

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

**Equalities Impact Assessment (EQIA)**

**December 2021**

## Equalities Impact Assessment (EQIA)

<p><b>Title of Policy</b></p>	<p>Disability Assistance for Working Age People (Scotland) Regulations</p>
<p><b>Summary of aims and desired outcomes of Policy</b></p>	<p>The Social Security (Scotland) Act 2018 (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 disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.</p> <p>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 devolution of disability benefits.</p> <p>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.</p> <p>The Disability Assistance for Working Age People (Scotland) Regulations set out how we will deliver Adult Disability Payment.</p>

	<p>This was formerly known as Disability Assistance for Working Age People. It will replace Personal Independence Payment for people living in Scotland, accepting new applications from individuals between the ages of 16 and state pension age.</p> <p>The regulations set out the detailed rules surrounding entitlement to Adult Disability Payment. They also make provisions for the Personal Independence Payment to Adult Disability Payment case transfer process.</p> <p>This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:</p> <ul style="list-style-type: none"> <li>•We respect, protect and fulfil human rights and live free from discrimination;</li> <li>•We tackle poverty by sharing opportunities, wealth, and power more equally;</li> <li>•We live in communities that are inclusive, empowered, resilient and safe; and</li> <li>•We grow up loved, safe and respected so that we realise our full potential.</li> </ul>
<b>Directorate: Division: team</b>	Social Security Directorate Social Security Policy Division Disability Benefits Policy Unit

## **Executive summary**

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

These benefits 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 devolution of disability benefits.

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 Scottish Government intends to launch disability assistance for new applicants first. This includes individuals who are not in receipt of a United Kingdom or Scottish Government disability benefit. Transfer of existing Department for Work and Pensions clients to Social Security Scotland will take place at a later point without clients needing to make a new application.

The Disability Assistance for Working Age People (Scotland) Regulations set out how we will deliver our replacement for Personal Independence Payment, Adult Disability Payment. This was formerly known as Disability Assistance for Working Age People. The regulations also make provisions for the Personal Independence Payment to Adult Disability Payment case transfer process.

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".

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.

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.

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 to apply for their new benefit 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.

The public sector equality duty is a legislative requirement which states that the Scottish Government must assess the impact of applying a proposed new or revised policy or practice on groups with protected characteristics. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of age, disability, gender reassignment, marriage and civil partnership,

pregnancy and maternity, race, religion and belief, sex and sexual orientation.

This Equality Impact Assessment has identified potential impacts on disabled people in Scotland as a result of replacing Personal Independence Payment with Adult Disability Payment. It was found that, overall, our policy would have a positive impact on people in Scotland with protected characteristics. Where areas of improvement have been identified, we have made changes to better meet the needs of people living in Scotland.

These changes build on the 2018 Act's framework of a new system that is underpinned by dignity, respect and a human rights based approach to delivering social security for the people of Scotland. This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Island Community Impact Assessment (ICIA) Children's Rights and Wellbeing Impact Assessment (CRWIA); and the Fairer Scotland Duty Assessment.

## **Background**

As part of the Scottish Government's long-standing commitment to a safe and secure transition, we do not propose to make significant changes to the existing Personal Independence Payment eligibility criteria for Adult Disability Payment. Social Security Scotland must commence delivering Adult Disability Payment before wider changes are made, to enable full consideration of the impact of any possible changes to eligibility criteria and to ensure that any such changes do not inadvertently disentitle clients who are currently in receipt of an award or other benefits delivered by DWP. We must ensure that people's payments are protected during this transition period.

However, there are several differences between Adult Disability Payment and Personal Independence Payment which we expect to have a positive impact on disabled people in Scotland. We also plan to establish a group to undertake a review of Adult Disability Payment to commence in summer 2023. The review will allow consideration of the suitability all of the activities, descriptors and supporting criteria while not jeopardising the safe and secure transition.

### Removal of face-to-face assessments

We have previously committed to reducing the number of face-to-face assessments that will be carried out by Social Security Scotland. We are doing this by improving the process of gathering supporting information and decision making. Face-to-face assessments will be replaced with client consultations. Clients will only be invited to participate in a consultation if it is the only practicable way to gather information about their needs.

Before inviting a client to a consultation, case managers within Social Security Scotland will work with clients to gather supporting information, including doing so on their behalf, with the client's consent. Case managers will seek only one source of formal supporting information (for example provided by a GP, social worker, nurse or support worker). They will also use informal sources of information, such as from carers or family members, who are able to give an accurate account of the needs of the client. This way, we will help to ensure that people are not disadvantaged by a lack of formal supporting information. It is only when there is no other way to gather sufficient information about the needs of a client that they will be invited to attend a consultation. This will help to ensure that individuals are not invited to attend a consultation unnecessarily which will reduce potential stress and anxiety.

### Social Security Scotland Practitioners

A key theme throughout our consultation on Adult Disability Payment and engagement with our Experience Panels was that there was no trust in the assessment process, assessors or the contractors that are responsible for carrying out assessments. It was generally felt that more knowledgeable assessors would lead to more accurate reports, higher quality assessments and fairer outcomes for clients.

Consultations will be carried out by health and social care practitioners employed by Social Security Scotland who will be suitably qualified to do so as required by the 2018 Act. Practitioners will have experience in the provision of health and social care and be able to evidence experience working in a relevant role for at least two years. A proportion of practitioners will also have particular experience in mental health and learning disabilities as recommended by the Disability and Carers Benefits Expert Advisory Group.

This is particularly important given that, according to Department for Work and Pensions data, a large proportion of clients, some 108,081 in Scotland, have mental health conditions such as anxiety or depression,

or global learning disabilities and difficulties. We have listened to feedback from individuals who report their mental health condition not being properly taken into account during an assessment because the assessor did not appear to have a sufficient understanding of mental health. People have also shared their experiences of assessors displaying a lack of empathy for a mental health condition or learning disability.

Suitably qualified practitioners will help address the negative impact on individuals that experiences such as these have. They will ensure that, when a client is invited to attend a consultation, they are able to engage in the discussion with someone who has an appropriate understanding of their disability or health condition.

### The consultation process

A significant change we are making is to take a multi-channel approach to how consultations take place, such as by phone or video call, removing the need for clients to travel to unfamiliar assessment centres in the majority of cases. While we expect it will be helpful for many clients, we understand that a telephone consultation will not be the best option for everyone and we know that clients have valid concerns over the way telephone assessments have been carried out by Department for Work and Pensions in recent months because of COVID-19.

Where a client is not able to express themselves over the phone or is uncomfortable doing so, we will work with the client to find alternative ways of carrying out a consultation. Clients will also be able to request a face to face consultation if they feel it is the best way of articulating the impact of their condition or disability. Social Security Scotland will continue to provide in-person consultations when required to meet a client's access needs, either by a practitioner attending the client's home, or at a local partnership location, such as a GP surgery.

Social Security Scotland will discuss with clients invited for a consultation the most suitable way for it to be carried out, to ensure their particular needs are met. This will help to address some of the difficulties outlined by our Experience Panels members who highlighted how difficult traveling to a Department for Work and Pensions face-to-face assessment could be, particularly if they had to travel a large distance or had a disability which made attending a Department for Work and Pensions assessment difficult or impossible which, consequently, made an already stressful experience worse.

A telephone consultation carried out by a practitioner from Social Security Scotland will be substantially different from Department for Work and Pensions telephone assessments. For example, clients will not face the same pressures to explain or 'prove' their disability or condition, as exemplified by our commitment to abolish functional examinations which is further explained below.

In the current system, PIP assessments last for a standard amount of time. Assessors are given one hour to complete an assessment regardless of how much time may be required. Individuals have reported both feeling rushed and not being properly listened to during a PIP assessment. During our public consultation, we heard how individuals have been asked questions repeatedly or have been asked questions that seemingly bear little relevance to their health condition or disability. Where a client participates in a consultation for Adult Disability Payment, they will be given a bespoke appointment duration based on the needs identified by the case manager. Social Security Scotland practitioners will be given the time they need to fully understand the impact of a client's condition or disability.

We will also audio record consultations as standard to promote transparency and trust in the process. The proposal to record consultations was approved of by 72% of participants in our Experience Panels. When asked why, many cited the lack of trust in the Department for Work and Pensions assessment process. A large majority of respondents to our Consultation on Disability Assistance were also in favour of consultations being recorded.

Recording consultations will help to improve trust in our system by ensuring that decision making is transparent. Having a record of what was said during the consultation was seen as beneficial for individuals by Experience Panel participants as it allows individuals whose disability or health condition has an effect on their memory to have a record of what was said. We also recognise that some people may not wish for their consultation to be recorded. Individuals will be able to opt out should this be the case.

### *Informal observations*

We are also changing how informal observations will be handled during consultations. The consultation on Adult Disability Payment and engagement with our Experience Panels highlighted that, while many

found the assessment better than they expected, this changed when they received a copy of the report. This is because they felt assessors had not accurately reported the conversation or felt that the observations they had made were inaccurate. They were also not given a chance to contest these observations. Respondents to our 2019 Consultation on Disability Assistance went on to say that informal observations could be 'inappropriate' for certain conditions such as autism or mental health conditions. Concerns have also been raised about how assessment of mobility is informed by informal observations. and around whether PIP assessors take into account the impact of fluctuating conditions.

Consideration of responses and advice from the Disability and Carer Benefits Expert Advisory Group has informed our approach to informal observations. Firstly, practitioners will be provided with specific guidance, training and resources regarding informal observations. Clients must also be made aware of what informal observations are, why they are being made, and the impact they will have. All informal observations will also be made known to the client so that they have the opportunity to respond. This will be beneficial as it will allow us to be as transparent as possible during the consultation process by ensuring that clients are aware of what is going on and reduce the likelihood of practitioners making inaccurate assumptions.

### Removal of functional examinations

There are many reasons for our decision to not carry out functional examinations during a consultation. Firstly, Adult Disability Payment supports disabled people or those with long term health conditions that can vary over days, weeks or months, while an examination can only offer a view at a single point in time. Obtaining an informed understanding of the impact of a condition or disability on a client will always involve several sources of information. The additional value of an examination will, for many people such as those living with Multiple sclerosis or epilepsy for example, not provide an accurate reflection of their potential level of need. There are other ways of understanding the nature of a client's needs such as confirmation of a diagnosis or the level of support they require.

Where the client has provided information in the course of a discussion, we believe it is undignified to then ask the client to prove a lack of function through a test. In the Scottish Government system, the consultation will allow the time needed for a client to give the additional information required. Practitioners will come from a position of trust in

the client when discussing how the client's health conditions or disability affect their daily life.

We will also not carry out any examinations to determine needs related to mental health such as the Mental State Examinations carried out by the Department for Work and Pensions. We are aware that, during a PIP assessment, a significant amount of weighting is placed on the Mental State Examination. This provides a snapshot of findings which does not take account of the variable nature of many clients' experience of their mental health condition.

There are also many conditions which do not have associated functional examinations within the Personal Independence Payment assessment. These include epilepsy, any conditions affecting internal organs such as Crohn's Disease, heart failure, kidney failure, tinnitus, cluster headaches, and cystic fibrosis. Removing the functional examinations from our consultations will promote a consistent service where no client is disproportionately scrutinised simply because they have a disability which is easier to examine than others. This consistency will contribute to our commitment that clients with varying disabilities or health conditions will be treated equally.

The consultation will be an objective discussion between a client and a practitioner, based on a position of trust. A case manager may not require information about every descriptor and will indicate to the practitioner which descriptors they are unclear on so the practitioner will not ask unnecessary questions by rote. This will lessen the likelihood of clients feeling as if the consultation is designed to "catch them out" and further help to reduce stress and anxiety.

### Our new definition of terminal illness

As of July 2020, there were 3,134 individuals in Scotland accessing Personal Independence Payment under Special Rules for Terminal Illness.

It is anticipated that the new definition of terminal illness will support recognition of a wider number of illnesses and conditions than can be accounted for under the current definition in the reserved system. Engagement with stakeholders has indicated that this is because the current time limited definition of terminal illness is able to recognise individuals with malignant illnesses or neoplasms (cancers) at the end of life, but is weaker in recognising individuals with other degenerative

conditions, as it can be harder to predict length of life for these illnesses. In these circumstances, individuals with such conditions do not meet the definition of terminal illness in the reserved system.

We can see this comparing cause of death among adults in Scotland from 2018. From the Department for Work and Pensions data available, around 80% of individuals applying for Personal Independence Payment who have a terminal illness in 2018 in Scotland identified their main disabling condition as malignant diseases. However, when we compare this with deaths in Scotland that could be due to terminal illness (i.e. excluding accidental and intentional deaths), malignant illnesses only accounted for around 40% of deaths of working age people. These figures indicate that it is reasonable to deduce that a much smaller percentage of people with a non-malignant terminal illness are currently accessing reserved disability benefits through special rules than those with malignant diseases.

Our new definition will allow medical professionals, including registered nurses, to use their clinical judgement when determining whether an individual has a condition which can reasonably be expected to result in their death. This means that individuals who would otherwise not be entitled to Adult Disability Payment through Special Rules Terminal Illness will be able to do so under our new definition, thereby having a positive impact on the protected characteristic of disabled people in Scotland.

We have designed our case transfer process to ensure that those who meet the special rules for terminal illness are able to avail themselves of our new approach even where they have an ongoing award of Personal Independence Payment. Where someone in receipt of Personal Independence Payment receives a clinical judgement as described above, their case will be selected for an accelerated transfer process, meaning their award for Adult Disability Payment will be made faster than in other cases. This will ensure clients are not disadvantaged by having to wait for their case transfer process to finish.

### Award duration and reviews

Between June 2016 and July 2020, 17% of awards reviewed led to increases, 15% to decreases, 44% remained the same, and 24% were disallowed. This does not include instances where a client has requested a mandatory reconsideration or appealed a decision. Including all instances of mandatory reconsiderations (involving reviews,

change of circumstances, new applications and reassessments from Disability Living Allowance), it is estimated that mandatory reconsiderations take place in a fifth of cases in Scotland. Around 10% of the aforementioned appealable decisions result in appeals. United Kingdom-wide, 76% of appeals received a decision in favour of the client in 19-20.

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 entitlement to assistance by removing the perception of reaching a financial cliff edge. By continuing entitlement while a review is taking place, we will ensure that disabled individuals continue to receive the assistance they are entitled to until a case manager has made a new determination.

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. 66% of respondents to our Consultation on Disability Assistance agreed with this approach alongside general agreement from our Experience Panels.

Additionally, when asked if awards should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary reviews of awards disabled people will need to go through and as a result, the stress and anxiety, thereby having a positive impact on individuals who fall under this protected characteristic.

For clients who are awarded Adult Disability Payment under terminal illness rules there will be no award review. This removes any stress or anxiety of an approaching review for this vulnerable group.

Our case transfer process will aim to align a client's initial Adult Disability Payment review process with the timeframes their Personal Independence Payment award would have been reviewed as far as possible. This will ensure continuity of client experience and allow their future review date to be set in line with the principles discussed above.

## Re-determinations and appeals

We want to ensure that no one is disadvantaged by time limits for challenging a decision. In response to the feedback from the Disability Assistance consultation and our Experience Panels, we have extended the time limit for requesting a re-determination to 42 calendar days. This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination. A majority of respondents (77%) to our consultation on Adult Disability Payment agreed with this approach. This is likely to be particularly beneficial for disabled people who live in remote or rural areas which make gathering such advice and information more difficult.

We proposed to give Social Security Scotland 40-60 days to reconsider a decision, as it may be necessary to collect supporting information on behalf of the individual, and this information may take some time to obtain. A majority (60%) agreed with this proposed approach. However, some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility.

In response to feedback from our Consultation on Disability Assistance in Scotland<sup>1</sup> and commentary from our Experience Panels and from DACBEAG, we have extended the time from 31 to 42 calendar days for individuals to request a re-determination (in exceptional circumstances, this can be extended up to a maximum of one year).

This will be beneficial as it will ensure that disabled people and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the First-tier Tribunal should Social Security Scotland be unable to complete the re-determination process within the timescale, this will further reduce any uncertainty and, consequently, make people feel more confident in challenging a decision they do not agree with.

During this time, individuals will continue to be entitled to the new rate of Adult Disability Payment, where an award has been made. This will help to alleviate some of the worry expressed by participants in our Experience Panels who raised the point that challenging a decision can

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<sup>1</sup> [Disability assistance in Scotland: response to consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

have a financial impact, particularly in cases where mandatory reconsiderations in the current system have taken a long time.

### Short-Term assistance

The Scottish Government has introduced Short-Term Assistance (STA) where Social Security Scotland has made a decision to reduce or stop a continuing payment of CDP, and that decision is subject to a request for re-determination or an appeal. The 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 social security 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.

STA will be available until the First-tier Tribunal for Scotland has made a determination, and is non-recoverable except in cases of fraud or error. Where a person is eligible for STA, the value of STA will be the difference between the level of assistance paid prior to the reduction and the new level of assistance (including if that amount is now nil because entitlement to CDP has stopped).

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; and
- We grow up loved, safe and respected so that we realise our full potential.

During the Parliamentary passage of the Social Security (Scotland) Act 2018, the inclusion of STA was welcomed by stakeholders and supported by Parliament. When asked for views on STA in the Consultation on Disability Assistance in Scotland, respondents were overall in favour of our proposals with some concerns raised that, originally, Short Term Assistance was not intended to be available for

individuals residing outside of Scotland. This has since been changed, allowing individuals living outside of the United Kingdom to apply for STA if they are in receipt of a qualifying benefit such as Adult Disability Payment. We recognise the complexities involved in this and will carry out further work to understand the impacts.

Our proposal that Short Term Assistance should not be recoverable (except in cases of fraud or error) was also met with approval (87%). This will ensure that, should a re-determination or appeal be unsuccessful, there will not be any overpayments that individuals will need to worry about repaying. This will help to prevent a further reduction in household income should the re-determination or appeal be unsuccessful, something which was stressed by respondents.

### *Scope of STA*

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.

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. 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.

### Passported entitlements

PIP eligibility currently provides clients with entitlement to various reserved benefits and premiums, usually referred to as 'passporting'. Throughout the consultation on Adult Disability Payment, we consistently heard how people's main concern was about having to submit a new application to receive Adult Disability Payment or to maintain other support they are entitled to as a result of their current PIP award. An additional decision process would require clients to re-apply for reserved entitlements with no guarantee that they would be successful. This would specifically impact on clients who rely on additional means of support such as Housing Benefit, Job Seeker's Allowance, Income Support and Working Tax Credit which any award of PIP entitles them to. Such clients may experience a period without the financial support they rely on or risk losing the support altogether. Clients entitled to the daily living component of PIP (around 95% of the caseload) are entitled to further reserved payments such as a top up of Employment and Support Allowance and Pension Credit.

A key purpose of Adult Disability Payment must therefore be to continue this passporting to additional forms of assistance, including reserved payments. Considerable analysis and consultation has been undertaken to test and fully understand the limits of passporting. We require agreement from DWP to treat Adult Disability Payment in the same way as PIP to enable clients to automatically access additional reserved payments without any further decision-making process. In order for that to happen, it is generally accepted that this requires PIP eligibility criteria to be broadly replicated for Adult Disability Payment.

As currently drafted the Adult Disability Payment regulations have been agreed with DWP as an acceptable basis for an interim arrangement on Adult Disability Payment passporting. The Scottish Government is working with DWP to secure future agreement on passported entitlements that allow for divergence between PIP and Adult Disability Payment. Whilst the passporting of benefit entitlement is not the sole reason for our approach to safe and secure transfer, we recognise that these entitlements are crucial to disabled people in Scotland.

## Who was involved in this EQIA?

In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses. 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 prior to the consultation.

There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 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 May 2017<sup>2</sup>. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Equality Impact Assessment for these Regulations.

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 disabled people from seldom heard groups as part of our engagement.

Two surveys regarding the case transfer process were 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>3</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

The Consultation on Disability Assistance built on the work on the Experience Panels and was published on 5 March 2019. In line with the principles of dignity, fairness and respect, the Scottish Government

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<sup>2</sup> <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>  
<sup>3</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/>

sought the views of the people of Scotland on the three proposed disability assistance benefits. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.

Regarding disability assistance, an initial framing exercise for the partial Equalities Impact Assessment was carried out in 2017 involving a range of internal Scottish Government stakeholders. In addition to highlighting a number of positive impacts and potential barriers, the exercise enabled significant data gaps to be identified. This in turn led to the targeted consultation with stakeholders representing people with protected characteristics which was undertaken during the Consultation on Disability Assistance between 5 March and 28 May 2019.

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 is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the UK social security system, from a range of professional backgrounds. It is independent of the Scottish Government. The Group's role is to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered in Scotland.

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 stakeholder engagement.

On 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on drafts of the accompanying impact assessments. The consultation ran until 15 March 2021 and received 127 responses from individuals and stakeholder organisations. A number of changes to this Equality Impact Assessment have been made in response to this feedback including:

- Undertaking further analysis of the impact of proposed changes to the application of the eligibility criteria, specifically looking at potential impacts on women and on people with one or more

mental health condition and people with a learning disability and/or learning difficulty, and on people with varying health conditions.

- The introduction of measures to ensure that a Social Security Scotland practitioner gains an understanding of the full needs and experiences of a client where a consultation takes place.
- Actions to further ensure that the application of the reliability criteria mitigates the negative impacts of how the PIP eligibility criteria is currently applied by the Department for Work and Pensions.

Despite the continuing impact of coronavirus, work with Experience Panels has continued, with user testing on digital material that will be available on the Social Security Scotland website. Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders.

## **The Scope of the Equality Impact Assessment**

This Equality Impact Assessment considers the impact of the introduction of Adult Disability Payment on disabled people who have one or more protected characteristics.

## **Data Sources**

A variety of information sources were used in compiling this EQIA, including:

- Scottish Health Survey 2018<sup>4</sup>;
- Scotland's Census 2011<sup>5</sup>;
- NRS Scotland Mid-year Population Estimates<sup>6</sup>;
- Social Security Experience Panel findings;
- responses to our Consultation on Disability Assistance in Scotland<sup>7</sup>;

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4 <https://www.gov.scot/publications/scottish-health-survey-2018-summary-key-findings/>

5 <https://www.nrscotland.gov.uk/statistics-and-data/census>

6 <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

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

- advice from our Disability and Carer Benefits Expert Advisory Group<sup>8</sup>; and
- the Department for Work and Pensions stat Xplore statistics.

## Key Findings

This Equality Impact Assessment has found that the introduction of Adult Disability Payment will have a positive impact on the people of Scotland, including individuals who fall under the following protected characteristics.

### Age

As of July 2020, 3,380 people under age 18 were entitled to Personal Independence Payment in Scotland.

In the current system, children in Scotland entitled to Disability Living Allowance for Children were previously invited to apply for Personal Independence Payment before they turn 16. This means that they may have had to undergo what is experienced by many as a stressful Personal Independence Payment assessment just before their 16th birthday.

We introduced legislation which has allowed us to extend awards of Disability Living Allowance for Children for individuals in Scotland to age 18 through the Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020. Although people in receipt of Personal Independence Payment receive, on average, awards that are 32% higher than DLA awards, under the current administration, 22% of Personal Independence Payment applicants are unsuccessful. This is expected to have a positive impact on young people in Scotland, as detailed in our impact assessments on this legislation which can be viewed here: [Personal Independence Payment \(Transitional Provisions\) Amendment \(Scotland\) Regulations 2020: impact assessments - gov.scot \(www.gov.scot\)](https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.).

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

<sup>8</sup> <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

income due to passported benefits, such as Carer's Allowance, also stopping.

We believe that our approach to disability assistance will have a positive impact on this group. Firstly, because we are extending Child Disability Payment, our replacement for Disability Living Allowance for Children, to age 18 for children 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.

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.

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.

We have also made changes to the application process for all forms of disability assistance, including Adult Disability Payment, which will help to reduce stress and anxiety for clients. Firstly, 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.

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 an individual's entitlement to Adult Disability Payment. It will also help to ensure that it is only when there is no other practicable way to gather accurate information about a client's needs that they will be invited to attend a client consultation.

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. This means these clients will benefit from the processes described above.

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.

9.6% of all working age and older people described having a condition which limited their day-to-day activities "a lot" in the 2011 census. 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 a lot but this rose to 27.6% of those aged 65 and above.

Adult Disability Payment will continue to be available to individuals over state pension age where they are in receipt of Adult Disability Payment

when they reach that age or where no more than one year has lapsed since their award ended. Individuals over state pension age who have not had a previous award of Personal Independence Payment or Adult Disability Payment, will apply for Attendance Allowance, or Pension Age Disability Payment when that is introduced in Scotland to replace Attendance Allowance.

## **Disability**

We have made many changes which we believe will have a positive impact on disabled people in Scotland.

As of July 2021, there were 292,231 people in Scotland entitled to PIP.<sup>9</sup> As of the same month, 3,271 people in Scotland entitled to PIP were terminally ill.<sup>10</sup> This represents around 1.1% of the total caseload in Scotland.

By the end of October 2019 more than 1.4 million Disability Living Allowance reassessment applications for Personal Independence Payment had been cleared in Great Britain with 39% (556,000) leading to award increases, 14% (200,000) remaining unchanged, and 47% leading to a reduction or disallowance (603,000). Detailed research by the Scottish Government in 2017<sup>11</sup> showed that the biggest impact was felt by individuals receiving the highest rate for both care and mobility components. Between 2013 and 2016, 6,400 people lost financial support of up to £7,000 per year as a result of the transfer from Disability Living Allowance to Personal Independence Payment. Since Personal Independence Payment was introduced, figures show that 25% undergoing the transfer in Scotland have lost entitlement to disability benefits entirely according to a report published by the Scottish Government in 2020.<sup>12</sup> The most recent figures from the Department for Work and Pensions estimate that, in Scotland, 22% of cases are disallowed.

New applications for Personal Independence Payment make up roughly 57% of Personal Independence Payment awards in Scotland and have a 46% success rate. These new applications make up 67% of assessments carried out in Scotland. Despite this, new applications are less likely to result in entitlement, with more than half of all applications (at the time of the report, this accounted for 160,000 cases in Scotland)

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<sup>9</sup> DWP Stat Xplore,

<sup>10</sup> DWP Stat Xplore,

<sup>11</sup> [UK welfare policy: impact on disabled people - gov.scot \(www.gov.scot\)](https://www.gov.scot/welfare-policy/impact-on-disabled-people)

<sup>12</sup> [Welfare reform: impact report on benefits for disabled people - gov.scot \(www.gov.scot\)](https://www.gov.scot/welfare-reform/impact-report-on-benefits-for-disabled-people)

being 'disallowed'. This accounted for 81% of all instances of disallowed cases in Scotland.

According to participants in our Experience Panels, the most negative part of applying for Personal Independence Payment was attending face-to-face assessments with one participant stating that it was "honestly one of the most traumatic experiences of my adult life".

For many, the experience of undergoing a face-to-face assessment was extremely stressful and anxiety inducing with some participants stating that it had an impact on their health. Additionally, when we engaged with parents to discuss their children moving from child to adult disability benefits, many told us that their teenage children refused to attend a Department for Work and Pensions face-to-face assessment entirely because of this fear and anxiety, resulting in a loss to the household income.

We have designed our case transfer process so that clients in Scotland will not have to undergo a face-to-face assessment for Personal Independence Payment after Adult Disability Payment launches nationally. We will, wherever possible, ensure that client awards are selected for transfer before any review that might result in a face-to-face assessment. This includes where a client reports a relevant change of circumstance, where their award is due to be reviewed, or where their award is due to end.

This means that clients with conditions that have more variable impacts will be more likely to have their case transferred earlier when compared with those with conditions that are less variable. This is because they are more likely to have a relevant change of circumstance, and because review dates and end dates for Personal Independence Payment are set in accordance with the decision makers understanding of how likely and when the client's condition may change.

We have tried to address this by ensuring that where a client would be better off on Adult Disability Payment than Personal Independence Payment due to eligibility differences between the two, a client's Adult Disability Payment award can be backdated accordingly. This means that no client should be financially worse off for having their benefit selected later in the process when compared to those whose cases are selected earlier.

In order to ensure the case transfer process remains safe and secure, we must transfer cases in a phased approach. This means some awards will be transferred earlier than others. We feel avoiding the need for a face-to-face assessment is a fair and proportional way to prioritise awards for this purpose.

### How we will apply the eligibility criteria

We have listened to feedback from our public consultation on Adult Disability Payment regarding the proposed eligibility criteria. In particular, the consultation highlighted how clients with mental health conditions, autism, learning disabilities and those with variable health conditions for example, do not feel treated fairly by the assessment process or the application of the PIP eligibility criteria.

Many of the problems people report with the PIP criteria relate to how the eligibility rules are applied by DWP. Consultation responses raised concerns with how certain conditions, such as fluctuating conditions and mental health conditions, were not properly considered by PIP assessors, and described the negative impact of this on clients. The high number of appeals that lead to a PIP decision being overturned reflect shortcomings in how the eligibility criteria is applied by DWP. Our focus on getting the decision right first time, by gathering supporting information and taking a person centred approach to decision making, will mitigate many of these negative impacts and reduce the number of re-determinations, appeals and overturned decisions.

### *“20 metre rule”*

A great deal of the negative feedback received regarding the limitations of the PIP framework relates to how the descriptors are interpreted and applied, and to the wording of the activities and descriptors themselves. A number of concerns were raised during our consultation on Adult Disability Payment specifically around the mobility criteria. Concerns were raised that the requirement to be unable to walk more than 20 metres in order to qualify for the enhanced mobility component, was thought to be too short a distance. Particular issues have been raised with the way the current application of the 20 metre rule negatively impacts on individuals with a range of disabilities and health conditions, particularly those who experience fluctuations.

Although responsibility for determining entitlement sits with decision makers, in practice the vast majority of decisions reflect the advice

provided to them in the PIP assessment carried out by Assessors. The way in which eligibility and entitlement will be decided for Adult Disability Payment will be fundamentally different to how it is decided for Personal Independence Payment. We are taking steps to ensure that all clients are treated equally and fairly. The application process and new client consultation service for Adult Disability Payment will reduce the negative impacts on individuals with fluctuating health conditions such as epilepsy and Multiple sclerosis.

Unlike the Department of Work and Pensions, we will not require evidence of every impact that the client reports. We recognise that the current approach presents particular challenges for individuals with limited mobility, or with variable health conditions such as Multiple sclerosis. This is because a GP is often not able to describe the impact of someone's health condition on their day to day mobility needs. Instead, the supporting information we require to make a decision on entitlement need only be consistent with the needs detailed by a client on their application.

Furthermore, we will properly apply the reliability criteria by defining the criteria more fully in legislation, better explaining the criteria in the application form, and embedding it in the decision making process. This means that someone can only be considered able to complete an activity if they can do so safely, repeatedly, in a reasonable time, and to an acceptable standard. Instead of this simply being a tick box exercise, this criteria will be enshrined in law and it will be used to ensure a full account of how a client experiences an activity such as moving around is produced.

To support practitioners and clients during a client consultation, we are developing a consultation tool which will prompt the practitioner to fully explore the reliability criteria with the client. In doing so, the practitioner will get a better understanding of the full impact that completing an activity such as moving around has on an individual, including the impacts of pain and fatigue, rather than simply establishing whether they are capable of completing the activity.

Therefore the information obtained during a consultation will be detailed and more representative of the clients' needs and experiences. This will prevent snap-shot judgements and limit the negative impacts of the way that the eligibility criteria is applied for determining eligibility for PIP. Not only will this improve the overall experience of applying for disability benefits, giving client's sufficient time to discuss their needs during a

consultation and ensuring the eligibility criteria is applied consistently and fairly will also improve the consistency and accuracy of decision making.

#### *“50% rule”*

Concern has also been expressed about the application of ancillary criteria – most notably the 50% rule which specifies that an individual must be impacted by their condition on at least half the days in a month. This is applied to the majority of descriptors.

The underlying intent of Adult Disability Payment is to provide support to people who face barriers as a result of a long term health condition or disability. It is therefore necessary to differentiate between long term conditions and short term illnesses which would not entitle someone to Adult Disability Payment.

This EQIA recognises that there are concerns that the 50% rule does not adequately take into consideration fluctuating conditions such as epilepsy. When Social Security Scotland case managers consider an application and apply the eligibility criteria, the full impact of completing an activity on a client will be considered. Our intention is that the application of the 50% rule will account for fluctuating conditions. This will be made clear in the guidance for staff and for clients which has been developed in conjunction with stakeholders.

The DWP PIP Questionnaire does not support clients to provide information which takes account of fluctuating conditions. We are therefore creating an application form which is supportive by telling the client the scope of the Daily Living activities and designing the form to enable the client to describe how often they are affected by their condition. The application form will provide examples and explainers, making use of images where appropriate, to ensure clients are clear about the specific information that is required. We are confident that these changes will result in more accurate decisions and an improved client experience.

#### *Required Period Condition*

The required period condition must be satisfied to be eligible for each of the components of Adult Disability Payment. It sets out that an individual needs to have had needs relating to their disability or health condition for 13 weeks before being entitled to Adult Disability Payment. We

understand that some people are concerned about the impact of this rule, particularly on people with fluctuating conditions such as epilepsy.

We believe the 13 week required period prior to Adult Disability Payment eligibility is appropriate and in keeping with the policy intent for Adult Disability Payment and for Disability Assistance more widely. The application of the eligibility criteria for Adult Disability Payment will account for unpredictable and fluctuating conditions and we will take a person-centred approach to decision making. A reduction in this period would potentially extend eligibility to individuals with temporary, short term disabilities whose lives are not impacted in the same way as people with long term disabilities and health conditions. For individuals with a terminal illness, there will be no qualifying period.

#### Payment of Adult Disability Payment when in hospital

We recognise that many people with disabilities and long-term health conditions may often experience stays in hospital, sometimes for a lengthy period. Adult Disability Payment will continue to be paid to an individual in hospital or a publicly funded care home for 28 days. Beyond 28 days, payment of Adult Disability Payment will stop. This replicates the rules for PIP.

As part of this EQIA, we have considered the impacts of this rule. The intention of Adult Disability Payment is to provide financial assistance to mitigate the costs that individuals and their families incur as a result of a health condition or disability. Continuing to pay Adult Disability Payment where an individual's care needs are met in full otherwise from public funds, for instance in a care home, hospital or secure accommodation, would lead to a funding duplication in meeting the individual's care needs. In the majority of instances, when a client is in hospital, their additional care needs are met by the NHS.

Child Disability Payment is not suspended when a client undergoes a stay in hospital for longer than 28 days. This is because, when children are in hospital they continue to require care and support, usually from a parent(s) or guardian, over and above that which is provided in clinical settings, because of their young age. Adult inpatients are not expected to need this kind of pastoral input, and NHS staff are expected to meet essential care needs. Indeed, the National Health Service Act 2006<sup>13</sup> stipulates that the NHS is responsible for meeting the day-to-day costs

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<sup>13</sup> [National Health Service Act 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

of an individual's accommodation, board, care and treatment free of charge whilst they are in hospital).

Adult Disability Payment is not intended to be an income-replacement benefit. Income replacement benefits are provided in the form of UK Government administered reserved benefits such as Employment and Support Allowance (ESA) and Universal Credit (UC). If we were to deliver Adult Disability Payment as an income-replacement benefit, there is a risk that DWP would not recognise it for the purpose of assessing a client's eligibility for reserved benefits, including access to passported premiums or benefits.

The purpose of the "28 day rule" is to ensure that longer term periods in alternative accommodation are not subject to funding duplication, by receiving both Adult Disability Payment and the costs of that care being covered. The 28 day window ensures that people cared for in temporary respite do not lose access to payments as well as recognising that where care placements break down or periods within alternative accommodation end at an early stage, the client does not experience the additional disruption of losing access to Disability Assistance.

Where a client undergoes frequent short periods in hospital, their payment of Adult Disability Payment will be unaffected. Clients are entitled to continue receiving their entitlement for the first 28 days of a hospital stay in order for should enable any outstanding additional costs to be met before the payment is suspended. Although payment will stop after 28 days of an individual being in alternative accommodation, entitlement is unaffected. Therefore, if and when a client leaves, payments will resume, subject to continuing to meet the eligibility criteria for Adult Disability Payment.

### **Marriage and civil partnership**

Although the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example Human Resource policies and practices, we have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of marriage or civil partnership.

### **Pregnancy and maternity**

We do not currently have any data on the number of disabled people that fall under this protected characteristic. Joint research carried out by Engender and Inclusion Scotland looked at the issues facing disabled women. Part of this research highlighted perceptions of disabled women regarding their ability to parent or whether they should become pregnant. Respondents also discussed the fear of having their children removed from their care due to the perception that they were not able to adequately care for them.

Engender proceeded to discuss instances where a disabled woman was able to carry out tasks relating to caring for children which resulted in them being judged as not entitled to disability benefits. The example provided detailed how a mother was able to prepare a meal for her child but not herself, requiring another person to do it. Because she was able to make a meal for her child, she was deemed not to be entitled to assistance. When asked what improvements could be made, key amongst them was a need for equalities training.

People employed by Social Security Scotland will be required to undertake equality training in-line with our commitment to delivering a service based on the values of dignity, fairness and respect. We will also trust what clients tell us about their needs during the application process and during consultations where they take place. This will help to ensure that individuals who fall within the protected characteristics, including pregnancy and maternity, do not experience discrimination when making an application for assistance or engaging with Social Security Scotland more broadly.

## **Race**

Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English. Although we do not have statistics showing the number of people within Scotland who are in receipt of disability benefits and who belong to minority ethnic groups, we know that they generally make up 3.7% of those with a reported learning disability or developmental disorder.

The 2011 census found that, for the general population, "White" people are more likely to say their day to day activities are limited "a lot" or "a little" by their long-term health conditions, compared to their share in the population. This is not true for any of the other ethnic categories apart

from “Caribbean or Black” respondents aged 0-24 who are slightly more likely to say their day-to-day activity is limited “a little”.

There was a wide variation between men and women in different ethnic groups. Women from the three groups Bangladeshi, Pakistani and Gypsy/Traveller recorded higher rates of 'health problem or disability' than women from the “White: Scottish” ethnic group, while men from only two ethnic groups, “Pakistani” and “Gypsy/Traveller”, recorded higher rates of “health problem or disability” than men from the “White: Scottish” ethnic group. Additionally, findings from the UK Government’s race disparity audit<sup>14</sup> found that Black women (29%) were more likely to have experienced anxiety or depression than White women (21%) and were less likely to seek treatment. This is the same regardless of gender with 7% of Black adults in the United Kingdom compared to 14% of White adults reporting receiving treatment at the time of the report.

We are aware that there are particular barriers for individuals from minority ethnic groups in applying for disability benefits, especially those with English as a second language, as there may be difficulties in accessing or understanding their entitlements due to language or other communication barriers. In particular, participants in our Experience Panels stated that they were not confident in using online resources or other materials because, while they felt they could speak English conversationally, they did not feel comfortable making sense of the complicated and technical language often used by authorities. To address this, work has been undertaken with ethnic minority groups alongside the main Experience Panels as part of our Benefit Take-up Strategy.

Experience Panel engagements with people who use English as a second language also showed that there is often an assumption around the most commonly translated languages. There is an expectation that Social Security Scotland will mirror provision by other public sector organisations, and speakers of less common languages have told us that they will generally opt for letters in English, on the assumption that there are no materials available in their home language. This removes individual agency, forcing some individuals to rely on support to apply, and creating a barrier to take-up. Additionally, many participants also expressed concern that they would misinterpret information and, as a result, they would be sanctioned or prosecuted because of language barriers.

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<sup>14</sup> [Race Disparity Audit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674217/race-disparity-audit-2018.pdf)

## *Refugees*

The ethnic minority population also includes refugees. Scotland has resettled 3,180 people under the Vulnerable Persons Resettlement Scheme and Vulnerable Children Resettlement Scheme since the start of 2014. Refugees are eligible for benefits such as disability benefits, but typically experience additional barriers to the general population in accessing them. We have undertaken specific engagement with this group to understand better some of the barriers to applying disability benefits.

The issue of language presented challenges for the Syrian refugees in our focus groups who could speak or understand very little English. This was exacerbated by lack of (Syrian) Arabic interpreters at advocacy and/or third sector organisations within their geographical area.

We were told during our engagements with Vulnerable Person Resettlement Scheme Syrian refugees that accurate information about eligibility to disability benefits was difficult to access, with some being told that refugees are not entitled to benefits at all. All spoke of a lack of knowledge of the benefit system, a fear of government officials and insurmountable challenges presented by language and dialect.

Many reported having their initial disability applications rejected, or receiving a lower rate than they expected. Some indicated that embarking on the appeal process might have been to their financial detriment, with the significant threat of no award presenting an insurmountable risk.

There is also evidence that attending an assessment may be particularly stressful for people with experience of the asylum system. Some people have traumatic experiences of being required to travel to an official government location for an appointment and are therefore reluctant to attend an assessment.

Only awards of those deemed to be “ordinarily resident” in Scotland on the day their case is reviewed for transfer will be subject to the transfer process. This will likely impact those that live more transient lifestyles, especially those regularly moving between Scotland and other parts of the UK, more so than those with a more settled lifestyle.

This residence requirement is therefore more likely to impact on the gypsy/traveller community. However, we do not have sufficient data to determine how many of the just over 4,000 people in Scotland (0.1% of the population) who identified their ethnic group as “White: Gypsy/Traveller”<sup>15</sup> regularly travel between Scotland and the rest of the UK. As a result, it is difficult to determine what, if any, negative impact this may have on this community.

### Our approach

Social Security Scotland will create a range of Adult Disability Payment stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities. The languages we proactively translate materials into were selected through stakeholder consultation. These are: British Sign Language, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats, and materials in other languages are available on request.

Social Security Scotland communications will work with community radio and foreign language press to provide messaging on Adult Disability Payment to communities. In some circumstances, printed marketing materials may not be the right way to engage with these communities and where this is the case we will provide an engagement approach through work carried out by the National Stakeholder Engagement and Local Delivery functions.

Replacing face-to-face assessments with client consultations only where they are needed will mitigate the particular negative impacts we have heard that assessments have on people from ethnic minority groups. Most consultations will happen over the phone or they may happen in-person, at a location local to the client or at the client’s home, where it is appropriate or requested by the client.

We were also informed anecdotally that Gypsy/Travellers operate within the ‘cash economy’ and that they are more likely to have a post office account than a bank account. This can be problematic in terms of receiving payments. We recognise that the payment method will be important for some people and in particular Gypsy/Traveller communities. In addition to Post Office and Credit Union accounts,

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<sup>15</sup> [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census \(webarchive.org.uk\)](https://www.webarchive.org.uk)

payments can be made using iMovo which is a secure digital voucher system that can be delivered to individuals in several media (SMS, email). These can be redeemed at one of 2850 PayPoint outlets in Scotland. This has also been found to be useful for young adults who have not yet opened a bank account.

Social Security Scotland will continue to work with experts who have experience of benefit take-up in specific communities, such as Black Asian Minority Ethnic women and Gypsy/Travellers. The purpose will be to monitor and provide management information to effectively target take-up activity, produce take-up resources for Social Security Scotland staff and stakeholders, and liaise with and support stakeholders and frontline staff with take-up activities. Our specific approach will draw on best practice from take-up initiatives and campaigns undertaken across Scotland and elsewhere in the United Kingdom.

### *The 'Past presence test'*

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.

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.

### *Terminal illness*

It is known that there is a low uptake of palliative and end of life care services for British and Minority Ethnic groups. This was found to be a 'common theme' in the 45 studies included in 'Palliative and end of life

care for BAME groups in the United Kingdom'.<sup>16</sup> Potential explanatory factors for the low uptake included lack of referrals, lack of knowledge about services or about what palliative care involves and religious traditions and family values in conflict with the idea of palliative/ hospice care. It is likely that some of the reasons for low uptake of palliative care could also lead to low uptake of disability assistance when terminally ill.

There is some evidence that ethnic groups can vary in the extent to which individuals would wish to know about their terminal diagnosis. This issue is discussed in relation to Chinese families and also in a cross a cultural study involving some East Asian countries.<sup>17</sup>

Our approach to terminal illness has been developed in a way that is supportive of clients from minority ethnic groups where explicit knowledge of a terminal diagnosis may be considered not to be in the best interests of the patient. The Chief Medical Officer Guidance contains important information for practitioners to support sensitive communication with individuals relating to their diagnosis. It also makes allowance for situations where sharing the terminal diagnosis with the patient would be harmful to them. To support terminally ill clients it will also be possible for a third party to complete the application form and this will similarly be supportive of clients where explicit knowledge of a terminal diagnosis is deemed not in their best interests. In these ways, the terminal illness policy is supportive of clients from minority ethnic groups.

We do not have data for individuals who are terminally ill disaggregated by ethnic group. As the numbers are small, caution would be needed to prevent the identification of individuals. To mitigate this, although the provision of diversity information is not compulsory it will form part of the application process. This should lead to collection of better data which can be used to inform future work on Adult Disability Payment and, where relevant, our overall approach to terminal illness.

## **Religion and belief**

According to latest data published by Scottish Surveys Core Question in 2019,<sup>18</sup> 50% of respondents identified as having “no religion” while 47%

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16 [Report: Palliative and end of life care for Black, Asian and Minority Ethnic \(BAME\) groups in the UK \(mariecurie.org.uk\)](#)

17 [A Cross-Cultural Study on Behaviors When Death Is Approaching in East Asian Countries: What Are the Physician-Perceived Common Beliefs and Practices? - PubMed \(nih.gov\)](#)

18 [Scottish Surveys Core Questions 2019 - gov.scot \(www.gov.scot\)](#)

identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”.

Once age was taken into account, in comparison to those with no religious affiliation, a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group.

We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of religion and belief.

## **Sex**

Data from the Paperworth Trust<sup>19</sup> found that women are slightly more likely than men to be disabled in the United Kingdom (23% of females compared to 19% of males). A report by the Women’s Budget Group<sup>20</sup> has also found that, overall, women are twice as likely to rely on social security as men. The higher percentage of female compared to male disabled people can also be seen when examining data from Department for Work and Pensions who, as of July 2020, reported 124,186 male and 149,717 female clients entitled to Personal Independence Payment in Scotland.

Within these groups, the largest proportion of clients entitled to Personal Independence Payment had a ‘psychiatric disorder’, totalling 108,081. There were slightly more male (56,559) than female (51,521) clients though this was not always the case when looking at individual conditions. Within the category of ‘psychiatric disorders’, there were significantly more male clients with a behavioural or learning disability such as autistic spectrum disorders (7,324 male compared to 2,128 female), Attention Deficit Hyperactivity Disorder/Attention Deficit Disorder (1,813 male compared to 412 female) while female clients were significantly more likely to report a mental health condition with the largest proportion experiencing mixed anxiety and depression (21,675 female compared to 15,698 male).

There is evidence that gender inequalities are likely to have become even more pronounced in light of the COVID-19 pandemic. healthcare systems come under pressure it becomes increasingly likely that women

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19 [papworth-trust-disability-facts-and-figures-2018.pdf](#)

20 [Social Security, Gender and Covid-19 - Womens Budget Group \(wbg.org.uk\)](#)

will take on further caring responsibilities.<sup>21</sup> Responses to our public consultation on Adult Disability Payment highlighted that many disabled women have caring responsibilities themselves and have taken on increased responsibilities as a result of the pandemic.

We also know from engagement with stakeholders that there are specific issues which arise for disabled women. This was also a key theme in feedback received through our recent consultation. For example, Engender have highlighted that women are far more likely to experience domestic violence and abuse and that this is compounded for disabled women.

Engender also highlighted that, for many women who attend Department for Work and Pensions face-to-face assessments, they face specific barriers due to assessors making assumptions based on stereotypical gendered roles. They noted that there has not been enough research conducted on the topic to provide a detailed analysis. This was linked to research<sup>22</sup> examining the gendered history of ‘incapacity benefits’ which asserts that awards tended to punish women who engaged in household labour because it was viewed as potential work activity for women, while men undertaking similar activities did not face such scrutiny at an assessment. The research further linked this to Department for Work and Pensions data which shows that men are more likely to be awarded the enhanced rate of the daily living component (52%) compared to women (46%).

As has been set out above, we will not carry out functional examinations of clients in order to decide eligibility for Adult Disability Payment. By removing functional examinations in all circumstances, there is less opportunity for gendered assumptions to affect expectations around daily living activities and mobility in a consultation. The consistent application of the ‘reliability criteria’ to ensure that clients’ full range of needs are taken into account should also ensure consistency and fairness and limit the possibility of women being penalised for undertaking certain activities such as household labour.

Practitioners will be required to discuss any informal observations made during a consultation with the client. This will ensure that assumptions based on stereotypical gender roles made must either be discussed, giving the client the opportunity to disagree, or not taken into account. In

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21 <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/03/GiHA-WG-Advocacy-Brief-Gender-Impact-COVID19.pdf>

22 [What do we want from the Government at Holyrood \(engender.org.uk\)](https://engender.org.uk/what-do-we-want-from-the-government-at-holyrood)

practice this will enable a practitioner to gain an accurate understanding of the client's needs rather than making assumptions about the client.

Our approach to making decisions will be person-centred and based on the values of dignity, fairness and respect. People employed by Social Security Scotland will be required to undertake equalities training which will help to ensure that clients do not face discrimination, including discrimination on the basis of sex.

### Recruitment of practitioners

This EQIA has considered provisions in the regulations relating to the experience and qualifications required of practitioners (referred to in the regulations as “assessors”) in order for them to carry out a consultation (referred to in the regulations as “assessments”). The policy intent behind these provisions, described in more detail in the “policy aims” section above, is to ensure that practitioners are suitably qualified. This is intended to address significant concerns in the current system with PIP assessors. We have received extensive feedback that PIP assessors often lack the professional background and/ or understanding of the health conditions and disabilities being discussed.

Therefore, we have specified in the regulations the level of qualifications and experience required of practitioners who will undertake a consultation. Practitioners will need to be registered with the relevant regulator and will be required to have worked in a relevant field for two years following initial qualification. A practitioner will be one of the following:

- an allied health professional with valid registration in the register maintained by the Health and Care Professions Council
- a registered adult, learning disability, or mental health nurse with valid registration in the register maintained by the Nursing and Midwifery Council
- a social worker with valid registration in the register maintained by the Scottish Social Services Council
- someone with a social care qualification to a minimum of Level 9 of the Scottish Credit and Qualifications Framework with valid registration as a social service worker in the register maintained by the Scottish Social Services Council.

These requirements are a result of extensive consultation with experts and stakeholders and were supported by a majority (69%) in our consultation on the draft regulations. We have considered any equalities

impacts of these provisions in relation to the Equalities Act 2010, specifically that “a public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”<sup>23</sup>

Ensuring that practitioners can demonstrate up to date fitness for practice at the point of employment is essential for meeting our policy intent. We have considered whether there are other ways of practitioners demonstrating this without requiring such registration. It is vital that clients trust that the practitioner they are speaking to is appropriately qualified. Up to date registration, at the point of employment with Social Security Scotland, provides reassurance to clients and is the only way Social Security Scotland can be assured that a practitioner’s experience is up to date and that they have no fitness to practice issues, while also ensuring that all practitioners are required to meet the same, or an equivalent standard.

## **Sexual orientation and gender reassignment**

In 2017, 2.4% of people in Scotland identified their sexual orientation as “Lesbian, Gay, Bisexual or other.” A report by the Equality Network<sup>24</sup> found that Lesbian, Gay, Bisexual, Transgender/Transsexual (LGBT+) disabled people were more likely to experience discrimination than LGBT+ non-disabled people with 59% reporting experiencing prejudice or discrimination within the last month at the time of the report compared to 47% of non-disabled LGBT+ individuals.

There is no robust data relating to the proportion of people in Scotland to whom the gender reassignment protected characteristic applies. However, we recognise that a potential barrier to trans and non-binary people accessing disability assistance is a requirement for individuals to provide their gender when making an application. This is often discriminatory as individuals are asked to tick a box to indicate their gender. This often involves a male-female binary which does not apply

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<sup>23</sup> [Equality Act 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>24</sup> [The Scottish LGBT Equality Report — Equality Network \(equality-network.org\)](http://equality-network.org)

to individuals whose gender does not fit neatly into one of these boxes such as individuals who are non-binary, agender or genderfluid.

During our engagement with individuals, those who had undergone gender reassignment discussed feelings of being 'outed' by this process as they had to reiterate that they had changed gender and often felt disparaged by assessment staff. They also expressed frustration that the system could not cope with their attempts to amend their existing identity information, such as name and gender, within the current system.

Some people we engaged with who had undergone a Personal Independence Payment assessment in the current system reported experiencing homophobia/ transphobia by assessors. They also spoke of dismissive and disrespectful attitudes towards their shared living arrangements with same-sex partners.

Our application form has been designed to allow individuals to identify as 'male', 'female' or 'other'. Agency staff will be recruited who embody values of dignity and respect and all training for new staff will include LGBT+ awareness and be underpinned by human rights principles. We anticipate that these measures will have a positive effect on people applying for Adult Disability Payment with these protected characteristics.

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

We have undertaken comprehensive consideration of the desirability and practicability of changes to the eligibility criteria and consulted widely on this issue. We are mindful that making even relatively minor changes to entitlement to Adult Disability Payment may have a considerable impact on safe and secure transfer. We are also confident that the draft regulations, taking into consideration the very different approach to delivery, provide a basis for significantly improved client experiences and outcomes and are a robust starting point both for the successful delivery of disability benefits and for future policy development.

However, we understand that many people are eager to see changes made to the eligibility criteria. We therefore 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.

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.

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 those with protected characteristics. The review will allow a measurement of the extent to which Adult Disability Payment has reduced the negative impacts identified in this Equality Impact Assessment.

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

## **Recommendations and Conclusion**

This Equality Impact Assessment process has identified that overall, the introduction of Adult Disability Payment to replace Personal Independence Payment has the potential to have a positive impact for people in Scotland with protected characteristics.

The potential positive impacts identified include:

- replacing Department for Work and Pensions private sector health assessments with client consultations undertaken by practitioners of Social Security Scotland with experience in the provision of health and social care, including a proportion with specific experience in mental health and learning disabilities;
- significantly reducing the number of face-to-face consultations that will need to be carried out due to our improved approach to gathering supporting information, decision making and, where a consultation is necessary, undertaking the majority of these by phone;
- making it easier for individuals with a terminal illness to be entitled to Adult Disability Payment through Special Rules Terminal Illness by allowing medical practitioners to use their clinical judgement

and removing the six month time limit from our definition of terminal illness;

- helping to reduce the stress and anxiety experienced due to the perception of reaching a financial cliff edge by making rolling awards;
- improving the accuracy and consistency of decision making by properly applying the reliability criteria;
- alleviating some of the worry that can be caused in the review process by making longer awards and using a light-touch review process when client's conditions are unlikely to have changed;
- reducing stress and anxiety as a result of requesting a re-determination by providing certainty around how long a re-determination will take alongside providing a way to appeal directly to the FtT should Social Security Scotland be unable to do so within the specified timescale; and
- helping to encourage individuals to seek administrative justice should they believe Social Security Scotland has made a mistake through Short Term Assistance, mitigating a drop in the level of household income while also protecting people by making Short Term Assistance non-recoverable (except in cases of fraud or error).

<p><b>Name and job title of Policy Lead:</b> Matthew Duff Disability Benefits Policy Team Leader Social Security Policy Division</p> <p><b>Name and job title of a Deputy Director or equivalent:</b> Ian Davidson Deputy Director Social Security Policy Division</p>	<p><b>Date this version authorised:</b> 17 December 2021</p>
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