

# **The Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022**

**Business and Regulatory Impact  
Assessment (BRIA)**

January 2022



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

## Business and Regulatory Impact Assessment

### Title of Proposal

The Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022

### Purpose and intended effect

#### Background

The Social Security (Scotland) Act 2018<sup>1</sup> 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 some disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.

The Scottish Government began the process of replacing Disability Living Allowance for Children this year with Child Disability Payment, and intends to replace Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. Social Security Scotland will deliver these benefits on behalf of Scottish Ministers with most determinations carrying a right of appeal to the First-tier Tribunal for Scotland's Social Security Chamber.

In 2022, the Scottish Government will begin to deliver Adult Disability Payment. This was formerly known as Disability Assistance for Working Age People. It replaces Personal Independence Payment for working age people in Scotland between 16 and pensionable age.

Receipt of Adult Disability Payment may entitle an individual to other forms of assistance, discount, exemptions or disregards that are generally called 'passported' benefits.

As part of the Scottish Government's commitment to a safe and secure transition of disability benefits from the Department for Work and Pensions (DWP) to Social Security Scotland, it is intended that Adult Disability Payment should entitle an individual to the same 'passported' benefits as Personal Independence Payment.

---

<sup>1</sup> [Social Security \(Scotland\) Act 2018](#)

Where those passported benefits fall within a devolved area, the Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 set out how devolved legislation will be amended to reflect the introduction of Adult Disability Payment, and ensure entitlement to passported benefits remains the same as for Personal Independence Payment.

### **The Legislation**

The consequential regulations will allow individuals who are entitled to Adult Disability Payment, to benefit from the same exemptions, concessions or reliefs, in devolved areas, as individuals who are entitled to Personal Independence Payment. The provisions being amended, that passport individuals to other forms of entitlement, typically relate to individuals who are in receipt of a particular component or rate of component of a disability benefit. Extending this provision to Adult Disability Payment clients is straightforward because Personal Independence Payment and Adult Disability Payment share substantially the same components, rates and eligibility criteria.

The consequential regulations also make provision for individuals who are in receipt of short-term assistance. Short-term assistance is assistance that an individual can elect to receive if they are appealing to Social Security Scotland, or to the First-Tier Tribunal for Scotland, against a decision to stop or reduce their entitlement to assistance under Part 2 of the Social Security (Scotland) Act 2018. Short-term assistance is not available for first-time applicants and is unique to the Scottish Social Security System. Because short-term assistance can be paid in respect of more than one form of devolved assistance, the consequential regulations make clear that the scope of the amendment extends only to circumstances where short-term assistance is paid as a result of a qualifying Adult Disability Payment award being stopped or reduced.

An additional amendment is also included within the Civil Legal Aid Regulations (Scotland) 2002 to make provision for individuals receiving Child Disability Payment, or short-term assistance paid as a result of a qualifying Child Disability Payment award being stopped or reduced.

As Adult Disability Payment will replace Personal Independence Payment for individuals in Scotland, the regulations make transitional provision to remove the right of individuals who are between the age of

16 and pensionable age (and able to apply for Adult Disability Payment) from applying for Personal Independence Payment. The transitional provision also ensures that the option of applying for Personal Independence Payment remains open to individuals in Scotland who are of working age and receiving Disability Living Allowance during the Adult Disability Payment pilot.

Finally, the Consequential Amendments make provision to amend the Child Disability Assistance regulations to include reference to Adult Disability Payment, and prevent individuals from being entitled to short-term assistance when they no longer meet the age criteria requirement for Child Disability Assistance or their Child Disability Payment claim is ended because they become entitled to Adult Disability Payment.

### **Financial Impact**

As noted in the Scottish Fiscal Commission's Economic and Fiscal Forecast dated 9 December 2021: the introduction of short-term assistance, the new rules for those with a terminal illness, and the changes in the processes and support that will be available for Adult Disability Payment compared to Personal Independence Payment mean that Adult Disability Payment is projected to have higher average awards and more successful applications than its UK counterpart. The forecast predicts that changes in policy and delivery of Adult Disability Payment, as well as the knock-on cost to Carer's Allowance and Carer's Allowance Supplement, will lead to an additional cost of £38 million in 2022/23, which will continue to increase annually and reach £567 million by 2026/27.

The expectation within this forecast is that caseloads for most benefits will increase over time, based on trends in recent years. Although the caseload for Personal Independence Payment will fall in Scotland as PIP clients are transferred and new clients are awarded Adult Disability Payment.

The Scottish Fiscal Commission's forecast estimates a joint caseload of 339,000 individuals who receive Personal Independence Payment or Adult Disability Payment in 2022/23. The forecast disaggregates Personal Independence Payment and Adult Disability Payment caseloads in the figures they provide.

The forecasts therefore provides indicative future numbers of individuals eligible to receive Adult Disability Payment, and a projection of the additional caseload estimated due to the differences between Adult Disability Payment and Personal Independence Payment.

Thousand	2021/2 2	2022/2 3	2023/2 4	2024/2 5	2025/2 6	2026/2 7
Adult Disability Payment and Personal Independence Payment combined	312	339	382	417	446	475
Personal Independence Payment only	312	319	173	16	0	0
Adult Disability Payment only	0	20	209	401	446	475
Additional case load for Adult Disability Payment	0	4	27	44	59	73

It is anticipated that there will be an additional 27,000 case load for Adult Disability Payment in 2023/24 and this is predicted to reach approximately 73,000 by 2026/27.

The effect of amending devolved legislation to include relevant references to Adult Disability Payment could increase the costing in a number of these areas, because while the eligibility criteria for both benefits are broadly the same, the forecasted figures suggest that the differences in Adult Disability Payment will likely lead to more individuals being entitled to access these passported benefits.

#### *Entitlement to Child Winter Heating Assistance*

Child Winter Heating Assistance is an annual payment which was £202 in 2021/22 for children and young people up to the age of 18 who are entitled to receive payment of the highest rate care component of either Disability Living Allowance for Children, Child Disability Payment, or the enhanced rate daily living component of Personal Independence Payment or Adult Disability Payment. The number of

individuals entitled to the enhanced rate daily living component of Personal Independence Payment will decrease as we transfer those individuals to Adult Disability Payment and because we will have removed the right to apply for Personal Independence Payment for those who are able to apply for Adult Disability Payment. This amendment does not produce any costs for the Scottish Government that have not already been forecast and budgeted for as part of the recent amendments made to Child Winter Heating Assistance, including making provision for 16 to 18 year olds in receipt of the enhanced rate of the daily living component of Personal Independence Payment.

*Payment of reasonable travelling expenses incurred in attending NHS treatment and the remission of NHS charges.*

Persons of certain descriptions are entitled to payment of the travelling expenses incurred in attending hospital for the provision of NHS services (including where necessary overnight accommodation and expenses related to a person accompanying the person receiving the service) and the remission of charges payable for certain NHS services. The relevant regulations for this scheme are the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003.

The charges are charges for drugs, medicines, appliances and pharmaceutical services payable under section 69 of the National Health Service (Scotland) Act 1978, and for dental appliances and dental services payable under sections 70, 71 of the National Health Service (Scotland) Act 1978 or section 20 of the National Health Service (Primary Care) Act 1997. Broadly, there are two routes to entitlement to the scheme. One route involves being in receipt of a qualifying low-income benefit. The second route involves having available resources (income and capital) below a specified threshold. For the purpose of access to the scheme, disability benefits are not a qualifying low-income benefit, but income from disability benefits is disregarded when determining if an individual's available resources are below the relevant threshold.

Full or partial support for dental care costs is delivered by the NHS Business Services Authority. The Scottish Government does not analyse the data collected when delivering the schemes as a whole to determine the proportion of funds directed towards the support of

adults with disabilities. The budget for the scheme is not a fixed amount. The Scottish Government provides the necessary funds each year for the cost of the scheme in order to meet demands, so the amount may vary from one financial year to the next.

The forecasted increase in the numbers of individuals receiving Adult Disability Payment in the coming years suggests a greater number of individuals will have income that can be disregarded when determining if their resources are below the relevant threshold, but it's not clear whether the introduction of Adult Disability Payment will affect the number of adults entitled to receive support.

### *Concessionary travel*

Transport Scotland offers free bus travel for older people, and for disabled people who are in receipt of Personal Independence Payment.

There are currently around 1.45 million National Entitlement Cards in circulation giving access to free bus travel throughout Scotland. Of these, around 90% are eligible through the age criteria (60 and over) with the remaining 10% eligible through a number of passported benefits.

Expenditure for the National Concessionary Travel Scheme in 2020-21 was £222.6 million; the average benefit for an individual eligible to use the scheme was in the region of £276. Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation.

Given the projected increase in Adult Disability Payment clients, there will likely be more individuals in Scotland who qualify for the National Concessionary Travel Scheme as a result of their Adult Disability Payment award than would have if Adult Disability Payment wasn't replacing Personal Independence Payment.

### *Disabled persons parking badges*

There were 230,644 Blue Badges on issue in use across Scotland as of December 2021. Throughout 2021, a total of 34,470 Blue Badges

were issued to individuals as a result of their Personal Independence Payment awards.

The budget for the Blue Badge scheme is not a fixed amount. Transport Scotland provides the necessary funds each year to meet the cost of the scheme in order to meet demands. This means that the cost of providing Blue Badge as a passported benefit may vary each year.

Given the projected increase in Adult Disability Payment clients and the level of awards, there will likely be more individuals in Scotland who qualify for a Blue Badge as a result of their Adult Disability Payment award than would have if Adult Disability Payment wasn't replacing Personal Independence Payment.

### *Legal aid*

The Scottish Legal Aid Board is a non-departmental public body funded by the Scottish Government and by contributions and expenses payable by persons in receipt of legal assistance. The Board is responsible for managing legal aid in Scotland. Applicants for legal assistance can qualify with no contribution payable if they are in receipt of certain low-income benefits. Applicants who are not in receipt of these low-income qualifying benefits must complete an application form and show evidence of income and expenditure. The Board will then decide if the person qualifies for legal assistance and whether or not they will have to pay a contribution.

The budget for legal aid is demand-led and is not a fixed amount. The Scottish Government gives the Board the necessary funds to meet the cost of cases. This means that the cost to the Legal Aid Fund of providing legal assistance will vary from year to year. If a person is in receipt of a passporting low income benefit, then they will be able to access funding for the legal issue they require assistance with, subject to satisfying any statutory merits tests that may be applicable.

Personal Independence Payment is not a passporting benefit for this purpose, but Personal Independence Payment is disregarded when calculating an individual's available resources for legal aid purposes. The legislation makes equivalent provision so that Adult Disability Payment payments, and short-term assistance payments while an Adult Disability Payment award is under appeal, are disregarded in the same manner as Personal Independence Payment.



### *Repayment of student loans*

There is not considered to be any additional costs associated with the amendment to the Repayment of Student Loans (Scotland) Regulations 2000. The provision being amended entitles individuals to have their student loan cancelled if they are in receipt of a qualifying disability benefit and are permanently unfit for work as a result of their disability. The effect of the amendment is that Adult Disability Payment is to be a qualifying disability benefit for this purpose in the same manner as Personal Independence Payment.

### *Council tax*

The amount of foregone council tax as a result of changes to the rules on entitlement to council tax discount, council tax reduction and council tax exemption is expected to increase. Although the numbers of individuals with qualifying Personal Independence Payment awards will decrease proportionately as the number of individuals with qualifying Adult Disability Payment awards increase; the proposed amendments will also apply to the forecasted increase in individuals entitled to Adult Disability Payment, including those in receipt of short-term assistance while a qualifying Adult Disability Payment award is under review. This will very likely lead to a greater number of individuals qualifying for council tax reduction, council tax discount or council tax exemption overall.

### *Elections*

There will be no additional costs incurred due to these changes as they simply remove the requirement to have an application for a proxy vote attested if the individual is already in receipt of a qualifying award of Adult Disability Payment.

### *Grants to improve energy efficiency of homes*

The passported entitlement in question is the right to be considered for a grant under the Home Energy Assistance Scheme (Scotland) Regulations 2013 (the 2013 Regulations). The grant making scheme established by the 2013 regulations is no longer in use. Similar grants continue to be given by the Scottish Government using a more general grant-making power. If the scheme under the 2013 regulations is re-established, then its likely additional costs will be incurred due to these

changes as even though the grants are discretionary, the number of individuals eligible to apply will likely increase.

*Residential accommodation that local authorities are required to provide*

Adults and young people with sufficient available resources are liable, under the National Assistance (Assessment of Resources) Regulations 1992, to pay for the cost of residential accommodation that local authorities are required to provide. Receipt of Adult Disability Payment will not be regarded as an available resource when determining an adult or young person's available resources. This change may have an additional cost on local authorities as the number of adults and young people entitled to Personal Independence Payment will not decline at a proportionate rate to the increase in the number entitled to Adult Disability Payment.

**Policy Objectives**

The Social Security (Scotland) Act 2018 allows Scottish Ministers to create a distinctly Scottish approach to developing a new social security system which has dignity and respect at its core.

Adult Disability Payment entitlement and the consequential access to passported benefits are intended to improve outcomes for disabled adults, by providing aid and financial assistance to help meet the additional costs of living with a disability or health condition. This includes physical or mental disabilities and health conditions which have a significant adverse effect on individuals' daily activities.

**Rationale for Government intervention**

These Consequential Amendments, in relation to Business and Regulatory impact, were undertaken using the five principles of Better Regulation as follows:

**Proportionate:** The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the introduction of The Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022.

The equivalent UK benefit, Personal Independence Payment will reduce in caseload as Adult Disability Payment is delivered by the Scottish Government and cases are later transferred to Social Security Scotland. This will likely lead to a neutral impact in the longer term on the administrative burdens on other public agencies, private businesses and third sector organisations.

In the short-term, there may be additional work for public agencies and some third sector organisations as they make arrangements for their staff to incorporate knowledge of the replacement benefit in to their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility, as far as possible, on behalf of people accessing disability assistance, including Adult Disability Payment, and intends to create data sharing processes with relevant public bodies. It is anticipated that this will reduce the burden of providing information to individuals that public agencies currently undertake, by creating formal data sharing agreements and processes with one agency, Social Security Scotland.

**Consistent:** Adult Disability Payment builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, fairness and respect.

Adult Disability Payment will be delivered on an entitlement basis for eligible people. Decision-making will be person-centred and operational guidance for case managers within Social Security Scotland will be created in line with the rules within the regulations which will provide a framework for consistent decision making across all applications. This includes guidance provided to practitioners of Social Security Scotland which will be utilised should a client be invited to attend a consultation.

Where possible The Disability Assistance for Working Age People (Scotland) Regulations 2022 and the associated policies have been aligned with those for Child Disability Payment to provide a consistent approach for clients, and services who will support them, to make applications for disability assistance and navigate Scotland's social security system.

The Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 ensure that clients are entitled to the same passported devolved benefits regardless of whether they are in receipt

of Adult Disability Payment or on Personal Independence Payment and still to awaiting transfer.

**Accountable:** The Social Security Charter sets out, in plain and clear English, what people are entitled to expect from the Scottish social security system, including how they should be treated and how their application will be processed. Complaints regarding Social Security Scotland can be directed to the Scottish Public Services Ombudsman.

We will ensure that clients understand their right to have their determination re-determined by Social Security Scotland and to request an appeal to the Social Security Chamber of the First-tier Tribunal for Scotland if they are unsatisfied with the outcome of the re-determination. This includes their right to appeal directly this chamber if Social Security Scotland is unable to complete the re-determination process before 56 days have elapsed.

Individuals will be made aware of the existence of short-term assistance which can be applied during re-determinations and appeals on ongoing awards of Adult Disability Payment. This will help to ensure that individuals are not discouraged from challenging a decision they do not agree with or seeking administrative justice, because they will continue to receive the level of Adult Disability Payment and passporting benefits, they were receiving prior to the decision they are challenging, during this process.

**Transparent:** We will develop a communications strategy for each form of disability assistance, including Adult Disability Payment. This will aim to ensure that clients and their families or carers, the third sector, local government, education sectors and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. Where a determination is made that an individual is not entitled, Social Security Scotland will provide a reason why, as set out in the notice of determination provisions at section 40 of The Social Security (Scotland) Act 2018, to ensure that decisions are understood and that our processes are as transparent as possible.

Information on passporting will also be made available through different channels, for instance through a Certificate of Entitlement provided with a successful Adult Disability Payment award, so that Adult Disability Payment clients are aware of other benefits they may be able to access.

We will publish guidance on Adult Disability Payment in a way that takes account of differing communication needs, so that entitlement is clearly understandable. Social Security Scotland will create a bank 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 in to were selected through stakeholder consultation. These are: BSL, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, and easy read formats.

Social Security Scotland will produce communication materials in other languages on request. Social Security Scotland communications will work with community radio and foreign languages 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 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.

We published our second Benefit Take-Up Strategy in October 2021 under the provision of the Social Security (Scotland) Act 2018. The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduced a series of new activities and initiatives aimed at increasing awareness of and access to Scottish benefits and supporting those who are eligible to apply.

These include new funding streams for benefit take-up and income maximisation, establishing a Take-up Stakeholder Reference Group to provide advice and support in the implementation of this strategy, developing a Take-up Stakeholder Toolkit, and two roundtable events held in 2020 which were co-designed with key stakeholders to explore solutions to issues such as stigma, barriers to access, and the human rights-based approach.

**Target only where needed:** Adult Disability Payment is intended to help mitigate the additional costs of having a disability. The rules for the benefit will be set out in these regulations and each new application will undergo an application process which will assess eligibility for Adult Disability Payment in a way that is consistent with the principles of dignity, fairness and respect.

As of June 2021, there were approximately 290,000 people in Scotland entitled to Personal Independence Payment who will see their award transferred to Adult Disability Payment. This accounts for roughly 7.8% of the population between the ages of 16 and 65.

We have not previously published forecasts for new applications to Adult Disability Payment but DWP outturn information shows that new applications for Personal Independence Payment have been relatively stable at around 58,000 cases per year, amounting to 4800 applications per month on average, although there is variation from month to month. It should be noted that this will not account for any differences resulting from Covid-19 which suppressed applications and decision making, particularly in April 2020.

Case managers will, where authorised, help clients gather supporting information through data-sharing agreements. We are not looking to gather an exhaustive list of sources of formal information. It need only be sufficient to determine, on the basis of probabilities, that an individual meets the eligibility criteria for Adult Disability Payment. It is only when there is no other way gather accurate information about the need of a client that they will be invited to attend a client consultation.

As set out above, the Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits. Increased benefit uptake is likely to have a positive impact on businesses and the economy because more individuals will be in receipt of benefits which will be used to purchase a range of goods and services.

It is expected that the introduction of Adult Disability Payment could cause additional requests for information and support from existing advice services. However, it is anticipated that by introducing a system that has been designed in partnership with advice agencies, key stakeholders and individuals with experience of the current system, Social Security Scotland will be equipped to support individuals. This should lessen the impact on advice services in their provision of complex welfare rights casework support for individuals.

## **Consultation**

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

the organisational and individual responses. In particular comments were invited on a partial Business and Regulatory Impact Assessment.

There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability and long term conditions covering a variety of disabilities and conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017<sup>2</sup> in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill.

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.

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 sought the views of the people of Scotland on the three proposed disability assistance benefits, including Adult Disability Payment.<sup>3</sup> The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals. Independent analysis of this consultation found that several consultees mentioned the need to conduct a comprehensive review of existing regulations, guidance and case law to ensure that important detail and rights are not lost upon transition from reserved to devolved social security benefits and stressed the need to ensure a smooth transition from the current system to the new system<sup>4</sup>.

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group as well as the Ill Health and Disability Benefits Stakeholder Reference Group. The Disability and Carers Benefits Expert Advisory Group is chaired by Dr Jim McCormick and

---

<sup>2</sup> [Analysis of written responses to the Scottish Government's consultation on social security](#)

<sup>3</sup> [Disability Assistance in Scotland consultation](#)

<sup>4</sup> [Disability assistance in Scotland: analysis of consultation responses - \(see page 71\)](#)

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 user and stakeholder engagement.

On the 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on the draft impact assessments. The consultation ran until 15 March 2021. The consultation received 127 responses from individuals and stakeholder organisations. One theme which came across in a number of responses was the importance of clients maintaining automatic access to the benefits and entitlements that they receive due to being in receipt of Personal Independence Payment. The Scottish Government published a response to the public consultation on 25 June 2021, reaffirming a commitment to this continuity of access to both reserved and devolved entitlements.

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

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.

## **Options**

Option 1 - Do Nothing:

The transfer of powers to The Scottish Ministers to make provision for Adult Disability Payment is set out in the Scotland Act 2016 and



Social Security (Scotland) Act 2018. Therefore, not taking over powers from the DWP was not considered to be a viable option.

If The Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 are not introduced, the Scottish Government's commitment to ensure that Scottish clients receiving Adult Disability Payment remain entitled or 'passported' to various reserved benefits and premiums that they rely on will not be fulfilled.

Option 2 – Introduce these regulations (recommended option):

This legislation will come into force in the pilot areas in the spring of 2022, and throughout Scotland by the summer of 2022 ensuring like-for-like access to passported benefits, in devolved areas, for Adult Disability Payment clients and Personal Independence Payment clients respectively.

### **Sectors and Groups Affected**

The Scottish Government is not fully aware of the sectors and groups of businesses that will be affected by the Adult Disability Payment Consequential Amendments. However a projected increase in those receiving Adult Disability Payment, and as a result passported benefits with monetary value, will likely have a positive impact on businesses as individuals will use this income to purchase a wide range of care, goods and services.

### **Scottish Firms Impact Test**

The Scottish Government does not believe that the introduction of Adult Disability Payment or these Consequential Amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom, or elsewhere in Europe or the rest of the world. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision. In the case of local authorities in particular, they currently work to provide a number of these passported benefits to the public due to entitlement through Personal Independence Payment, and it will be important for their staff to become aware of Adult Disability Payment to treat people receiving it the same.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people receiving and enquiring about social security payments and should not require a significant change to their operations.

### **Competition Assessment**

The Scottish Government does not believe that Adult Disability Payment generally or these Consequential Amendments will directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

Any procurement required to support the administration and consequential changes required as a result of Adult Disability Payment will be subject to the Public Contracts Scotland (2015) regulations and the Procurement Reform (Scotland) Act 2014, which together provide a national legislative framework for sustainable procurement which supports Scotland's economic growth through improved procurement practice.

### **Legal Aid Impact Test**

Clients applying for Adult Disability Payment will have a right to request a re-determination of their entitlement by Social Security Scotland, and have a right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

It is not envisaged that there be any greater demands placed on the legal aid system as a result of implementing this change, principally because the caseload is unlikely to change significantly. Legal assistance is available to individuals and is subject to a financial eligibility test based on the "disposable income" and "disposable capital" of the applicant.

It is a demand led budget and will continue to be available to individuals to appeal an entitlement decision to the First-tier Tribunal, to the Upper Tribunal, the Court of Session or Supreme Court. The Scottish Government does not expect any new impact on the legal aid

budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

It is also expected that as a result of the extensive consultation and co-designed service design process, that the decision making quality of Social Security Scotland will be improved and reduce appeals to tribunals by clients.

As highlighted in the financial impact section, these regulations make provision for Adult Disability Payment and short-term assistance payments within legal aid legislation. This is to ensure that they are disregarded when calculating an individual's available resources, for legal aid purposes, in the same instances as they are for people currently receiving Personal Independence Payment in Scotland.

### **Enforcement, sanctions and monitoring**

If required, on-going engagement with local authorities and key organisations – such as the Child Poverty Action Group in Scotland, Citizens Advice Scotland, Disability and Carers Benefits Expert Advisory Group, and the Ill Health and Disability Benefit Stakeholder Reference Group will provide the Scottish Government with an opportunity to monitor the impact of changes made by these regulations.

The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the broad impact of the changes made to disability assistance, with a full suite of equalities data for new applicants.

The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year. The report is to describe what the Scottish Ministers have done in that year to meet the expectations on them set out in the Social Security Charter.

## **Implementation and delivery plan**

The Scottish Government will begin to accept applications from new Adult Disability Payment clients from the spring 2022, and at a later date, existing DWP awards will transfer to Social Security Scotland without clients having to make a new application. Social Security Scotland will handle all aspects of the client's case to minimise stress and anxiety.

A communications strategy will be developed in advance of the launch of Adult Disability Payment and the transfer process, which will aim to ensure that individuals, their families and carers, the third sector, local government, health sector, and advance providers are aware of the introduction of Adult Disability Payment, and understand the eligibility criteria, as well as understanding how and when their award will transfer if relevant. We will develop the communications strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people.

## **Summary and recommendation**

In summary, the projected increase in the number of individuals who could receive an Adult Disability Payment award means a likely increase in those receiving passporting benefits as a result. It is anticipated that those additional benefits that hold monetary value will be used to pay for care, goods and services and therefore business could benefit from the introduction of these Consequential Amendments as part of the launch of Adult Disability Payment in Scotland.

Any impact to business as a result of these consequential regulations should be positive or neutral. The Scottish Government have worked closely with stakeholders to develop the overall policy and will continue to do so when Adult Disability Payment opens for new applications, during the transfer process of clients from DWP to Social Security Scotland, and beyond.

## **Declaration and publication**

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for BRIA:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:** 27/01/2022

**Minister's name** – Ben Macpherson

**Minister's title** – Minister for Social Security and Local Government

**Scottish Government Contact point:** Nathan Gale/Christopher Shepstone



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2022

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-80201-974-2 (web only)

Published by The Scottish Government, January 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1016620 (01/22)

w w w . g o v . s c o t