

# **The Disability Assistance for Working Age People (Scotland) Regulations 2022**

**Children's Rights and Wellbeing Impact Assessment (CRWIA)**

**December 2021**

# **Children's Rights and Wellbeing Impact Assessment (CRWIA) of the Disability Assistance for Working Age People (Scotland) Regulations 2022**

## **Executive Summary**

1. The Social Security (Scotland) Act 2018<sup>1</sup> (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for non-means tested disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.

2. These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement with the Scottish Government to ensure the safe and secure transfer of United Kingdom disability benefits to Scotland.

3. The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber. The Disability Assistance for Working Age People (Scotland) Regulations set out how we will deliver our replacement for Personal Independence Payment; Adult Disability Payment. It will replace Personal Independence Payment for people living in Scotland between the ages of 16 and state pension age. They also make provisions for the Personal Independence Payment to Adult Disability Payment case transfer process.

4. In addition to supporting new applications, Scottish Ministers will make provision for the transfer of responsibility for delivering disability benefits for individuals who receive Personal Independence Payment in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these individuals from Personal Independence Payment to Adult Disability Payment. We refer to this process as "case transfer".

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

5. The cases and supporting information for these clients will transfer to Social Security Scotland once new applications for Adult Disability Payment are available to all clients across Scotland. Based on estimates provided by the Scottish Government's Communities Analysis Division, there are around 290,000 individuals whose benefits will transfer from Personal Independence Payment to Adult Disability Payment.

6. We were told by parents in our focus groups that for some 16 year olds, an impending face-to-face assessment was so stressful that their children refused to attend, which meant a loss of part of the household's income due to passported benefits, such as Carer's Allowance, also stopping. Our case transfer process will ensure that wherever possible after the national launch of Adult Disability Payment, a client's Personal Independence Payment award will be selected for transfer to Adult Disability Payment before their award is subject to a review that could lead to a face-to-face assessment with the Department for Work and Pensions.

7. This will reduce the stress and anxiety young people have reported experiencing in the current system as, in the majority of cases, consultations will not be required to make a determination of entitlement. Where a consultation is required, we have worked to improve the process and make sure that practitioners who carry out consultations are suitably qualified to do so, reducing the risk of clients experiencing stress and anxiety.

8. We believe that our approach to disability assistance will have a positive impact on 16-18 year olds. Firstly, because we are extending Child Disability Payment, our replacement for Disability Living Allowance for Children, to age 18 for young people entitled to Child Disability Payment immediately before their 16th birthday, young people will continue to be entitled to Child Disability Payment assistance for an additional two years before they will be required to apply for Adult Disability Payment. That does not however stop clients moving from Child Disability Payment to Adult Disability Payment before age 18 should they wish to. It will be important for clients to be aware that as Child Disability Payment and Adult Disability Payment are two different forms of assistance with different criteria, they may not be entitled to Adult Disability Payment, in spite of being in receipt of Child Disability Payment. Further, if in making a determination in relation to Adult Disability Payment, information comes to light which suggests the client may have experienced a change of circumstances, an unscheduled review of their Child Disability Payment entitlement may be commenced.

9. The transition has been designed to minimise gaps in entitlement and to ensure that the process is as smooth as possible for clients. In contrast to the current system, young people will be given significant flexibility in choosing when to apply to Adult Disability Payment after their 16th birthday. A client's Child Disability Payment will only stop when a positive determination is made for Adult Disability Payment. If they do not receive any award of Adult Disability Payment, their Child Disability Payment will continue until their 18th birthday. If they request a re-determination on their Adult Disability Payment determination, and they turn 18 before that re-determination is complete, they will continue to receive Child Disability Payment until they turn 19th birthday.

10. Individuals applying for disability assistance for the first time who are 16 and above will apply for Adult Disability Payment. This will ensure that clients will not be required to apply for another benefit a short time after being awarded Child Disability Payment.

11. We have also made changes to the application process for Adult Disability Payment, which will help to reduce stress and anxiety for young people. We are utilising a new approach to gathering supporting information. Case managers within Social Security Scotland will, if requested, help clients gather existing supporting information from public sector sources. This could include professional sources (such as confirmation of a diagnosis from a GP) or informal sources (accounts of the needs of the client from a family member or carer). In many cases, a case manager will only seek one source of formal supporting information to make a decision regarding an individual's entitlement to Adult Disability Payment.

12. Case managers will also have access to Social Security Scotland practitioners who, alongside conducting client consultations, will be able to provide specialist advice if required during case discussions. This might include side effects of a particular medication, how a disability or health condition will typically affect someone, or the way in which two conditions may interact. This approach will allow case managers to make an informed decision regarding a young persons' entitlement to Adult Disability Payment.

13. Scottish Ministers have set out a number of case transfer principles which we have used to guide the development of our approach to case transfer.

14. The principles are:

- **Correct payment at the correct time** – ensuring that the case transfer process is designed so that clients will receive the same amount for the Scottish benefit as they received for the corresponding UK benefit.
- **No re-applications** - we will not require clients who receive Personal Independence Payment to apply for Adult Disability Payment as part of the case transfer. We will work with DWP to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.
- **No face to face DWP re-assessments** - we will, wherever possible, ensure that no-one will be subject to a face to face re-assessment by DWP when new applications for Adult Disability Payment are open across Scotland.
- **Complete as soon as possible** – Scottish Ministers have been clear that they want to complete the transfer of cases as soon as is possible in a way that will not create unacceptable risks for clients.
- **Clear communication with clients** – we will inform our clients the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

15. This Child Rights and Wellbeing Assessment sets out the Scottish Government's analysis of the impact of the regulations on children and young people's wellbeing who may be affected by the implementation of Adult Disability Payment. In this context it is considering the impact of Adult Disability Payment on 16-18 year olds. It also considers the wider impact on children living in families where an adult receives Adult Disability Payment.

16. The delivery of Adult Disability Payment and the case transfer process in Scotland is anticipated to have a broadly positive impact on children's rights and welfare. We are delivering person centred disability assistance rooted in the values of providing disabled people and their families with dignity, fairness and respect.

## **Background**

17. The Ill Health and Disability Benefits Stakeholder Reference Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. This group has advised on the potential impact of policy decisions as well as user and stakeholder engagement.

18. In July 2016, the Scottish Government launched a public consultation to support the development of a framework that would become the 2018 Act. The questions relating to disability benefits received over 200 responses with an even split between organisational and individual respondents.

19. The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland. In July 2019 recruitment to the Experience Panels was reopened. We have been working with relevant stakeholders to specifically target groups which were previously underrepresented, including young people.

20. Specifically with regards to case transfer, two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.<sup>2</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

21. The Consultation on Disability Assistance built on the work of the Experience Panels and was published on 5 March 2019. It sought the views of the people of Scotland on the three proposed disability assistance benefits, including Adult Disability Payment.<sup>3</sup> The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

22. The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group. DACBEAG

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<sup>2</sup> See <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/> and <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

<sup>3</sup> <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the United Kingdom social security system, from a range of professional backgrounds. It is independent of the Scottish Government.

23. On 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on the draft impact assessments. The consultation ran until 15 March 2021. The consultation received 127 responses from individuals and stakeholder organisations.

24. Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on the draft Adult Disability Payment regulations and draft impact assessment. On 25 June 2021, the Scottish Government provided redrafted regulations to SCoSS, SCoSS published its supplementary scrutiny report on 1 October 2021, making 24 recommendations and two observations in relation to the draft regulations. The Scottish Government will publish its formal response to both reports when laying these regulations before the Scottish Parliament.

25. In addition to the above, the views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring their views.

26. The stakeholder engagements, expert advisory groups and events held with people with lived experience as well as the public consultations have helped to identify the potential impact of Adult Disability Payment on other Scottish Government policy areas as well as on children and young people's wellbeing.

### **Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base**

27. Consideration has been given to the impact of the policy on the rights and wellbeing of children and young people in Scotland. This policy should have a direct, positive impact on disabled children and young people, and an indirect positive impact on their families and carers.

28. The views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring the views of stakeholders and service users in more depth. The events have also provided the Scottish Government opportunity to engage specifically with particular groups that would be impacted by the proposed policy.

29. The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. For young people aged 16-24, 24% of young people have a limiting longstanding illness.<sup>4</sup>

30. UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%.

31. Scotland-wide, there are higher levels of child material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members).

32. Disability and unemployment / under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness.

33. A further 17% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or

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<sup>4</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>



more children with a disability or long-term illness.<sup>5</sup> Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

34. Even where one or more parent in the household is in employment, within families with a disabled child, the same level of income secures a lower standard of living than it would for a disabled person.

35. Research conducted by the Papworth Trust<sup>6</sup> showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.<sup>7</sup> Travel costs too, may be higher as families have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

## Data

36. The latest Scottish Health Survey covering the calendar year 2019 reports that among young people aged 16-24, around 22% have a limiting longstanding illness<sup>8</sup>.

37. The mid-year population estimates showed that as of 30 June 2019 there were almost 108,000 people aged 16 or 17 in Scotland<sup>9</sup>. At the same time there were around 3,700 16-17 year olds receiving Personal Independence Payment<sup>10</sup>, accounting for 3.4% of this demographic. For context, there were almost 201,000 working age Personal Independence Payment recipients among over 3.5 million people of working age (including 16 and 17 year olds). Personal Independence Payment recipients account for 5.7% of this wider group.

38. In the financial year 2020-21 there were around 2,800 applications to Personal Independence Payment for 16 or 17 year olds in Scotland. Given that Child Disability Payment will extend to 16 and 17 year olds

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<sup>5</sup> <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

<sup>6</sup> Papworth Trust, Disability in the United Kingdom 2010, in <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

<sup>7</sup> <https://www.jrf.org.uk/income-and-benefits/>

<sup>8</sup> <https://www.gov.scot/publications/scottish-health-survey-2019-supplementary-tables/>

<sup>9</sup> NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>10</sup> Department for Work and Pensions Stat-Xplore (accessed 07 October 2020)

there will no longer be automatic reassessment at these ages. However, new clients will be able to apply for Adult Disability Payment from 16. Of the aforementioned 2,800, 650 were new applications to Personal Independence Payment, and a similar number can expect to be received when Adult Disability Payment opens to new applications<sup>11</sup>. Additionally, Child Disability Payment clients may elect to apply for Adult Disability Payment once they reach 16.

39. In the latest Personal Independence Payment caseload information to the end of July 2020, there are around 3,200 people in Scotland of all ages that have received a Personal Independence Payment award under the Terminal Illness Special Rules<sup>12</sup>. A very small number of these are aged 16 or 17 (figures suggest there are around 20 young people at GB level).

40. Data and views were sourced from:

- Scottish Health Survey 2018;
- Census 2011;
- DWP Stat X-plore;
- National Records of Scotland Population Statistics;
- Consultation on social security in Scotland 2016
- Consultation on Disability Assistance in Scotland 2019 and
- Social Security Experience Panel Research.
- The Disability and Carer Benefits Expert Advisory Group (DACBEAG)

### **United Nations Convention on the Rights of the Child ( UNCRC)**

41. The policy intent has been assessed against the relevant UNCRC articles:

**Article 3 - Best Interests of the Child:** Social Security Scotland has been developed around the principles of dignity, fairness and respect, transparent decision making, a person centred approach and rooted in the belief that social security is a human right. Adult Disability Payment will have these principles embedded both in the policy and in the way in which the assistance is delivered. This will help to ensure that all decisions made by Social Security Scotland are made with consideration of the best interests of the young person, both when they are the

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<sup>11</sup> Department for Work and Pensions Stat-Xplore (accessed 20 November 2020)

<sup>12</sup> Department for Work and Pensions Stat-Xplore (accessed 20 November 2020)

recipient and where the recipient is a family member of the young person.

**Article 6 - Life, Survival and Development:** Adult Disability Payment is intended to mitigate the additional costs disabled people, including disabled young people, incur in meeting their care and mobility needs. Mitigation of these additional costs is anticipated to provide young people with funding to access community resources, education and social activities, develop skills and new experiences and to have a good quality of life. Once young people are in receipt of Adult Disability Payment they have the security of the continuity that comes with a form of assistance available, as long as they remain eligible, for the rest of their adult lives. This is particularly valuable at a time when young people are experiencing many other transitions which can be the source of a great deal of stress and anxiety for them and their families.

**Article 12 - Respect for the views of the child:** Adult Disability Payment has been developed through consultation with and input from people with lived experience of the current social security system, including young people, their families and carers through our Social Security Experience Panels. This policy will impact the lives of disabled people including young people and their contribution is crucial in shaping a successful policy.

**Article 23 - Children with a Disability:** Adult Disability Payment will ensure that individuals, including young people, who receive it 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 young people will have the option to engage in more activities of their choosing.

**Article 26 - Social Security:** Adult Disability Payment has been developed for adults in Scotland. This includes young people aged 16 and 17 years old. We have engaged with individuals and stakeholders to make changes that improve both the rules and the client experience of applying for, and receiving, Adult Disability Payment. These changes will ensure that the application process is easily accessed by those who are eligible, that take up amongst eligible individuals, including young people increases, and that, throughout engagement with Social Security Scotland, individuals are treated with dignity, fairness and respect. Our case transfer process, which does not require a new application or assessment for those with an ongoing award of Personal Independence

Payment, will similarly aid in ensuring take-up of Adult Disability Payment.

**Article 27 - Adequate Standard of Living:** The key policy intent of Adult Disability Payment is to provide individuals with payments to help mitigate the costs they incur as a result of a disability or long term condition. Adult Disability Payment will not be means-tested. Young people in receipt of Adult Disability Payment will be able to use it to pay for things such as care, access to community resources, transport, social activities, and any other goods or services of their choosing. The case transfer process has been designed to ensure no one is financially disadvantaged as a result of the process.

### **Getting it right for every child (GIRFEC) wellbeing indicators**

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

**Healthy:** Adult Disability Payment will improve the health of disabled adults, including young people, by ensuring that increased financial support is provided to them, contributing towards the additional costs of care and transport.

**Achieving:** The provision of the mobility and daily living components of Adult Disability Payment directly contribute to enabling disabled individuals including young people to engage in activities of their choosing including education, development opportunities and social activities.

**Active:** As outlined above, the provision of daily living and mobility components of Adult Disability Payment will provide the funds to enable individuals including young people to engage in community activities of their choosing, ensuring that they 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. Adult Disability Payment will further embed these principles, recognising that disabled individuals, including young people, have the right to engage in activities of their choosing and providing funds to enable them to purchase the services or equipment they need to help them do so. The administration of the assistance has been designed to ensure that people are treated with dignity and respect

and provided with a service that takes account of, and meets, their needs.

**Responsible:** Social Security Scotland will pay Adult Disability Payment directly to young people aged 16 and 17, where they are able to manage their own affairs. The young person will decide on how this money should be used with support from their parents or carers where appropriate. Where there is a requirement for an appointee, or a young person is subject to a guardianship order, Social Security Scotland can pay Adult Disability Payment to the relevant person acting on the young person's behalf.

## **Key Findings and policy aims**

### Applications for Adult Disability Payment from Child Disability Payment clients

42. A young person in receipt of Child Disability Payment will be required to make an application to Adult Disability Payment. This is because Adult Disability Payment is a different benefit to Child Disability Payment with different eligibility criteria. Therefore, different information is required to make a decision on someone's entitlement. We have concluded that supporting clients through a new application process, with flexibility built into the system, offers the smoothest client journey.

43. As part of the implementation of Child Disability Payment we are increasing eligibility from age 16 to 18 for young people in receipt of Child Disability Payment prior to their 16<sup>th</sup> 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 Child Disability Payment.

44. We intend to make this process as smooth as possible, and certainly less disruptive than the current system. Clients will have the choice of when to make that application, through a choice of channels.

45. A client's entitlement to Child Disability Payment will only end before their 18<sup>th</sup> birthday if they are determined to be entitled to Adult Disability Payment. This will provide clients with the security of knowing that if they are not entitled to Adult Disability Payment, they will continue

to receive the Child Disability Payment payments they are entitled to. Clients who are entitled to Adult Disability Payment will have their entitlement to Child Disability Payment end on one day and their Adult Disability Payment entitlement begin the following day. The regulations have been drafted to ensure this transition is aligned so that clients do not experience a gap in payment or, conversely, receive unnecessary overpayments which then require to be recovered.

46. Furthermore, there will be extensive support and advice available to clients undergoing this process. Support will be available through a choice of channels. It will be made clear to all clients that there are some instances in which it will be an individual's interests to remain in receipt of CDP for as long as possible, and others where they may receive more favourable entitlement to Adult Disability Payment. We will recommend that clients access independent advice in order to make an informed decision about what is best for them.

47. By enabling applications for Adult Disability Payment from age 16, young people who are not already receiving disability assistance are able to access this through a route which offers continuity into adulthood. This prevents 16 or 17 year olds applying for Child Disability Payment and then, after a short period, requiring them to apply for Adult Disability Payment. This would add a further transition for young people to navigate which is what we are seeking to avoid by extending eligibility of Child Disability Payment to age 18. This avoidance of a further transition is particularly important as young people aged 16 and 17 are already undergoing a period of significant change transferring from child to adult services. This policy measure is likely to have a positive impact on young people and is supported by stakeholders.

### Award Duration and Reviews

48. We know that, for many people in the current system, the end of their award for disability benefits can be extremely stressful, particularly for individuals whose conditions are unlikely to change over time and who are consequently subject to unnecessary reassessments of entitlement. Making awards rolling, subject to reviews, will help to reduce stress and anxiety associated with coming to the end of an award for assistance by removing the perception of reaching a financial cliff edge.

49. By continuing entitlement while a review is taking place, we will further help to mitigate the risk of a financial cliff edge by ensuring that

children and young people continue to receive the assistance they are entitled to until a case manager has made a new determination.

50. The process for reviewing awards will be light-touch, providing a balance between respecting the needs of the individual and robust decision-making. Having a light-touch review process is more appropriate, particularly where a client's needs are unlikely to have changed significantly.

51. This process still enables Social Security Scotland to undertake reviews as appropriate to determine continuing entitlement to CDP. 66% of respondents to our Consultation on Disability Assistance agreed with this approach alongside general agreement from our Experience Panels. Similarly, when asked if awards should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the Consultation agreed.

52. This will help to cut down on the number of unnecessary reviews of awards children and young people will need to go through. In particular, for children with conditions that are unlikely to change, we will use light-touch reviews to reduce stress and anxiety experienced as a result of an award being reviewed.

### Residence and Presence conditions

53. The Scottish Government has considered the implications of removing or adjusting the existing DWP residence and presence conditions. This is the type of policy change which could potentially have implications for individuals moving around the UK whilst in receipt of Scottish Disability Assistance. There may also be issues around eligibility for a range of payments, exemptions and entitlements associated with reserved UK benefits which remain within the control of DWP, eligibility for which currently depends on receipt of a UK disability benefit.

54. A majority of respondents to the consultation on Adult Disability Payment agreed with the proposed approach taken to residence and presence tests for Child Disability Payment. However, we also received suggestions about how we could change the rules, including the removal or shortening of the 'past presence test'.

### *The 'Past presence test'*

55. A small number of respondents commented that the ‘past presence test’, would be discriminatory and unfairly exclude some individuals. Concerns were raised over potential impacts on refugees, asylum seekers and people granted Discretionary Leave to Remain; international students; and newly resident disabled people. It was also suggested that those impacted by COVID-19 travel restrictions could be negatively impacted. A number of stakeholders believe that the ‘past presence test’ be reduced or dropped entirely and some responses favoured no qualifying period for eligibility required.

56. Since the public consultation launched, a change has been made to the regulations to reduce the past presence test from 104 out of 156 weeks to 26 out of 52 weeks. Removing the test entirely, would carry a financial cost as well as a number of delivery implications. The test also provides for a number of exceptions such as for individuals with a terminal illness. We believe this strikes the right balance between meeting the policy intent behind the residence and presence eligibility criteria and ensuring fairness to clients.

### Short-Term Assistance

57. During the Parliamentary passage of the Social Security (Scotland) Act 2018, the inclusion of STA was welcomed by stakeholders and supported by Parliament.

58. When asked about STA in our Consultation on Disability Assistance, it was found that:

- 73% agreed that STA should not be paid to individuals not living or present in Scotland;
- 87% agreed that STA should not be recoverable (except in cases of fraud or error); and
- 49% agreed that deductions being made from an on-going assistance should also be applied to STA.<sup>13</sup>

59. Because STA is not recoverable, there will be no overpayments which individuals will need to worry about should their re-determination or appeal be unsuccessful. This will help to prevent a further reduction in household income in these circumstances, something which was stressed as important by respondents.

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13 <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>



60. Engagement with our Experience Panels has found that participants believe introducing STA is a good idea,<sup>14</sup> stating: “Nothing in place at the moment so this is a good system, means nobody is left out to dry”.

61. When asked if the introduction of STA would make it more likely for people to challenge a decision by Social Security Scotland, almost all participants agreed that it would with particular emphasis on STA reducing financial pressure and giving people confidence in challenging a decision.

62. This will help to ensure that, if a mistake has been made by Social Security Scotland, disabled children and young people will continue to receive the payments they would have been entitled to should the mistake not have been made. STA will therefore enable people to feel more confident in seeking administrative justice should a mistake have been made by Social Security Scotland.

### *Scope of STA*

63. We recognise that some people think that STA should be extended so that it is available to clients moving between Child Disability Payment and Adult Disability Payment. The Scottish Government recognises the vital importance of supporting young people who are transitioning between different forms of assistance. We are taking a number of actions to ensure that this process is less burdensome and more seamless than under the current system.

64. Extending the scope of STA, to make it available to people moving between Child Disability Payment and Adult Disability Payment, would represent a significant departure from the policy intent behind Short-term Assistance. STA is designed to support clients in challenging a decision and accessing their rights under the 2018 Act. It is intended to minimise injustice in the system where a decision has been made to reduce or remove an individual’s entitlement to a particular type of assistance. Child Disability Payment and Adult Disability Payment however are separate forms of assistance with different eligibility criteria. STA is not designed to be a ‘bridge payment’ between two forms of assistance. Extending the scope of STA in this way would represent a significant departure from the current policy intent of STA in requiring it to be paid on the basis of an award a client is potentially no longer eligible for.

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14 <https://www.gov.scot/publications/social-security-experience-panels-short-term-assistance-visual-summary/>

Continuing to pay a client's previous award during the re-determination relies on a client having a previous award for a particular form of assistance that has been reduced or stopped. A client who has applied to Adult Disability Payment for the first time who wished to challenge a determination, having previously been in receipt of another form of assistance with a different eligibility criteria, is therefore not the same as a client already in receipt of Adult Disability Payment who wished to challenge a determination following a review. Therefore, it is our view that Short-term Assistance should only be paid during a re-determination or appeal on an existing award.

### Accessible Vehicles and Equipment Scheme

65. Young people in receipt of the higher rate mobility component of Personal Independence Payment are able to transfer this directly from DWP to Motability, a provider of accessible cars, vehicles and equipment. The Scottish Government will ensure that young people in receipt of the enhanced rate of the mobility component of Adult Disability Payment will have access to an equivalent service so that their mobility needs continue to be met.

66. The Accessible Vehicles and Equipment Scheme will provide young people and the family of people with a disability or health condition with a choice of vehicles (including cars, wheelchair accessible vehicles, powered wheelchairs and scooters), on affordable leasing terms, from accredited providers. All leases include insurance, breakdown cover, servicing and road tax. It is anticipated that continued access to this form of support with mobility and transport will help ensure that young people in receipt of Adult Disability Payment, and the children of people in receipt of Adult Disability Payment, will be able to engage in community activities, social events, education and training and to live a life of their own choosing.

### Terminal Illness

67. We know that the definition of terminal illness used in the UK system can be limited, imposing a time limit of six months and, thus, not taking account of a range of conditions and situations which may affect children and young people. For example, we know from engagement with stakeholders that, for some conditions. It can be especially difficult to predict length of life, meaning that individuals who would otherwise qualify for assistance under SRTI are unable to do so as they do not fit the strict definition in the current system.

68. Our new definition will be able to take account of such cases by allowing medical professionals to use their clinical judgement on a case by case basis. This, in turn, will mean that a broader range of conditions will be able to be accounted for and, thus, allow more young people to be entitled to Adult Disability Payment through SRTI. This will be beneficial to young people and allow those that need support to receive it quickly. We are also putting in place a process to prioritise the transfer of individuals who have been diagnosed with a terminal illness.

### **Other policy divergences that will support individuals including children and young people.**

69. As part of the Scottish Government's commitment to a safe and secure transition of powers, we do not propose to make significant changes to the eligibility criteria of Adult Disability Payment.<sup>15</sup> However, we have set out several points of divergence between Adult Disability Payment and Personal Independence Payment which we expect to have a positive impact on disabled people in Scotland.

### **Conclusion**

70. The development of Adult Disability Payment and how it will be delivered – including the case transfer process - has been informed by engagement with a range of stakeholders and people with lived experience of the current benefit system. The policy intent of Adult Disability Payment is to provide payments to contribute to the additional care and mobility costs resulting from a disability or long term condition. The provision of this assistance is intended to enable people to mitigate these costs, and to mitigate societal barriers to ensure they are able to live a life of their own choosing.

71. Policy measures outlined above are anticipated to be broadly positive in relation to the impact on children's rights and wellbeing. This is both directly where a young person is an Adult Disability Payment client and also for the children of parents who are an Adult Disability Payment client.

72. Based on the evidence gathered, previous consultative engagement with users and stakeholders, and assessment of the demographic makeup of current Personal Independence

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<sup>15</sup> <https://www.gov.scot/publications/social-security-case-transfer-policy-position-paper/>

Payment recipients, the Scottish Government does not consider that Adult Disability Payment 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 Adult Disability Payment as set out in the assessment of the policy against UNCRC articles outlined above.

73. The Scottish Government has assessed Adult Disability Payment 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 who meet the eligibility rules and for the children of adults who are awarded Adult Disability Payment.

### **Independent review of Adult Disability Payment and monitoring**

74. We plan to establish a group to undertake a review of Adult Disability Payment to commence in summer 2023. The members and chair of the group will be drawn from outside the Scottish Government. The group will also secure input from people with lived experience.

75. Holding the review in summer 2023 will provide the opportunity for Social Security Scotland to administer Adult Disability Payment for a full year so the necessary data and feedback from individuals can influence the recommendations.

76. The review will be wide ranging to allow consideration of the suitability all of the activities, descriptors and supporting criteria. For example, the review will enable an understanding of the impacts of how the eligibility criteria is being applied, including the reliability criteria, and whether there are any disproportionate impacts on young people. The review will allow a measurement of the extent to which Adult Disability Payment has reduced the negative impacts identified in this impact assessment.

77. We will then make the independent report and recommendations publically available to allow for transparency, scrutiny and visibility.

<b>Regulation - Clause</b>	<b>Aims of measure</b>	<b>Likely to impact on . . .</b>	<b>Compliance with UNCRC requirements</b>	<b>Contribution to local duties to safeguard, support and</b>
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				<b>promote child wellbeing</b>
Disability Assistance for Working Age People (Scotland) Regulations 2021	These regulations set out how Adult Disability Payment will be delivered and make provision for the transfer of responsibility for delivering disability benefits for people who receive Personal Independence Payment in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland.	Children and young people in Scotland between the ages of 16 and 18 years with a disability or health condition and their families and children who have one or more parent with a disability or health condition.	The regulations do not infringe upon any UNCRC Article. The Scottish Government considers that it gives further effect to: Article 3 (best interests of the child) Article 12 (respect for the views of the child) Article 23 (children with disabilities) Article 26 (social security) Article 27 (adequate standard of living)	The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: Healthy, Respected, Included

<b>Name and job title of Policy Lead:</b> Nathan Gale Disability Benefits Policy Team Leader	<b>Date this version authorised:</b> 16 December 2021
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Social Security Policy Division

**Name and job title of a Deputy Director or equivalent:**

Ian Davidson

Deputy Director

Social Security Policy Division



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