benefit. Details are set out below:

- Payment of DACYP for those who are required to stay away from home in a residential setting (care or education) will be stopped after a 28 day period. In the case of under 18's the mobility element will continue to be paid.
- Payment of the care component of DAWAP for those who are required to stay away from home in a residential setting (care or education) will be stopped after a 28 day period. The mobility element will continue to be paid.
- Payment of DAWAP and DAOP requiring an in-patient hospital stay will be stopped after a period of 28 days.
- Payment of DACYP requiring an in-patient hospital stay will continue.
- Payment of DAWAP who has been sentenced or are on remand will be stopped after 28 days.
- Payment of DAOP who have been sentenced or are on remand will be suspended immediately. Further payment may be made in the future depending on the outcome of the case.
- Payment of DACYP who have been sentenced or are on remand will continue.

Question 39. Do you agree or disagree with the proposed approach that, generally, where there is a break in a client's eligibility to receive the benefit, eg. due to being in residential care, they will cease to receive the benefit?

Question 40. If you disagreed, please could you explain why.

4.20 Overpayments and Deductions

Policy on overpayments for Disability Assistance will follow wider policy for Social Security Scotland. Where an overpayment is made as a result of Agency error it will not be pursued unless under exceptional circumstances such as a large and obvious overpayment. Where it is made as a result of client error, Social Security Scotland may seek to recover the overpaid assistance, but in doing so will have regard to the individual's financial and other circumstances they consider relevant.

Where possible Social Security Scotland will always aim to agree a schedule of repayments with the individual through a variety of payment methods. There is an

option for an overpayment to be repaid as a deduction from payments of an ongoing benefit. This would involve a new determination of the Disability Assistance concerned, and would be subject to redetermination and appeal.

Detailed policy for how deductions may be made is still under development. However the key principles guiding recovery decisions will be that no-one is placed into undue hardship and that people should at all times be treated with fairness, dignity and respect.

Where recovery is sought, having taken into account financial and other circumstances, consideration is being given to what rules if any, there should be around deductions from ongoing benefit payments. There are two main scenarios:

- where a client opts for this as their repayment method
- where agreement has not been achieved and Social Security Scotland proposes to make deductions.

We are considering:

- whether the amounts that may be deducted from Disability Assistance should be subject to minimum and maximum rates;
- whether these should be fixed; and
- whether there should be differentiation in the rate of deduction for different types of overpayment for example if due to fraud or error.

Question 41. Please outline any comments or experience you would like to share with us about overpayment recovery and the current DWP approach to deductions?

5. Section 2 – Disability Assistance for Children and Young People (DACYP)

We will safely and securely transfer this type of assistance to Scotland, whilst ensuring that our new system continues to make improvements.

Entitlement to DACYP

It is our intention that Disability Assistance for Children and Young People will be payable between the ages of 3 months and 18 years. Children aged 3 months or over will be entitled to claim the care component of the assistance. To claim the higher rate of mobility, eligible children will need to be at least 3 years old and at least 5 years old to claim the lower rate of the mobility component.

We do not intend to open eligibility to new applicants age 16 or over due to the potential disruption involved with applying for the benefit, then being required to apply for a working age benefit soon after. We therefore intend that brand new Disability Assistance applicants aged 16 or over will apply for working age benefit (PIP), initially with DWP, until Social Security Scotland commences delivering Disability Assistance for Working Age People.

Children and young people must have had their disability or condition for at least 3 months and expect them to last for at least 6 months. If they're defined as terminally ill they do not need to meet these qualifying periods.

Question 42. Do you agree or disagree with our proposal to provide entitlement to Disability Assistance for Children and Young People to clients aged 0-18 years?

Question 43. If you disagreed, please could you explain why.

Young People Aged 16-18

As noted above we will provide eligible children with DACYP up to the age of 18. This approach was developed to mitigate the numerous transitional difficulties experienced by young people and their families at age 16 including the requirement to navigate a potentially stressful PIP application process.

From our work with stakeholders we know that in the future many families would prefer to have the continuity of receiving DACYP up to age 18, than be required to engage with the current application process for PIP. This additional two years of receiving assistance will aid families during a potentially challenging time.

Question 44. Do you agree or disagree with our proposal to extending eligibility, for those in receipt of Disability Assistance for Children and Young People before the age of 16, to age 18?

Question 45. If you disagreed, please could you explain why.

It is currently anticipated that broad eligibility rules for DACYP, will remain similar to Child DLA. That is:

For the **care component** the **lower rate** is payable where the child or young person requires assistance for some of the day or night.

The **middle rate** is payable where:

- the child or young person requires frequent help or supervision during the day or at night; or
- they may require prolonged or repeated attention in connection with bodily functions from another person.
- they may also require a person to be awake during the night for a prolonged period or at frequent intervals to watch over them in order to avoid substantial danger to themselves or others

The middle rate of the care component is also payable to those children or young people who undergo the following treatment at home at least twice a week:

- haemodialysis – (a treatment for kidney failure which uses a machine to filter blood outside the body); or
- intermittent peritoneal dialysis – (a form of peritoneal dialysis in which dialysis solution is infused into the peritoneal cavity, allowed to equilibrate for 10 to 20 minutes, and then drained out).

The **highest rate** is payable where the child or young person requires help or supervision throughout both the day **and** night, or they are terminally ill.

For the **mobility component** the **lower rate** is payable where the child or young person can walk but need help or supervision out of doors.

The **higher rate** is payable where the child or young person is unable to walk, can only walk a short distance without severe discomfort, could become very ill if they try to walk or have severe mental or visual disabilities.

Question 46. Do you agree or disagree with our approach to the eligibility rules for the different components of Disability Assistance for Children and Young People?

Question 47. If you disagreed, please could you explain why.

Winter Heating Assistance

Winter Heating Assistance is an annual tax free supplement which will be paid to people who are over the current state pension age to help towards their winter heating costs. We are committed to providing Winter Heating Assistance to families with children in receipt of the highest care component of Disability Assistance for Children and Young People to supplement winter heating costs for families.

We intend to replicate the current sum provided by DWP to eligible recipients. This will be a lump sum payment of £200 to individuals in receipt of the highest rate care component of Disability Assistance for Children and Young People.

Question 48. Do you agree or disagree with the proposal to make a £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People?

Question 49. If you disagreed, please could you explain why.

Non Entitlement

It is intended that a child or young person would not qualify for assistance where they are:

- Already receiving an allocation of this benefit;
- Claiming the equivalent of this benefit elsewhere in the United Kingdom which would be defined as England, Wales and Northern Ireland;
- In receipt of PIP (if age 16 or over);
- Over the age of 16 for new applications; and/or
- Subject to immigration control.

6. Section 3 - Disability Assistance for Working Age People (DAWAP)

Entitlement to DAWAP

The intention is to safely and securely transfer this benefit to Scotland. New claims for DAWAP will be available to those from aged 16. We intend to link the entitlement age for Disability Assistance for Older People with changes to the state pension age which will be age 66 by 2020. The entitlement for DAWAP will therefore align with the state pension age, opening it to clients from age 16 to state pension age when Social Security Scotland begin accepting new applications.

This form of Assistance will be available to those who meet the age criteria and have difficulties with daily living or getting around (or both). To meet the eligibility criteria individuals will need to have had the physical or mental difficulty for at least 3 months and expect them to continue for at least 9 months.

If an individual is terminally ill these qualifying periods do not apply.

Benefit rules: Activities and Descriptors

The Scottish Government proposes that the criteria for awarding DAWAP will be determined on a 'points based' test against a list of [daily living](#) and [mobility activities](#). We will be open and transparent about the criteria for DAWAP and how each activity is scored. The application process will be designed to allow the person to fully explain the impact of their disability or condition, ensuring person centred decisions. However, we are aware that the current DWP approach can be problematic for some people, including those with fluctuating conditions.

We have serious concerns about the way in which the ability to move around is currently assessed and measured, in particular the use of the 20, 50 and 200 metre rules, as well as the '50% rule' that is applied to all descriptors. This means that the proportion of time during which an individual satisfies a descriptor must amount to 50% of the days in a month period. We want to find a better way to understand people's mobility needs and ensure that people get the benefits that they're entitled to. We want to get the rules right and so will carefully consider how we can improve them in a way that does not risk the safe and secure transition of this form of assistance.

Each activity will have a list of descriptors, describing different levels of need in undertaking each of the activities. Points will be awarded on the descriptor which best meets the needs described by the individual. The points scored for the daily living component will be added together. If an individual scores between 8 and 11 points they will be awarded the standard rate of the daily living component or the enhanced rate if they score 12 points or more. The same process will be carried out to assess entitlement to the mobility component.

An individual will score points on most of the daily activities as a result of a requirement to use an aid, appliance or adaptation because of a disability or condition.

In awarding points for the descriptors, Case Managers will consider whether a person is able to do the activity safely, to an acceptable standard, repeatedly and within a reasonable time period.

Question 50. Do you agree or disagree with our proposal to use a points based system to assess eligibility in relation to Disability Assistance for Working-Age People?

Question 51. If you disagreed, please could you explain why.

Question 52. Do you have any suggestions about the most appropriate way to assess eligibility in relation to mobility for Disability Assistance for Working-Age People?

Question 53. Do you have any comments on the full list of descriptors (provided at page 36) currently used to assess claims for Personal Independence Payments?

Face to Face Assessments

The Scottish Government remains committed to significantly reducing the proportion of people required to attend a face to face assessment. People will not be required to do so unless it is the only practicable way to make a decision about their entitlement.

When a face to face assessment is carried out, we will make sure the process is right for people. To deliver a successful disability assessment process we have considered what is needed from a social security system that ensures dignity and respect at every stage.

That is why we have decided that the private sector will not be involved in conducting assessments and Social Security Scotland will deliver assessments to determine eligibility for Disability Assistance, fully supported by public sector healthcare professionals. We want to ensure that people with disabilities can access a flexible, person centred assessment service across the length and breadth of the country and Social Security Scotland is best placed to do deliver that.

We want to provide an effective service and will manage performance, quality and outcomes. This approach will ensure that dignity and respect is embedded throughout, and that people can trust in the benefits system.

Informal Observations

Currently, during face to face assessments the assessor can make what are referred to as "informal observations" about the individual they are assessing. Assessors can also draw inferences from the informal observations they make about the accuracy of what an individual has written in their self-assessment form. We have received feedback from experience panel members about the kind of informal observations made by assessors and the way they are used to discredit or undermine the information provided in self-assessment.

However, assessors can also make informal observations which can support the description individuals have given of how their condition affects them. The Scottish Government is considering whether clear guidance is required to ensure that informal observations are appropriate. We also propose that there should be transparency at the assessment when an observation is made and that an individual is given the opportunity to respond to this.

Question 54. What types of observations, as part of a face to face assessment, do you believe are inappropriate?

More choice when a face to face assessment is required

We have heard from many people about their dissatisfaction with the way in which assessments are currently organised including people who have had to travel for hours to get to assessments, those who are too ill to leave the house being refused home assessments and those who unavoidably miss their assessments being told they must start the entire application process again.

We are committed to providing home assessments when necessary. In considering when this is necessary we propose that this will not require confirmation from an individual's GP but it could be required as a result of mobility needs or because of the impact of certain conditions.

We propose that individuals are provided with choice and flexibility, taking into account the distances people are expected to travel and their location preferences, when they are invited to an assessment.

Question 55. In relation to assessments, what are your views on acceptable distances to travel?

Question 56. What other circumstances should the Agency take into account?

Whilst we will provide a choice of appointment we understand that people may not be able to make their chosen appointment time. In order for the Agency to provide an efficient assessment process that avoids delays for individuals, we will have to limit the number of times an individual can cancel or fails to attend an appointment unless this happens as a result of exceptional circumstances.

In circumstances where there are cancellations it may be helpful if these appointments are offered to other individuals. However, this may mean that the invitation is made at short notice. In these circumstances the individual would be able to refuse a short notice appointment with no detrimental impact.

Question 57. In relation to assessments, how many times do you think an individual should be able to reschedule, or fail to attend, an appointment?

Question 58. In relation to a missed assessment, do you have any comments on what should amount to exceptional circumstances (e.g. hospital admissions)?

Face To Face Assessments Will Be Audio Recorded As Standard

We are aware that there is a lack of trust in the current assessment process which is exacerbated by a lack of transparency. We have therefore committed to introducing the audio recording of assessments as standard.

We want people to be confident in the knowledge that there is an accurate record of all that has been said during their assessment. Recording will also provide assessors with an additional tool that they can access when writing assessment reports, ensuring reports are an accurate reflection of the assessment. However, we also recognise that some people may not be comfortable with their assessment being recorded.

Question 59. Please provide any comments you wish to make about the audio recording of assessments.

It is our intention that a properly functioning assessment system, robust decision making and a thorough redetermination process will bring about a marked reduction in the number of decisions which are taken to appeal. We recognise however that in any social security system there will still be instances where individuals challenge the decision made about their entitlement and that they should be able to do so. We want to get appeals right, therefore it will be up to the tribunal whether they wish to consider the audio recording as part of their decision making process.

If a person chooses that their assessment should not be audio-recorded, only a copy of the assessment report will be sent to the tribunal.

Non Entitlement

As is current practice it is intended that a person would not qualify to receive assistance where they are:

- Already receiving an allocation of this form of assistance;
- Claiming the equivalent of this benefit elsewhere in the United Kingdom which would be defined as England, Wales and Northern Ireland;
- In receipt of another form of Disability Assistance;
- Under the age of 16 or over state pension age; and/or
- Subject to immigration control.

7. Section 3.1 Personal Independence Payment Criteria

PIP DAILY ACTIVITY DESCRIPTORS

Activity	Descriptors	Points
Daily Living Activities		
1. Preparing Food	a. Can prepare and cook a simple meal unaided	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition	a. Can take nutrition unaided.	0
	b. Needs – (i) to use an aid or appliance to be able to take nutrition; or (ii) supervision to be able to take nutrition; or (ii) assistance to be able to cut up food.	2
	c. Needs a therapeutic source to be able to take nutrition.	2
	d. Needs prompting to be able to take nutrition	4
	e. Needs assistance to be able to manage a therapeutic source to take nutrition.	6
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either – (i) does not receive medication or therapy or need to monitor a health condition; or (ii) can manage medication or therapy or monitor a health condition unaided.	0

	<p>b. Needs any one or more of the following –</p> <p>(i) to use an aid or appliance to be able to manage medication;</p> <p>(ii) supervision, prompting or assistance to be able to manage medication;</p> <p>(iii) supervision, prompting or assistance to be able to monitor a health condition</p>	1
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours per week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 hours but no more than 7 hours per week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but not more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing		
	a. Can wash and bathe unaided	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of a bath or shower.	3
	f. Needs assistance to be able to wash their body between the shoulders and waist.	4
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence.		
	a. Can manage toilet or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2

	d. Needs assistance to be able to manage toilet needs.	4
	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8
6. Dressing and undressing.		
	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either – (i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or (ii) prompting or assistance to be able to select appropriate clothing.	2
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally		
	a. Can express and understand verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.		
	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2

	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
9. Engaging with other people face-to-face		
	a. Can engage with other people unaided.	0
	b. Needs prompting to be able to engage with other people.	2
	c. Needs social support to be able to engage with other people.	4
	d. Cannot engage with other people due to such engagement causing either – (i) overwhelming psychological distress to the claimant; or (ii) the claimant to exhibit behaviour which would result in a substantial risk or harm to the claimant or another person.	8
10. Making budgeting decisions		
	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions.	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

Activity	Descriptors	Points
Mobility Activities		
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.	10
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
	e. Can stand and then more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, wither aided or unaided. – (i) stand; or (ii) move more than 1 metre.	12

8. Section 4 - Disability Assistance for Older People (DAOP)

Entitlement to DAOP

As indicated, the intention is to safely and securely transfer this benefit to Scotland. It is our intention that new claims for Disability Assistance for Older People will continue to be available to those who are state pension age and over.

The current rules state that people receiving this form of assistance must have required frequent attention or supervision as outlined below for a period of 6 months. If they're terminally ill the 6 month period does not apply.

Question 60. Do you agree or disagree with our proposal that Disability Assistance for Older People is provided to those who are state pension age or older?

Question 61. If you disagreed, please could you explain why.

It is anticipated that eligibility rules for the benefit, and the components that make up the benefit, will remain similar to AA. Therefore the **lower rate** of care of assistance will be available to:

- anyone who requires frequent attention or supervision daily from another person in connection with bodily functions in order to avoid substantial danger or require prolonged or repeated attention or supervision nightly from another person to avoid substantial danger will be eligible to receive.
- anyone who requires attention or supervision during both day **and** night would be eligible to receive the **higher rate** of care.

In addition, anyone who requires regular renal dialysis treatment of two or more sessions a week at home and requires the attendance or supervision of another person will be eligible to receive the **lower rate** of assistance. If their requirements includes further attention or supervision during the night they will be entitled to receive the **higher rate** of assistance.

Question 62. Do you agree or disagree with the proposed eligibility criteria for Disability Assistance for Older People?

Question 63. If you disagreed, please could you explain why.

Non Entitlement

It is intended that a person would not qualify to receive assistance where they are:

- Already receiving an allocation of this benefit;
- Claiming the equivalent of this benefit elsewhere in the United Kingdom, which would be defined as England, Wales and Northern Ireland;
- In receipt of another form of Disability Assistance;
- Under state pension age;
- Subject to immigration control.

Question 64. If you have any further comments you would like to make relating to Disability Assistance benefits not covered by this consultation document, please provide them below.

9. Section 5 - Disability Assistance in Scotland Consultation Questions

Question 1. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 0-18 years old Disability Assistance for Children and Young People (DACYP)?

Question 2. If you disagreed, please could you explain why.

Question 3. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 16 years old to state pension age Disability Assistance for Working-Age People (DAWAP)?

Question 4. If you disagreed, please could you explain why.

Question 5. Do you agree or disagree with the proposal to name Disability Assistance for clients who are state pension age or older Disability Assistance for Older People (DAOP)?

Question 6. If you disagreed, please could you explain why.

Question 7. Do you agree or disagree with the proposal to enable multiple application channels for Disability Assistance?

Question 8. If you disagreed, please could you explain why.

Question 9. Do you agree or disagree with the proposal to broadly replicate the current temporary absence rules?

Question 10. If you disagreed, please could you explain why?

Question 11. Do you agree or disagree with the proposal to implement a person-centred approach to making decisions about entitlement for Disability Assistance?

Question 12. If you disagreed, please could you explain why?

Question 13. Do you agree or disagree with our proposed approach to the involvement of Specialist Advisors in Decision Making?

Question 14. If you disagreed, please could you explain why.

Question 15. What factors should Case Managers take into account in deciding when a Specialist Advisor should be involved?

Question 16. Do you agree or disagree that the decision making process for Disability Assistance for Children and Young People, and for Older People should use existing supporting information and not through face-to-face assessments?

Question 17. If you disagreed, please could you explain why.

Question 18. What types of supporting information would be relevant in assessing an application for Disability Assistance eg. social work report, medical report?

Question 19. Do you agree or disagree with the proposal to have no set award durations but to set an award review date when a decision on a Disability Assistance application is made?

Question 20. If you disagreed, please could you explain why.

Question 21. Do you agree or disagree with the proposal to set an award review date 5-10 years in the future for a person with a condition unlikely to change

Question 22. If you disagreed, please could you explain why.

Question 23. Do you agree or disagree with the proposal that a change of circumstances should be defined as a change which has an impact on the level of assistance a person receives?

Question 24. If you disagreed, please could you explain why.

Question 25. Do you agree or disagree with the proposal that clients have 31 days to request a redetermination?

Question 26. If you disagreed, please could you explain why.

Question 27. We have proposed that Social Security Scotland have a period of between 40 and 60 days to consider a redetermination of Disability Assistance? Do you agree or disagree with this proposal?

Question 28. If you disagreed, please explain why.

Question 29. Do you agree or disagree that STA should not be paid to people who are not living or present in Scotland?

Question 30. If you disagreed, please could you explain why.

Question 31. Do you agree or disagree that STA should not be recoverable except where it is later established that the principal assistance type was claimed fraudulently when STA was awarded?

Question 32. If you disagreed, please could you explain why.

Question 33. Do you agree or disagree that STA should not be available where an investigation by Social Security Scotland has determined that the original payment was claimed fraudulently?

Question 34. If you disagreed, please could you explain why.

Question 35. Do you agree or disagree that any deductions being made from an on-going assistance type to service an overpayment liability should also be applied to STA?

Question 36. If you disagreed, please could you explain why.

Question 37. Do you agree or disagree that for successful process decision appeals where the tribunal has overturned Social Security Scotland's decision, STA should become available at the point the decision is overturned rather than the date of the original request?

Question 38. If you disagreed, please could you explain why.

Question 39. Do you agree or disagree with the proposed approach that, generally, where there is a break in a client's eligibility to receive the benefit, eg. due to being in residential care, they will cease to receive the benefit?

Question 40. If you disagreed, please could you explain why.

Question 41. Please outline any comments or experience you would like to share with us about overpayment recovery and the current DWP approach to deductions?

Question 42. Do you agree or disagree with our proposal to provide entitlement to Disability Assistance for Children and Young People to clients aged 0-18 years?

Question 43. If you disagreed, please could you explain why.

Question 44. Do you agree or disagree with our proposal to extending eligibility, for those in receipt of Disability Assistance for Children and Young People before the age of 16, to age 18?

Question 45. If you disagreed, please could you explain why.

Question 46. Do you agree or disagree with our approach to the eligibility rules for the different components of Disability Assistance for Children and Young People?

Question 47. If you disagreed, please could you explain why.

Question 48. Do you agree or disagree with the proposal to make a £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People?

Question 49. If you disagreed, please could you explain why.

Question 50. Do you agree or disagree with our proposal to use a points based system to assess eligibility in relation to Disability Assistance for Working-Age People?

Question 51. If you disagreed, please could you explain why.

Question 52. Do you have any suggestions about the most appropriate way to assess eligibility in relation to mobility for Disability Assistance for Working-Age People?

Question 53. Do you have any comments on the full list of descriptors (provided at page 36) currently used to assess claims for Personal Independence Payments?

Question 54. What types of observations, as part of a face to face assessment, do you believe are inappropriate?

Question 55. In relation to assessments, what are your views on acceptable distances to travel?

Question 56. What other circumstances should the Agency take into account?

Question 57. In relation to assessments, how many times do you think an individual should be able to reschedule, or fail to attend, an appointment?

Question 58. In relation to a missed assessment. do you have any comments on what should amount to exceptional circumstances (e.g. hospital admissions)?

Question 59. Please provide any comments you wish to make about the audio recording of assessments.

Question 60. Do you agree or disagree with our proposal that Disability Assistance for Older People is provided to those who are state pension age or older?

Question 61. If you disagreed, please could you explain why.

Question 62. Do you agree or disagree with the proposed eligibility criteria for Disability Assistance for Older People?

Question 63. If you disagreed, please could you explain why.

Question 64. If you have any further comments you would like to make relating to Disability Assistance benefits not covered by this consultation document, please provide them below.

10. Section 6 - Impact Assessments

As we have been assessing options for policy and regulations we have been logging impacts and developing the following impact assessments on which we are now consulting. Each impact assessment is described as a “partial assessment” as engagement to date has been carried out internally by Scottish Government. Reviewing and analysing responses to this consultation document will allow for comprehensive assessments to be finalised.

- The Partial Equality Impact Assessment at page 43. An Equality Impact Assessment involves assessing the impact of new or revised policies, practices or services against the requirements of the public sector equality duty. The duty requires all Scottish public authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. It covers people in respect of all aspects of equality. It helps to ensure the needs of people are taken into account during the development and implementation of a new policy or service or when a change is made to a current policy or service.
- The Partial Business and Regulatory Impact Assessment at page 57. A Business and Regulatory Impact Assessment is used to analyse the cost and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.
- The Partial Child Rights and Wellbeing Impact Assessment at page 64. The Scottish Government want to make Scotland the best place in the world for a child to grow up. Recognising, respecting and promoting the rights of children and young people is essential to achieving this. We are taking steps to ensure that children experience their rights, as determined by the United Nations Convention on the Rights of the Child. A Child Rights and Wellbeing Impact Assessment helps ensure that our policies, measures and legislation protect and promote the wellbeing of children and young people.

11. Section 7 - Partial Equality Impact Assessment

Title of policy	Disability Assistance for Children and Young People, Working Age people, and Older people.
Summary of aims and desired outcomes of policy	<p>Devolving non-means tested Disability Assistance to Scotland for children and young people, working age people and older people.</p> <p>Ensure that those who are entitled to Disability Assistance receive it based on the principle that it is a human right. Deliver such assistance with fairness, dignity and respect.</p> <p>Provide assistance that works for the people of Scotland and focusses on the needs of those accessing the system.</p>
Directorate: Division: Team	Social Security: Policy Division, Disability and Carer Benefits Policy Unit

Background

Policy Aims

1. The Social Security (Scotland) Act 2018 set out the legislative framework for the delivery of nine types of social security assistance in Scotland, including Disability Assistance. The Scottish Government is currently consulting on Disability Assistance, the three benefits that will become the Scottish replacements for Disability Living Allowance (child) (DLA Child), Attendance Allowance (AA) and Personal Independence Payments (PIP) currently administered by the Department for Work and Pensions (DWP).
2. The three new benefits currently proposed to replace the DWP administered benefits stated above are:
 - Disability Assistance for Children and Young People (DACYP)
 - Disability Assistance for Working Age People (DAWAP)
 - Disability Assistance for Older People (DAOP)
3. This Equalities Impact Assessment (EQIA) sets out the Scottish Government's analysis of the equalities impact of the policies described in the consultation document: 'Social Security: A Consultation on Disability Assistance in Scotland.'

Disability Assistance

4. The proposed approach to providing Disability Assistance was set out in the Scottish Government's consultation on Social Security in Scotland, which ran from 29 July 2016 to 28 October 2016.
5. As a result of this consultation, following extensive engagement with people who have a lived experience of accessing or attempting to access the DWP benefits system, the Cabinet Secretary for Social Security and Older People announced on 26 September 2018 that all assessments for Disability Assistance would be carried out by Social Security Scotland. At the same time the Cabinet Secretary set out a number of ways in which Scotland's social security system will work for the people of Scotland, providing a person centred service that treats people with fairness, dignity, and respect.
6. This policy will help deliver numerous Social Security Outcomes, it is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:
 - We respect, protect and fulfil human rights and live free from discrimination;
 - We tackle poverty by sharing opportunities, wealth, and power more equally;
 - We live in communities that are inclusive, empowered, resilient and safe;
 - We grow up loved, safe and respected so that we realise our full potential.

7. Disability Assistance will be provided to individuals on account of their disability or health condition (which can be physical or mental). The Act also provides for Disability Assistance to be paid to people who are terminally ill. The eligibility requirement relating to disability means that the person's disability or health condition must have a significant adverse effect on their daily activities that is not short-term.
8. For those who are defined as terminally ill, this is not required. The rules for terminal illness state that a diagnosis by a registered medical practitioner, having regard to guidance that is produced by the Chief Medical Officer, will be sufficient evidence that a person qualifies for assistance.
9. In line with the principles of dignity, fairness and respect, the Scottish Government has sought the views of people with lived experience of engaging with the current benefit system to ensure that people's views and needs are embedded in both the policy and the operations of all aspects of social security. As part of this work the Scottish Government set up the Social Security Experience Panels. The Experience Panels are made up of over 2,400 people from across Scotland who have recent experience of claiming at least one of the benefits that will be devolved to Scotland. They are instrumental in shaping the policy and design of Disability Assistance in Scotland. The Scottish Government will continue to co-design the end to end process – from application to award- with them.

Who have we involved in our policy deliberations?

10. As part of the Social Security Consultation in 2016 there were more than 200 responses to questions relating to disability benefits with an even split between responses from individuals and organisations. Respondents highlighted the positive aspects of DLA, PIP, and AA, including that the approach was holistic and fair and that the benefits were non-means tested. They also identified a number of weaknesses in the current approach, which related mainly to the complex and stressful application and assessment processes - particularly for DLA and PIP, and also the perception that the eligibility criteria for DLA, PIP and AA discriminated against certain groups.
11. Overall respondents felt that the new Scottish social security system should be more flexible, accessible and person-centred. It was felt that applicants should be able to decide how to engage with the system, choosing from a range of options that suited them best, whether paper-based, online, by telephone, face to face or using other types of technology. Others underlined the importance of applicants being treated with dignity and respect throughout their dealings with the new Social Security Agency. There was support for better joint working and communication between relevant public agencies. In relation to data sharing there was some concern about potential breaches of security and respondents emphasised the importance of securing consent.
12. Policy changes have been co-designed by the Scottish Government, stakeholders, the Experience Panels and the wider public. The Disability and Carers Benefits Expert Advisory Group (DACBEAG) is independent of the

Scottish Government and was formed to provide recommendations and advice to Scottish Ministers on the development of policy related to Disability Assistance. They have provided a range of advice to inform policies such as in relation to suitably qualified assessors, award duration, automatic entitlement and the Social Security Charter.

13. DACBEAG is comprised of experts from a range of professional backgrounds including the Convener of the Scottish Social Services Council, Chief Executive Officer of Inclusion Scotland and Associate Director for Scotland of Joseph Rowntree Foundation. The DACBEAG has significantly contributed to the development of policy related to Disability Assistance. To date the group has advised on:

- automatic entitlement of Disability Assistance
- duration of Disability Awards
- the evidence base for policy decisions
- suitably qualified assessors, Case Managers and relevant training

14. The Scottish Government has undertaken ongoing consultation with the Ill Health and Disability Benefits Stakeholder Reference Group. The Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. The group has advised on:

- the evidence base for policy decisions
- potential impact of policy decisions
- user and stakeholder engagement; and
- the interaction with other Scottish and UK social security benefits.

15. An exploratory process was undertaken for each form of assistance to gather the views of users through a range of user research and stakeholder engagement activity. These engagements supported the development of both the policy intent and the design of the administrative functions of each of the forms of assistance.

Who was involved in assessing the equalities impact?

16. Stakeholders and the wider public had the opportunity to express views about Disability Assistance during the consultation on Social Security, discussed above. In particular comments were invited on a partial Equality Impact Assessment which represented the Scottish Government's work on the impact of social security policy on people with protected characteristics up to the point of consultation. 521 formal written responses to the consultation were submitted. Of these, 241 were from organisations and 280 from individual respondents. Of the 241 organisations that responded to the consultation 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions and carers. The independent analysis of the responses along with the Scottish

Government response were published on 22 February 2017¹. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform this partial assessment. It can be found: <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

17. An initial framing exercise was carried out involving a range of internal Scottish Government stakeholders in order to inform this partial Equality Impact Assessment relating to Disability Assistance. In addition to highlighting a number of the positive impacts and potential barriers discussed above, the exercise enabled significant data gaps to be identified. Targeted consultation with stakeholders representing people with protected characteristics will be undertaken during the consultation period.

Data on Benefits Currently Paid

Attendance Allowance

18. As of May 2018, 125,501 individuals were in receipt of AA.
19. The AA caseload has gradually declined from a peak of 147,990 in November 2009.
20. 61 % of claimants were aged 80 or over. The peak age band for claims was 80-85 (31,875), though it is likely the incidence of claims increases with age, but subsequent age cohorts become smaller due to mortality.
21. The largest number of cases are due to arthritis (39,694), followed by dementia (10,833) and heart disease (10,046). Learning disabilities tend to be more common for younger-age recipients.

Personal Independence Payments

22. 213,741 individuals received PIP in October 2018 in Scotland.
23. This number is increasing as DLA claimants are re-assessed onto PIP – 48 % of current PIP claimants have been re-assessed from DLA.
24. 66 % of claimants receive both daily living and mobility elements of PIP, and the most common types of main disabling condition are psychiatric disorders.

Disability Living Allowance

25. 38,488 children (aged 0-18) received Child DLA in May 2018 in Scotland.

¹ Analysis of Written Responses to the Consultation on Social Security in Scotland (2017) <http://www.gov.scot/Topics/People/fairerscotland/Social-Security/SG-Response>

26. 19% of claims for DLA overall were aged 0-17.
27. As a significant number of the working age and 65+ population receive DLA, the equality breakdown is still of interest when considering the assistance in those age groups. 41 % of DLA claimants are aged over 65. DWP do not publish breakdowns of DLA data for Scotland by religion, ethnicity or sexual orientation. In the UK, “White British” family units are the most likely to receive the care component of DLA (7 per cent) and “Chinese” the least (0 per cent). White British families are also most likely to receive the mobility component (6 per cent) and “Asian Other” and Chinese are the least likely on 1 per cent². (DWP has not published similar data for PIP or AA).
28. DWP does not hold administrative data on gender re-assignment, marital status, religion or sexual orientation. Pregnancy data is only held where this is the main reason for incapacity.

Data Gaps

29. We are aware that there are significant gaps in our data particularly in relation to the gender of children and young people. This is due to the sensitivities and challenges in collecting data related to young children. In addition, there is no robust data relating to the proportion of people of any age in Scotland to whom the gender reassignment protected characteristic would apply. The available data in relation to religion and belief is also very limited: 48.7% Scots over 16 in 2016 identified as having “no religion” and 47.3 % were Christians (Church Scotland, Roman Catholic or “Other Christian”). Once age was taken into account difference in reported health tend to disappear, with only “lower than average” rates for “Roman Catholic” and “Other” Groups³.

Impact of Disability Assistance on people with protected characteristics

30. This policy has the potential to have an overwhelmingly positive impact on people with protected characteristics. In reflecting the Scottish Government’s approach to social security we intend to create a system of Disability Assistance that is person centred, meeting the specific needs of each individual. In combination with the ethos of fairness, dignity and respect this should bring about a marked improvement in the experience of people with disabilities, including those with other protected characteristics, in interacting with the social security system.
31. We have also identified a number of areas in which further development of the policy may be required to mitigate any potential barriers that people with certain protected characteristics may experience. We want to ensure that Disability Assistance meets the needs, as far as possible, of the people applying and receiving assistance.

² <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/benefits/state-support/latest>

³ Scottish Surveys Core Questions 2014

32. The key positive impacts we envisage to specific protected groups are set out below followed by the potential barriers that have come to light and any proposed alternative approaches we have considered.

Positive Impacts

Sex

33. From the 2011 census we know that those reporting a long-term condition which limits their daily activities “a lot” rises with each age group for both men and women although women over 65 are still more likely to report a long-term condition. 8.3% of men and 10.2% of women reported that their day-to-day activities were limited “a lot”. For those over 65 this rose to 25.6% and 29.2% for men and women respectively. For those over 85 this rose further to 48.1% of men and 56.% of women.
34. Women are proportionally more likely than men to have a limiting condition at older ages but also are more likely to live to those ages where frailty becomes an increasingly greater issue. Looking at a specific age band, 17% of women aged 65-69 find their activities limited a lot compared to 18.1 % of men, suggesting that disability has a similar incidence but that the numbers of women with a disability are likely to be higher because of a higher average life expectancy.
35. As boys account for 71% of those currently in receipt of Child Disability Living Allowance (DLA) it is predicted that the policy relating to Disability Assistance for children and young people will have a disproportionately positive impact on that group. One of the main causes of this disparity is the much more frequent diagnosis of boys with behavioural and learning disabilities compared to girls.
36. In contrast, women are currently more likely to be in receipt of PIP and AA than men, accounting for 55% and 64% of recipients of the respective benefits. This means that the benefits providing assistance relating to working age and older adults will have a disproportionately positive impact on women.

Disability

37. Our consultation and engagement with stakeholders in relation to current disability benefit provision has shown that individuals with fluctuating conditions, mental health conditions and learning disabilities have faced particular difficulty in applying for and receiving Personal Independence Payment (PIP). It is estimated that they account for over 50% of people currently in receipt of PIP, with the most common disabling condition among PIP claimants being psychiatric disorders. The aspects of the policy that will improve the application and assessment process, particularly the proposed approach to the provision of suitably qualified assessors, are likely to have an even greater positive impact on people with fluctuating conditions, mental health conditions and learning disabilities.

38. In addition to our proposals for the ways in which existing PIP rules should be dealt with in Scotland, Scottish Disability Assistance will further positively impact on people with mental health conditions and fluctuating conditions. Examples of this are the “50% rule” (which determines that for a fluctuating condition you must require support at least 50% of the time) and the “20m rule” (which determines that to receive the higher mobility rate you must be able to walk less than 20m).
39. We are committed to delivering Disability Assistance in a way that reflects our responsibility to provide inclusive communication. We know, for example, that 12,533 people in Scotland use BSL (British Sign Language) as the main language spoken at home. The variety of ways in which individuals will be able to apply for assistance – on-line, on the phone, by e-mail and in person – and the provision of application forms in accessible formats is part of this commitment. This will reduce the barriers to access which may otherwise be experienced by people whose illness or disability impacts the ways in which they communicate.
40. In addition, when building our Disability Assistance system the Scottish Government will continue to adhere to the Digital First Service Standards. These criteria include requirements relating to accessibility, ensuring that systems can be used by individuals with a range of communication needs. In order to progress to each new stage of development the system must pass a Digital First Assessment.

Age

41. The 2017 mid-year population estimates reported that there were 3.38 million people aged 18-64, 1.01 million people aged 65 and over, and 1.03 million under 18 year olds in Scotland⁴.
42. The ethos underpinning Scotland’s system of social security – fairness, dignity and respect – ensures that a person centred approach, whatever the individual’s age, is embedded within delivery of Disability Assistance.
43. The Scottish Health Survey 2016 (published 2017) found that around 7% of young people in Scotland (under the age of 16) had a limiting long-term physical or mental health condition. Boys were much more likely to have a long-term limiting condition at 9% of the population of boys under 16, compared to 6% of girls under 16.
44. If an individual is regarded as terminally ill, their claim for Disability Assistance will be processed under ‘special rules’ for terminal illness as laid out in the Social Security (Scotland) Act 2018. These rules will do four things:

⁴ National Records of Scotland <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2017>

- No qualifying period for the benefit will apply. This means that an individual will not be required to have the progressive disease for any period of time in order to be eligible for assistance.
 - There will be no assessment by Social Security Scotland. All that will be needed is verification that an individual has been diagnosed by a registered medical practitioner as being terminally ill for the purposes of entitlement to Disability Assistance.
 - Awards will be calculated, at the latest, from the date of application. This approach allows awards to be made based on an earlier date than when the application is made, namely the date on which an individual is verified by a registered medical practitioner as being terminally ill.
 - At present, individuals regarded as terminally ill get the highest rate for the care component but the mobility component of an award is not automatic. We are changing this approach to ensure that individuals regarded as terminally ill will be fast-tracked to both highest rate care and mobility components for Disability Assistance.
45. As part of the implementation of DACYP we are intending to increase eligibility from age 16 to 18 for young people in receipt of DACYP prior to their 16th birthday. This will ensure that young people and their families do not have to undergo a stressful and anxiety provoking reassessment process at age 16, a time when many young people undergo a transition to adult services. This policy measure is likely to have a broadly positive impact and is supported by stakeholders as a desirable permanent change to the eligibility rules for the benefit.
46. It should be noted that at age 16, under the current UK administration of Child DLA, 22% of DLA applicants to UK PIP are unsuccessful^[1]. This policy measure intends to mitigate this issue by ensuring that there is an extended award to 18.

Sexual Orientation

Young people are more likely to identify as “Lesbian, Gay, Bisexual or Other” at 4.5 %.⁵ Individuals reporting themselves as “LGB & Other” are less likely to report “good” or “very good” general health than the rest of the population (65.6% compared to 74.5% of the general population). It is therefore predicted that this group will benefit from policy related to new Disability Assistance.

Other Protected Characteristics

47. The policy measures described are anticipated to have a broadly positive impact across all individuals. However we have not identified any specific positive impacts of this policy in relation to the following protected

^[1] <https://www.gov.scot/binaries/content/documents/govscot/publications/report/2017/10/impact-uk-welfare-policy-disabled-people/documents/00526666-pdf/00526666-pdf/govscot%3Adocument>

⁵ Scottish Surveys Core Questions 2016

characteristics: race, religion or belief, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Potential barriers

Age

48. 9.6% of all working age and older people described having a condition which limited their day-to-day activities “a lot”. We know that the older population is more likely to be affected by disabling conditions: 7% of those aged 16-64 describe having a condition which limits their day-to-day activities but this rose to 27.6% of those aged 65 and above.
49. People currently in receipt of the higher rate of mobility component of DLA or the enhanced rate mobility component of PIP are able to transfer either the whole or part of their mobility component to lease a new car, scooter or powered wheelchair through the Motability Scheme.
50. Due to the lack of mobility component AA recipients cannot access the motability scheme although we know that the largest number of AA cases are due to mobility-limiting conditions: for example, 32% of all claims are due to arthritis. Respondents to the 2016 Consultation on Social Security in Scotland argued this lack of mobility component for older people represented discriminatory policy making.
51. We intend to carry out some exploratory work to assess how we can better meet the mobility needs of older people who are not currently eligible for mobility elements of benefits and will be in receipt of Disability Assistance in the future.
52. It should be noted that under the current DWP administered system, children in receipt of DLA are required to apply for PIP at age 16, of which 22% are unsuccessful. Increasing the transition age intends to mitigate this issue by ensuring that there is an extended award to 18. Further scoping is being undertaken to ascertain any negative impact of this change. PIP clients receive on average awards that are 32% higher than DLA awards, meaning that some clients may be in receipt of a lower award as a result of this policy measure.

Race

The total share of minority ethnic groups in 2015 was 3.7 %. In terms of general health, respondents with Pakistani heritage (in 2008-2011) were least likely to report good health, albeit this was not significantly different to the national average. People describing themselves as having Chinese heritage were most likely to report good health although not by a significant margin. In 2014 those identifying as “White, other British” and “White other” had reported

significantly better health than those who reported “White-Scottish” as their ethnicity.⁶

Non-white ethnicities made up 3.7 % of those with a reported learning disability or developmental disorder compared to 4.0 % of the total population according to the 2011 census. The 2011 census showed that 9.6 % of the population reported that their day-to-day activities were limited “a lot”. This was 9.7 % for “white” people, 5.6 % for those who identified as “Caribbean or Black”, 4.1 % for “Asian, Asian Scottish or Asian British”. The smallest incidence was 2.2 % for those who reported their ethnicity as “African”. White and Caribbean or Black groups show the joint highest: 5.5 % of 24-49 year-olds described their day-to-day activity as limited. Among 50-64 year-olds those describing themselves as “mixed of multiple ethnic groups” had the highest incidence of those who describe their day-to-day activities as “limited a lot”: 13% compared to a whole-population share of 12.8 % and 8.1 % who described themselves as “African”.

53. As with the general population, incidence of disability amongst those who reported that their day-to-day activities were limited “a lot” tends to rise with age. 27.6% of white people aged 65+ had conditions which limited their day-to-day activity “a lot”, 29.5 % “mixed or multiple ethnic groups” and 21.7% of who described themselves as “African”.
54. Our commitment to accessible communication includes making sure that we do not create language barriers for people who communicate in languages other than English, who make up 7% of the Scottish population. We intend to undertake additional engagement with stakeholders to fully understand the needs of such individuals and explore the measures we can take to ensure equal access to all the application channels for Disability Assistance.
55. In order to promote uptake of Disability Assistance amongst people with disabilities from ethnic minorities a communication and engagement strategy will be required. We understand that some ethnic minority communities feel less able to engage with universal services because the services don’t reach out appropriately. It is crucial that we work with stakeholders to identify an effective strategy. In promoting engagement with Social Security Scotland, individuals can be linked up with additional assistance and services, both within the Agency and more widely.
56. Our proposed residence requirements are:
 - Ordinarily resident in Scotland.
 - Have been present in Great Britain for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the last 156 weeks (i.e. 2 out of the last 3 years);
 - Be habitually resident in the United Kingdom, Republic of Ireland, Isle of Man or the Channel Islands (i.e. the Common Travel Area (CTA)).
 - Not be subject to immigration control.

⁶ Scottish Surveys Core Questions 2014

57. We are aware that when people are newly able to meet the residence requirements we may need to consider evidence requirements so they do not continue to experience barriers to applying for Disability Assistance. For example, this may include broadening the documentation that can be used to prove residence. In addition, we understand that gypsy/travellers in particular, may not have easy access to the forms of evidence usually required to meet residence requirements and so this factor will be included when evidence requirements are considered.

Sex

58. Our policy is that Disability Assistance for adults who are detained in custody will have their payment suspended after 28 days. This indirectly discriminates against men as they account for a significantly higher proportion of the prison population than women, with men comprising 95% and women 5% of the average daily prison population⁷. We intend to undertake analysis to consider whether there is anything we can do as part of the policy development to mitigate this issue.

Sexual orientation

59. Potential barriers may deter lesbian, gay and bisexual (LGB) people from accessing Disability Assistance relating to language, both with regards to written communication and interactions with Agency staff. During the development of the Disability Assistance system we will ensure that the need for language to be inclusive of LGB people - for example by using parent as opposed to mother or father, and partner as opposed to husband or wife – is fully understood and implemented. It will also be important that all Agency staff undergo LGB awareness training and avoid making assumptions, for example that two women are sisters as opposed to married.

60. We understand that there are likely to be other factors which although not a consequence of the policy itself may impact on uptake by LGB people. This may include a fear of experiencing homophobia when interacting with a government Agency. We will engage with stakeholders during the consultation to more fully understand potential issues and, if necessary, explore what can be done to overcome them.

Gender reassignment

61. One of the main potential barriers to trans people accessing Disability Assistance is a requirement for individuals to provide their gender when making an application. Non-binary people in particular will be excluded if individuals are asked to tick a box to indicate their gender and the only options available are male and female. The issues discussed above impacting

⁷ Figures for 2017-18, SPS annual reports
<http://www.sps.gov.uk/Corporate/Publications/Publication-6020.aspx>

LGB people relating to inclusive language, staff awareness, and fear of experiencing discrimination also apply to trans people.

Other Protected Characteristics

62. We have not yet identified any particular barriers resulting from our policy approach which may affect people with the following protected characteristics: religion or belief, marriage and civil partnership, and pregnancy and maternity.

Monitoring and review

63. Monitoring the impact of Disability Assistance on people with protected characteristics will be a continuous process. If and when any unintended consequences are identified steps will be taken to rectify them. The Scottish Government will put in place a monitoring and evaluation plan prior to the implementation of Disability Assistance which takes account of the issues identified within the final EQIA. On-going stakeholder engagement will be an important part of this plan monitoring. The Charter reflects the requirements set out in the Act that the Scottish social security system advances equality and non-discrimination.

Extent / Level of EQIA required

64. While we have identified that the devolution of Disability Assistance will have some positive and negative impacts on the groupings outlined above, we are keen to seek out opportunities to promote better equality of opportunity. This consultation therefore seeks the views of stakeholders, the public and a wide range of equality groups (see Annex A) on any potential equality issues.

The consultation specifically asks consultees to consider:

Do you think the partial Equality Impact Assessment has correctly identified the impact of our proposals on those with protected characteristics? What would you add or change?

In 2014-17, the poverty rate after housing costs for families with a disabled person was 24%. This compares with 16% of people in a family without a disabled person who were in poverty.

How do you think the devolution of Disability Assistance might impact upon disabled households? Particularly people on low incomes, people living in deprived areas, people in material deprivation, or people with no / or low wealth and people from different socio-economic backgrounds?

Responses to these and the other questions will inform the development of the EQIA that will accompany the draft regulations for Disability Assistance and help us to duly consider its impact for equality groups within the context of the public sector equality duty to:

- eliminate unlawful discrimination, harassment and victimisation,
- better promote equality of opportunity and

- foster good relations

12. Section 8 - Business and Regulatory Impact Assessment Summary

Introduction

1. The Social Security (Scotland) Act 2018 set out the legislative framework for the delivery of nine types of social security assistance in Scotland, including Disability Assistance. The Scottish Government is currently consulting on Disability Assistance, the three benefits that will become the Scottish replacements for Disability Living Allowance (child) (DLA Child), Attendance Allowance (AA) and Personal Independence Payments (PIP) currently administered by the Department for Work and Pensions (DWP).
2. The three new benefits currently proposed to replace the DWP administered benefits stated above are:
 - Disability Assistance for Children and Young People (DACYP)
 - Disability Assistance for Working Age People (DAWAP)
 - Disability Assistance for Older People (DAOP)
3. This Business and Regulatory Impact Assessment sets out the Scottish Government's analysis of the policies described in the consultation document: 'Social Security: A Consultation on Improving Disability Assistance in Scotland' on businesses, private organisations, public agencies and Legal Aid. It also sets out how Scottish Government will ensure that the delivery of Disability Assistance complies with relevant regulatory requirements.
4. These forms of Disability Assistance will provide financial support to over 350,000 people in Scotland and it is anticipated that all of these individuals will be impacted directly by the delivery of Disability Assistance. Further work on developing a benefit uptake strategy is being undertaken and it is likely that the total caseload will increase as a result of the implementation of the strategy.
5. The delivery of Disability Assistance in Scotland is anticipated to have a broadly neutral impact on businesses and public agencies.

Who we have involved in our deliberations?

6. A range of private and third sector organisations responded to the Social Security Consultation in 2016 and gave views on the current administration of PIP, DLA and AA, as well as giving written responses on how the benefits, and the benefit administration processes, should be changed. There was support across all of these groups for change in a number of areas particularly around the administrative processes for PIP, DLA and AA, and these responses have supported the Scottish Government to develop policy options in line with comments and feedback given.

7. The Scottish Government has developed policy related to Disability Assistance through co-production with current benefit recipients, key third sector stakeholders and other interested parties and is currently undertaking a public consultation to further ensure that the policy intent is supported by stakeholder, individuals and interested organisations. Where feedback is provided as part of the consultative process that would alter the policy direction, these will be considered as part of the drafting of the Disability Assistance regulations for each of the three benefits. Draft regulations will be scrutinised by the Scottish Commission on Social Security (SCoSS) before being laid before the Scottish Parliament.
8. We are seeking further comments and feedback from businesses, the third sector, public agencies and individuals on the impact of Disability Assistance in relation to their organisations.

Business and Regulatory Impact Assessment (BRIA) summary

9. Our assessment of the Disability Assistance policy intent in relation to Business and Regulatory impact was undertaken using the five principles of Better Regulation, as follows:
10. **Proportionate** –The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the benefit introduction. The equivalent UK benefits, DLA, PIP and AA will reduce in caseload as Disability Assistance is delivered by the Scottish Government. This will likely lead to a neutral impact on the administrative burdens on other public agencies, private businesses and third sector organisations. Social Security Scotland has committed to undertaking much of the administrative responsibility, as far as possible, on behalf of people accessing Disability Assistance and intends to create data sharing processes with relevant public bodies. It is anticipated that this will reduce the burden of providing information to individuals that public agencies currently undertake, by creating formal data sharing agreements and processes with one Agency, Social Security Scotland.
11. **Consistent** – Disability Assistance builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, respect and a human rights based approach. The benefit will be delivered on an entitlement basis to eligible people. Secondary legislation will be laid describing the rules and eligibility for each of the three new benefits. Operational guidance for Case Managers within Social Security Scotland will be implemented, in line with the rules within the regulations, to provide a framework for consistent decision making across all applications. There will be provision in place to challenge the decision of Social Security Scotland

through a redetermination and all recipients will have the right of appeal to a First-tier Tribunal.

12. **Accountable** – We will ensure that clients understand their right to have their decision re-determined by Social Security Scotland and to request an appeal to the First-tier Tribunal if they remain unhappy with their Disability Assistance benefit decision. All decisions made relating to an application for Disability Assistance will be provided to clients in a communication method that meets their needs. All evidence used, and rationale for the decision, will be included within this communication to ensure that clients are informed of how the decision relating to their benefit application was assessed. The Social Security Charter sets out, in plain and clear English, what people are entitled to expect from the Scottish social security system, including how they should be treated and how their application will be treated. Complaints regarding Social Security Scotland can be directed to the Scottish Public Services Ombudsman.
13. **Transparent** – We will develop a communications strategy for each of the three Disability Assistance benefits. This will aim to ensure that people who are eligible, the third sector, local government, education sectors and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. We will publish guidance on the benefit, in a way that takes account of differing communication needs, so that eligibility is clearly understandable. The Social Security (Scotland) Act 2018 places a duty on Scottish Ministers to publish a benefit uptake strategy in advance of delivery of social security benefits. This benefit uptake strategy will be a transparent measure of success in promoting uptake of each the benefits.
14. **Targeted only where needed** – Each form of Disability Assistance is provided to cover the additional costs of a disability or long term condition. There is currently no other funding source or alternative service that would be available to support children and families for this purpose. The rules for the benefit will be set out in regulations and each new claim will undergo a claims process which will assess eligibility for the benefit, in a way that is consistent with the principles of dignity, respect and being person-centred. As described above, the regulations will set out the eligibility rules for the benefit and operational guidance to ensure that, where a client has submitted an application but does not meet the eligibility criteria for the benefit, they will not receive an award for Disability Assistance. We have undertaken analysis, based around the anticipated eligibility rules, to scope potential caseload sizes of those who will be the target group for each form of assistance:
15. In May 2018 there were 37,226 children in receipt of Child DLA in Scotland, and our forecasts estimate that we could receive approximately 7,600 new applications for Child DLA in 2020/21.

16. In October 2018 there were 213,741 individuals in receipt of PIP in Scotland. This total will increase significantly as working age individuals currently in receipt of DLA are transitioned on to PIP. By the end of 2020/21 our forecasts estimate that the total PIP caseload in Scotland will be almost 300,000, and in 2021/22 there could be over 50,000 new applications for PIP.
17. In May 2018 there were 125,501 people in receipt of AA in Scotland, and our forecasts estimate that we could receive approximately 28,000 applications in 2021/22.
18. Disability Assistance will initially transfer to Scotland with rates for the benefit components unchanged at point of transfer. The Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits for eligible individuals, and the Act requires Ministers to set out in parliament a benefit uptake strategy. Increased benefit uptake is likely to have a positive impact on businesses and the economy because more individuals will be in receipt of benefits which will be used to purchase a range of goods and services from third sector or private organisations.
19. It is expected that the introduction of these benefits could cause additional requests for information and support from existing advice services. However it is anticipated that by introducing a system that has been designed in partnership with advice agencies, key stakeholders and recipients, the Social Security Agency will be equipped to support individuals. This should lessen the impact on advice services in their provision of complex welfare rights casework support for individuals.

Terminal Illness

20. For the purpose of determining entitlement to Disability Assistance the Act requires the Chief Medical Officer (CMO) to prepare guidance which sets out when a progressive disease can reasonably be expected to cause an individual's death. A decision on whether an individual is to be regarded as having a terminal illness is to be based on the clinical judgement of a registered medical practitioner. This decision must take regard of the CMO Guidance and the definition set out within this.
21. If an individual is regarded as terminally ill, their claim for Disability Assistance will be processed under 'special rules' for terminal illness as laid out in the Social Security (Scotland) Act 2018. These rules will do four things:
 - No qualifying period for the benefit will apply. This means that an individual will not be required to have the progressive disease for any period of time in order to be eligible for assistance.
 - There will be no assessment by Social Security Scotland. All that will be needed is verification that an individual has been diagnosed by a registered medical practitioner as being terminally ill for the purposes of entitlement to Disability Assistance.

- Awards will be calculated, at the latest, from the date of application. This approach allows awards to be made based on an earlier date than when the application is made, namely the date on which an individual is verified by a registered medical practitioner as being terminally ill.
- At present, individuals regarded as terminally ill get the highest rate for the care component but the mobility component of an award is not automatic. We are changing this approach to ensure that individuals regarded as terminally ill will be fast-tracked to both highest rate care and mobility components for Disability Assistance.

Competition Assessment

22. The Scottish Government does not believe that Disability Assistance will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The benefit does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.
23. Any procurement required to support the administration of Disability Assistance will be subject to the Public Contracts Scotland (2015) Regulations and the Procurement Reform (Scotland) Act 2014, which together provide a national legislative framework for sustainable public procurement which supports Scotland's economic growth through improved procurement practice.
24. Face to face assessments will be delivered by the public sector. This will mean that there will be no contracts for the current private sector assessment providers to bid for undertaking assessments for the purposes of determining eligibility for Disability Assistance. The Scottish Government will have to consider however whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to employees currently delivering this service.

New business forms

25. The Scottish Government will ensure that all clients with the highest rate of mobility component for either DACYP or DAWAP will have access to an accessible vehicle and equipment leasing scheme to meet their mobility needs. The Scottish Government is currently developing its approach to this scheme and any introduction of a new business form to the market will be done in a way that meets requirements set out in the Public Contracts Scotland (2015) Regulations and the Procurement Reform (Scotland) Act 2014, as well as relevant EU directives on state aid and competition.

26. As highlighted above, where a face to face assessment is deemed necessary, it will be delivered by the public sector. There will be no new business form in the market and the face to face assessments service will be delivered nationally by Social Security Scotland.

Legal Aid Impact Test

27. The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court.

28. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Disability Assistance. Current recipients are already able to access legal aid to appeal entitlement decisions. It is expected that as a result of the extensive consultation and co-produced service design process, that the decision making quality of Social Security Scotland will be improved and reduce appeals to tribunal by clients.

Enforcement, sanctions and monitoring

29. The Scottish Government has set up the Scottish Commission on Social Security, an independent expert body that will scrutinise the Scottish social security system (including benefit regulations) and hold Scottish Ministers to account. As part of their function, they will examine the regulations required for the administration of Disability Assistance and produce a report setting out their observations and recommendations in relation to the proposals. This report will be submitted to Scottish Ministers, the Scottish Parliament and made available to the wider public.

30. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system, including all three Disability Assistance benefits. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

Consultation

31. We are keen to hear from stakeholders in relation to this impact assessment and their feedback on our impact analysis.

The consultation specifically asks consultees to consider

Do you think the partial Business and Regulatory Impact Assessment has identified where the devolution of Disability Assistance might impact on public agencies and businesses? What would you add or change?

Responses to these and the other questions will inform the development of the final Impact Assessment that will accompany the draft regulations for Disability Assistance and help us to duly consider its impact on businesses and public agencies.

13. Section 9 - Child Rights and Wellbeing Assessment

Introduction

1. The Social Security (Scotland) Act 2018 set out the legislative framework for the delivery of nine types of social security assistance in Scotland, including Disability Assistance. The Scottish Government is currently consulting on Disability Assistance, the three benefits that will become the Scottish replacements for Disability Living Allowance (child) (DLA Child), Attendance Allowance (AA) and Personal Independence Payments (PIP) currently administered by the Department for Work and Pensions (DWP).
2. The three new benefits currently proposed to replace the DWP administered benefits stated above are:
 - Disability Assistance for Children and Young People (DACYP)
 - Disability Assistance for Working Age People (DAWAP)
 - Disability Assistance for Older People (DAOP)
3. This Child Rights and Wellbeing Assessment (CRWIA) sets out the Scottish Government's analysis of the impact of the policies described in the consultation document: 'Social Security: A Consultation on Improving Disability Assistance in Scotland' on children and young people's wellbeing who may be affected by the implementation of Disability Assistance.
4. These forms of Disability Assistance will provide financial support to over 350,000 people in Scotland and it is anticipated that all of these individuals will be impacted directly by the delivery of Disability Assistance. Further work on developing a benefit uptake strategy is being undertaken and it is likely that the total caseload will increase as a result of the implementation of the strategy.
5. The delivery of Disability Assistance in Scotland is anticipated to have a broadly positive impact on children's rights and welfare and the three forms of assistance, and related administrative functions, have been designed around the principles of providing dignity and respect for people and their families.
6. The Scottish Government has developed policy related to Disability Assistance through co-production with current benefit recipients, key third sector stakeholders and other interested parties and is currently undertaking a public consultation to further ensure that the policy intent is supported by stakeholders and individuals. Where feedback is provided as part of the consultative process that would alter the policy direction, these will be considered as part of the drafting of the Disability Assistance regulations for each of the three benefits. Draft regulations will be scrutinised by the Scottish Commission on Social Security (SCoSS) before being laid before the Scottish Parliament.

Who have we involved in our policy deliberations?

7. As part of the Social Security Consultation in 2016 there were more than 200 responses to questions relating to disability benefits with an even split between responses from individuals and organisations. Respondents highlighted the positive

aspects of DLA, PIP, and AA, including that the approach was holistic and fair, and that the benefits were non-means tested. They also identified a number of weaknesses in the current approach, which related mainly to the complex and stressful application and assessment processes - particularly for DLA and PIP, and also the perception that the eligibility criteria for DLA, PIP and AA discriminated against certain groups.

8. Overall, respondents felt that the new Scottish social security system should be more flexible, accessible and person-centred. It was felt that applicants should be able to decide how to engage with the system, choosing from a range of options that suited them best, whether paper-based, online, by telephone, face to face, or using other types of technology. Others underlined the importance of applicants being treated with dignity and respect throughout their dealings with the new Social Security Agency. There was support for better joint working and communication between agencies. In relation to data sharing, there was some concern about potential breaches of security, and respondents emphasised the importance of securing consent.

9. Policy changes have been co-produced by colleagues from within the Scottish Government, stakeholders, the Experience Panels, and the wider public. The Disability and Carers Benefits Expert Advisory Group (DACBEAG) is independent of the Scottish Government and was formed to provide recommendations and advice to Scottish Ministers on the development of policy related to Disability Assistance. They have provided a range of advice to inform policies such as scrutiny, suitably qualified assessors, award duration and automatic entitlement and the Charter.

10. DACBEAG is comprised of experts from a range of professional backgrounds including the Convener of the Scottish Social Services Council, Chief Executive Officer of Inclusion Scotland and Associate Director for Scotland of Joseph Rowntree Foundation – the DACBEAG has significantly contributed to the development of policy related to Disability Assistance. The Ill Health and Disability Benefits Stakeholder Group was set up to inform and influence the development of policy options relating to disability and ill health social security benefits. Members of the group attend as representatives of their organisation/profession, and include representatives of Coalition of Care and Support Providers Scotland, University of Glasgow, Child Poverty Action Group, and National Rural Mental Health Forum.

11. The Scottish Government has undertaken ongoing consultation with the Ill Health and Disability Benefits Stakeholder Reference Group. The Group was set up in March 2016 to inform and influence the development of policy options relating to disability and ill health social security benefits. The group has advised on:

- The evidence base for policy decisions
- The potential impact of policy decisions
- User and stakeholder engagement
- The interaction with other Scottish and UK social security benefits.

12. An exploratory process was undertaken for each form of assistance to gather the views of users through a range of user research and stakeholder engagement activity. These engagements supported the development of both the policy intent and the design of the administrative functions of each of the forms of assistance.

Who was involved in assessing the Child's Rights and Wellbeing impact?

13. Stakeholders and the wider public had the opportunity to express views about Disability Assistance during the consultation on Social Security, discussed above. In particular comments were invited on a partial Equality Impact Assessment which represented the Scottish Government's work on the impact of social security policy on people with protected characteristics up to the point of consultation. 521 formal written responses to the consultation were submitted. Of these, 241 were from organisations and 280 from individual respondents. Of the 241 organisations that responded to the consultation 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017[1]. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform this partial assessment. It can be found at: <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

Data

14. In May 2018 there were 37,226 children in receipt of Child DLA in Scotland, and our forecasts estimate that we could receive approximately 7,600 new applications for Child DLA in 2020/21.

15. The Scottish Health Survey 2016 (published 2017) found that around 7% of young people in Scotland (under the age of 16) had a limiting long-term physical or mental health condition. Boys were much more likely to have a long-term limiting condition at 9% of the boys under 16, compared to 6% of girls under 16.

16. In 2017, 16 children were awarded Child DLA under terminal illness Special Rules. In 2017, the number of young people aged 16 and 17 awarded PIP under terminal illness Special Rules is not reported in line with data protection requirements because there are so few.

United Nations Convention on the Rights of the Child (UNCR)

17. The policy intent has been assessed against the relevant UNCR articles:

Article 3 – Best Interests of the Child: Social Security Scotland has been developed around the principles of dignity and respect for people, transparency of decision making, being person centred and that social security is a key right for citizens. Disability Assistance will have these principles embedded both in policy and operations to ensure that all decisions made by Social Security Scotland are made with consideration of the best interests of the child, including both where the child is a recipient or where they are a family member of the benefit recipient.

Article 6 – Life, Survival and Development: DACYP has been developed with the intent to provide mitigation for the additional costs incurred by families of disabled children relating to care and mobility. Mitigation of these additional costs is anticipated to provide families with the funding to ensure children are able to access

community resources, education and social activities, ensuring they are able to develop skills and new experiences and to have a good quality of life.

Article 23 – Children with a Disability: DACYP will ensure that the children in receipt of the benefit are more likely to be able to live a full life, to be as independent as possible and to be able to engage in the community. By ensuring that some of the additional costs incurred as a result of additional care or mobility requirements are mitigated, eligible disabled children and young people will have the option to engage in more activities of their choosing.

Article 26 – Social Security: DACYP has been developed as the key Disability Assistance benefit for disabled children and their families in Scotland. We have developed the policy intent based on the current system and engaged with users and stakeholders to influence targeted system changes to improve both the rules and the operation of the benefit. These changes will ensure that the benefit is easily accessed by those who are eligible, that take up amongst eligible children increases and that, throughout engagement with Social Security Scotland, individuals are treated with dignity and respect.

Article 27 – Adequate Standard of Living: The key policy intent of DACYP is to provide families, and young people, with payments that mitigate the costs they incur as a result of a disability or long term condition. DACYP will not be means tested and will be universally available to eligible children. The benefit will support families to pay for care, specialist resource, transport or accessible vehicles, enabling disabled children to access community resources, social activities, education or other activities of their choosing.

Getting it right for every child (GIRFEC) wellbeing indicators

18. The Children and Young People (Scotland) Act 2014 introduced a range of indicators used to measure children and young peoples' wellbeing. Our assessment of Disability Assistance against this framework is:

Healthy: DACYP will improve the health of disabled children by ensuring that increased financial support is provided to their families to contribute towards the additional costs of care and transport.

Achieving: The provision of the mobility and care components of this benefit directly contribute to enabling disabled children to engage in activities of their choosing including education, development opportunities and social activities.

Active: As outlined above, the provision of care and mobility components in this benefit will provide the funds for parents to enable them to support their children to engage in community activities of their choosing, ensuring that disabled children have the option to choose to engage in community based activities and resources.

Respected: The principle of respect for the dignity of individuals is at the heart of the new Scottish social security system and specified in the Social Security (Scotland) Act 2018. DACYP will further embed these principles, recognising that disabled children have the right to engage in activities of their choosing with their peers and

providing funds to parents to enable them to purchase the services of equipment they need to support their children to do so. The administration of the assistance has been designed to ensure that people are treated with respect and provided with a service that takes account of, and meets, their needs.

Responsible: Social Security Scotland will pay Disability Assistance people over 16 and, with support from their parents or carers where appropriate, young people will decide on how this money should be used. Where there is a requirement for appointeeship, or a young person is subject to a guardianship order, Social Security Scotland will pay the benefit to the relevant person acting on the young person's behalf.

Included: DACYP is provided as a support to young people and children to ensure that they have, as far as possible, the care and support they require to engage in activities of their choosing. Provision of this benefit helps ensure that families are able to fund the support needed for children to attend a wide range of community and social activities and be included in activities more easily accessible to non-disabled children.

Specific Policy Impacts

Young People Aged 16-18

19. As part of the implementation of DACYP we are intending to increase eligibility from age 16 to 18 for young people in receipt of DACYP prior to their 16th birthday. This will ensure that young people and their families do not have to undergo a stressful and anxiety provoking reassessment process at age 16, a time when many young people undergo a transition to adult services. This policy measure is likely to have a broadly positive impact and is supported by stakeholders as a desirable permanent change to the eligibility rules for the benefit.

20. It should be noted that at age 16, under the current UK administration of Child DLA, 22% of DLA applicants to UK PIP are unsuccessful⁸. This policy measure intends to mitigate this issue by ensuring that there is an extended award to 18. Further scoping is being undertaken to ascertain any negative impact of this change. It is known that people in receipt of PIP generally receive, on average, awards that are 32% higher than DLA awards, meaning that some people may receive a lower award as a result of this policy measure.

Terminal Illness

21. For the purpose of determining entitlement to Disability Assistance the Act requires the Chief Medical Officer (CMO) to prepare guidance which sets out when a progressive disease can reasonably be expected to cause an individual's death. A decision on whether an individual is to be regarded as having a terminal illness is

⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/report/2017/10/impact-uk-welfare-policy-disabled-people/documents/00526666-pdf/00526666-pdf/govscot%3Adocument>

to be based on the clinical judgement of a registered medical practitioner. This decision must take regard of the CMO Guidance and the definition set out within this.

22. If an individual is regarded as terminally ill, their claim for Disability Assistance will be processed under 'special rules' for terminal illness as laid out in the Social Security (Scotland) Act 2018. These rules will do four things:

- No qualifying period for the benefit will apply. This means that an individual will not be required to have the progressive disease for any period of time in order to be eligible for assistance.
- There will be no assessment by Social Security Scotland. All that will be needed is verification that an individual has been diagnosed by a registered medical practitioner as being terminally ill for the purposes of entitlement to Disability Assistance.
- Awards will be calculated, at the latest, from the date of application. This approach allows awards to be made based on an earlier date than when the application is made, namely the date on which an individual is verified by a registered medical practitioner as being terminally ill.
- At present, individuals regarded as terminally ill get the highest rate for the care component but the mobility component of an award is not automatic. We are changing this approach to ensure that individuals regarded as terminally ill will be fast-tracked to both highest rate care and mobility components for Disability Assistance.

Accessible Vehicle and Equipment Leasing

23. Under the current administration of Child DLA and PIP, people in receipt of a mobility component are able to transfer this directly from DWP to Motability, a provider of accessible cars, vehicles and equipment. The Motability Scheme, where payments are transferred directly from DWP in relation to access to mobility aids, vehicle leases of accessible equipment, enjoys exemption from Value Added Tax (VAT) and Insurance Premium Tax (IPT) which enables it to provide leases to people with disabilities at a much lower rate than market value.

24. Scottish Government intends to ensure that people in the Scottish system in receipt of DACYP and DAWAP have access to an equivalent service so that their mobility needs continue to be met. It is anticipated that continued access to this form of support with mobility and transport will help ensure that young people and children in receipt of Disability Assistance will be able to engage in community activities, social events, education and training and to live a life of their own choosing.

Special benefit rule pertaining to detention in a Young Offenders Institution or other form of detention.

25. As part of the implementation of this policy, it is intended to remove the special benefit rule pertaining to detention in a Young Offenders Institution or other form of detention. When a young person is detained payment of Child DLA stops under current rules. We know that young people in detention are more likely to have

a learning disability or difficulty proportionate to the general population.⁹ This will ensure that, for the many young people detained in legal custody with a disability, their benefit is not stopped and, as they approach release, their family will have the funds required to support them transition back into the community as they undertake longer visitation sessions.

26. We also know that young males are disproportionately represented in secure care and young offenders institutions. The removal of this rule will therefore have the greatest positive impact on the families of young disabled boys.¹⁰

Conclusions

27. Disability Assistance has been co-designed with a range of stakeholders and people with lived experience of engaging with the current benefit system. The policy intent for the introduction of Disability Assistance is to provide them with funds to contribute to the additional care and mobility costs they incur as a result of their disability or long term condition. The provision of this assistance is intended to enable people to mitigate these costs, and ensure they are able to live a life of their own choosing.

28. Policy measures outlined above are anticipated to be broadly positive in relation to the impact on children's rights and wellbeing. There are a number of policy measures including Young People Aged 16-18, terminal illness rules and detention in legal custody that seek to mitigate a range of issues identified that currently have a negative impact on children and young people.

29. Based on the evidence gathered, previous consultative engagement with users and stakeholders, and assessment of the demographic makeup of current Child DLA recipients, the Scottish Government does not consider that DACYP or DAWAP infringes upon the rights of the child as set out in the articles of the UNCRC. The assessed impacts of the policy make a positive contribution to the rights and wellbeing of young people who are eligible to receive the benefit as set out in the assessment of the policy against UNCRC articles outlined above.

30. The Scottish Government has assessed DACYP and DAWAP against the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014 and has concluded that the policy is likely to have a positive impact against each of the indicators, for young people and children who meet the benefit eligibility rules.

⁹ Harrington and Bailey, 2005 – Prison Reform Trust Report: “23% of children who offend had an IQ of under 70, ('extremely low' – clinical learning disability diagnosis), 36% had an IQ of 70-79 – 'borderline' learning disability diagnosis.”

¹⁰ Scottish Government, 2016-2017 - Criminal proceedings in Scotland 2016-17: statistics: Males accounted for 83 per cent of all people convicted in but represented a higher proportion of all custodial sentences (92 per cent) totalling 11,656 men.

Consultation

31. While we have identified that the devolution of Disability Assistance will have some positive impacts on the groupings outlined above, we are keen to seek out opportunities to promote improved rights and wellbeing for children and young people. This consultation therefore seeks the views of stakeholders, the public and a range of groups with a specific interest in child policy development (see Annex A).

The consultation specifically asks consultees to consider:

Do you think the partial Children’s Wellbeing and Rights Impact Assessment has identified where the devolution of Disability Assistance might impact on young people? What would you add or change?

How do you think the devolution of Disability Assistance might impact upon children living in low income households, in deprived areas, children in material deprivation, or children from different socio-economic backgrounds?

Responses to these and the other questions will inform the development of final Impact Assessment that will accompany the draft regulations for Disability Assistance and help us to duly consider its impact on children and young people.

Annex A

Children's Parliament
Scottish Youth Parliament
Young Scot
ChildrensRightsandParticipation@gov.scot
Children 1st
Children in Scotland

Equality groups

Age Scotland
Scottish Older People's Assembly
Scottish Seniors Alliance
Scottish Pensioners Forum
Children's Parliament
Scottish Youth Parliament
Young Scot

British Deaf Association Scotland
Deaf Action Scotland
Disability Agenda Scotland
Disability Equality Scotland (formerly SDEF)
Glasgow Centre for Inclusive Living
Glasgow Disability Alliance
Inclusion Scotland
Lothian Centre for Independent Living
Scottish Council on Deafness
Sense Scotland

Action of Churches Together Scotland
Church of Scotland
Catholic Bishops Conference Scotland
Free Church of Scotland
Humanist Society Scotland
Interfaith Scotland
Muslim Council of Scotland
Scottish Council of Jewish Communities

Article 12
BEMIS
Cemvo Scotland
Coalition for Racial Equality and Rights (CRER)
MECOPP

Equality Network
LGBT Youth Scotland
LGBT Health and Wellbeing
Scottish Trans Alliance
Stonewall Scotland

Scottish Women's Aid
Engender
Close the Gap
Zero Tolerance
Equate Scotland



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