

The Disability Assistance for Older People (Scotland) Regulations 2024

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

April 2024

Business and Regulatory Impact Assessment

Title of proposal

The Disability Assistance for Older People (Scotland) Regulations 2024

Purpose and intended effect

Background

The Social Security (Scotland) Act 2018¹ (the 2018 Act) sets out the broad framework for the delivery of the Scottish Government's social security benefits. On 1 April 2020, Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance.

Pension Age Disability Payment will be the replacement for Attendance Allowance in Scotland. Attendance Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Pension Age Disability Payment. The Scottish Government plans to introduce Pension Age Disability Payment with a pilot and phased approach in Autumn 2024 and national launch in early 2025.²

The Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. This benefit will accept new applications from those over State Pension age.

The regulations also include technical amendments on Short-term Assistance for Child Disability Payment and Adult Disability Payment. These amendments regularise existing processes, to align with current practice used across live disability benefits to calculate the value of Short-term Assistance.

The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance.

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 150,000 individuals in May 2023 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.³

The Scottish Government has prioritised ensuring the safe and secure transfer of awards for those receiving Attendance Allowance. Scottish Ministers have set out a number of case transfer principles which have guided the development of the

¹ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [Social Security business case: February 2023 - executive summary - gov.scot \(www.gov.scot\)](https://www.gov.scot)

³ [Stat-Xplore - Home \(dwp.gov.uk\)](https://dwp.gov.uk)

approach to case transfer.⁴ The Scottish Government's commitment to equalities will run through all of these principles and also guides the overall approach. The principles are:

- **Correct payment at the correct time** – ensuring that the case transfer process is designed so that people will receive the same amount for the Scottish Government benefit as they received for the corresponding UK Government benefit.
- **No re-applications** - we will not require individuals to re-apply as part of the case transfer. We will work with the Department for Work and Pensions to move people automatically to Social Security Scotland and the corresponding new benefit.
- **No face to face Department for Work and Pensions re-assessments** - we will ensure that, wherever possible, no-one will be subject to a face to face re-assessment by the Department for Work and Pensions. The DWP do not typically conduct face to face assessments for Attendance Allowance, so this is not a consideration for Attendance Allowance-Pension Age Disability Payment case transfer.
- **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 is safe and secure, and will not create unacceptable risks for individuals.
- **Clear communication with individuals** – we will inform people of the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

As part of the commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing Attendance Allowance eligibility criteria when introducing Pension Age Disability Payment. Examples of this include the replication of the current 6 month qualifying period for Attendance Allowance and continuing alignment by not introducing a mobility component. By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.

However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the

⁴ [Social security case transfer: policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-security-case-transfer/policy-position-paper/pages/10.aspx)

commitments under the Social Security Charter.⁵ The Scottish Government recognises social security as a human right and has designed Social Security Scotland's services with the people who use them so that everyone is treated with dignity, fairness and respect. The Scottish Government is committed to continually improving Scottish disability benefits by continuing to engage with disabled people and stakeholders to identify areas for further improvement in future.

The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.

People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.

The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.

As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals.

Case Managers can use a collaborative approach to help people gather supporting information from a professional, where needed and if an individual does not already have this to hand. This may include Case Managers obtaining supporting information from professionals on the individual's behalf. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual's needs, conditions or disability.

The Scottish Government's new definition of terminal illness will apply to Pension Age Disability Payment. The Scottish Government definition removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the

⁵ [Social Security Scotland - Our Charter \(socialsecurity.gov.scot\)](https://socialsecurity.gov.scot)

purposes of Pension Age Disability Payment will be made by clinicians based on guidance prepared by the Chief Medical Officer.⁶

Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.

The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.

The intention of Short-term Assistance is to ensure individuals are not discouraged from challenging a review of their award determination or from accessing administrative justice, by having to manage, for a period, with a reduced income. Short-term Assistance is not available in the UK Government system. Providing support in this way is another example of where Scottish Ministers are removing barriers in the Scottish social security system.

This policy 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; and
- We live in communities that are inclusive, empowered, resilient and safe.

Objective

Pension Age Disability Payment is awarded to help with the extra costs if an individual over State Pension age has a condition or disability severe enough that they need someone to help look after them. This includes physical or mental health conditions and disabilities which have a significant adverse effect on an individual's care needs.

The case transfer process ensures individuals have their award transferred from Attendance Allowance to Pension Age Disability Payment in a safe and secure way, ensuring payments are correct and made at the right time.

This impact assessment is one of a package to accompany the regulations. The other impact assessments are: Equality Impact Assessment; Island Communities Impact Assessment; Data Protection Impact Assessment and the Fairer Scotland Duty Assessment.

⁶ [Updated Guidance on the Implementation of Benefits Assessment under Special Rules in Scotland \(BASRIS\) - Chief Medical Officer \(sehd.scot.nhs.uk\)](#)

Rationale for government intervention

The assessment of the Disability Assistance for Older People (Scotland) Regulations 2024 and Pension Age Disability Payment overall in relation to business and regulatory impact was undertaken using the five principles of Better Regulations,⁷ 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 Pension Age Disability Payment.

The equivalent UK Government benefit, Attendance Allowance, will reduce in caseload as Pension Age Disability Payment is delivered through Social Security Scotland, and cases are transferred from the Department for Work and Pensions. This will likely lead to a neutral impact in the longer term on the administrative burdens on other public agencies, private business and third sector organisations.

In the short term, there will 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 into their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility on behalf of people accessing disability assistance, including Pension Age Disability Payment, and intends to utilise data sharing processes with relevant bodies. For example, this may occur where an individual requests Social Security Scotland to gather supporting information from a professional, where needed and the individual does not already have this to hand.

It is anticipated that in the longer term, this will streamline the administrative burden of providing supporting information in circumstances where needed and an individual does not have this to hand. Public agencies will instead be able to supply this information directly to Social Security Scotland through formal data sharing agreements and processes.

There is also expected to be a slight impact on medical professionals as a result of the new definition of terminal illness. They will still be expected to use their clinical judgement to determine whether an individual has a terminal illness with the primary difference being that, instead of a DS1500 or SR1 form, they will be required to complete a 'Benefits Assessment Under Special Rules in Scotland' (BASRiS) form.

There may be some short-term impacts as medical professionals adjust to using the BASRiS form and taking a different approach but, overall, this should not place additional burdens on medical staff and, as the BASRiS form has been rolled out for Child Disability Payment and Adult Disability Payment, many medical professionals will already be familiar with this new process in Scotland.

The case transfer process should similarly have a neutral impact in that it relies on the information already contained in Department for Work and Pensions records,

⁷ [Business regulation - Supporting business - gov.scot \(www.gov.scot\)](https://www.gov.scot/business-regulation-supporting-business)

meaning no further information is required for a case to complete the transfer process. A clear communication strategy around the transfer will be developed, with the aim of minimising the need for additional enquiries to be made to public or third sector advice organisations.

Consistent: Pension Age Disability Payment builds on the framework of a new social security system underpinned by the values of dignity, fairness and respect, as set out in the 2018 Act.

Pension Age Disability Payment will be delivered to eligible people on a similar basis as Attendance Allowance. Decision-making will be person-centred and operational guidance for Case Managers within Social Security Scotland will be in line with the regulations and 2018 Act, which will provide a framework for consistent decision-making across all applications.

Where possible, regulations for Pension Age Disability Payment and associated policies have been aligned with those of Child Disability Payment and Adult Disability Payment. This will provide a consistent approach for both applicants and external organisations who will support them, while paying due regard to the specific needs of people over State Pension age.

Accountable: All determinations made relating to an application for Pension Age Disability Payment, and information about the case transfer process, will be provided to individuals in a communication method that meets their needs. All information used, and a rationale for the determination made for a new application or re-determination, will be included within communications to ensure that individuals are informed of how their determination of entitlement was made.

The Social Security Charter sets out 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.

The Scottish Government will ensure that people understand their right to have a re-determination by Social Security Scotland, and have a right of appeal to the Social Security Chamber of the First-tier Tribunal for Scotland if they are not satisfied with the outcome of a re-determination. This includes a right to appeal directly to the First-tier Tribunal if Social Security Scotland are unable to complete the re-determination process within the 56 day period.

Individuals will also be made aware of the existence of Short-term Assistance, which can be utilised where Social Security Scotland has made a determination to reduce or stop a longstanding Scottish Government benefit award and that determination is subject to a request for re-determination or an appeal. Short-term Assistance will ensure that individuals do not face a reduced income while undergoing a re-determination or appeal of an ongoing award. This will help to ensure that individuals are not discouraged from challenging a determination they do not agree with, or seeking administrative justice by having to manage, for a time, with a reduced income.

Short-term Assistance for Pension Age Disability Payment will be processed in the same way as Adult Disability Payment and Child Disability Payment in terms of eligibility, value and form. Scottish Ministers have sought to clarify existing processes for how Short-term Assistance value is currently calculated for live disability benefits, such as Adult Disability Payment and Child Disability Payment, and bring Pension Age Disability Payment in alignment with current practice. These regulations therefore include technical amendments to Pension Age Disability Payment Regulations, as well as equivalent technical amendments to the Adult Disability Payment and Child Disability Payment Regulations for Short-term Assistance, ensuring clarity regarding Short-term Assistance value and existing practice.

Transparent: A communications strategy will be developed for Pension Age Disability Payment, as has been done for other forms of disability assistance. This will aim to ensure that individuals and their families or carers as well as the third sector, local government, health sector and advice providers are aware of this benefit, know how to apply for it and understand the eligibility criteria and the case transfer process.

Where a determination is made that an individual is not entitled to Pension Age Disability Payment, Social Security Scotland will provide a reason why, as set out in section 40 of the 2018 Act, to ensure that determinations are understood and that Social Security Scotland's processes are as transparent as possible.

Guidance will be published on Pension Age Disability Payment in a way that takes account of differing communication needs, so that material is clear and transparent for those seeking further information. Social Security Scotland will create a bank of Pension Age Disability Payment stakeholder resources and content for distribution to people in local communities. These resources will be produced in accessible formats that will be proactively supplied to relevant stakeholder organisations through the Stakeholder Engagement team.

The languages that Social Security Scotland proactively translate materials to were selected through consultation with those who have experience of the social security system. These languages are: British Sign Language, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and Easy Read formats.

Social Security Scotland will produce communication materials in other languages on request. Social Security Scotland's communications team will work with community radio and foreign language press to provide messaging on Pension Age 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 Social Security Scotland will provide an engagement approach through work carried out by the Stakeholder Engagement and Local Delivery teams.

The second Benefit Take-Up Strategy was published in October 2021 under the provision of the 2018 Act.⁸ The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduced a series of new activities and initiatives

⁸ [Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/benefit-take-up-strategy-2021/pages/10/index.aspx)

aimed at increasing awareness of, and access to, Scottish Government benefits and supporting those who are eligible to apply.

These include new funding streams for benefit take-up and income maximisation, establishing a Benefit Take-up Stakeholder Reference Group to provide advice and support in the implementation of this strategy and developing a Benefit Take-up Stakeholder Toolkit. Two roundtable events were 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. Increased benefit take-up is likely to have a positive impact on businesses and the economy because more individuals with a disability will have increased income, which may be used to purchase a range of goods and services from private or third sector organisations.

Targeted only where needed: Pension Age Disability Payment is intended to help mitigate the additional costs for individuals over State Pension age with a disability or health condition that requires someone to help look after them. The rules for the benefit will be set out in these regulations, and each new application will undergo a decision-making process which will consider eligibility for Pension Age Disability Payment in a way that is consistent with the principles of dignity, fairness and respect.

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 150,000 individuals in May 2023 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.⁹ Individuals with an award of Attendance Allowance that will be transferred to Pension Age Disability Payment will not be required to make a new application.

It is expected that the introduction of Pension Age 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 social security rights casework support for individuals.

The case transfer process is not expected to have an impact with regards to requesting information, as it relies on the information already contained in Department for Work and Pensions records, meaning no further information is required for a case to complete the transfer process. Individuals wishing to better understand the case transfer process may seek support from existing advice services, but the approach to clear communications will seek to minimise any questions or concerns that individuals may have.

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.

⁹ [Stat-Xplore - Home \(dwp.gov.uk\)](https://www.dwp.gov.uk/stat-xplore)

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 Business and Regulatory Impact Assessment.

There were 521 formal written responses submitted in total, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability, long term conditions and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017,¹⁰ 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 the Scottish Government has executive and legal competence for. In July 2019, recruitment to the Experience Panels was reopened. The Scottish Government have been working with relevant stakeholders to specifically identify disabled people from seldom heard groups for further 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.^{11,12} 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 of 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 Pension Age Disability Payment.¹³ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

The Scottish Government has also undertaken engagement with stakeholders during the development of Pension Age Disability Payment, through the Ill Health and Disability Benefits Stakeholder Reference Group (IHDBSRG) as well as the independent Disability and Carers Benefits Expert Advisory Group (DACBEAG).

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

¹⁰ [Analysis of written responses to the consultation on social security in Scotland - gov.scot \(www.gov.scot\)](http://www.gov.scot/Analysis-of-written-responses-to-the-consultation-on-social-security-in-Scotland)

¹¹ [DWP benefits case transfers: survey findings - gov.scot \(www.gov.scot\)](http://www.gov.scot/DWP-benefits-case-transfers-survey-findings)

¹² [Social Security Experience Panels: designing the benefits case transfer process - gov.scot \(www.gov.scot\)](http://www.gov.scot/Social-Security-Experience-Panels-designing-the-benefits-case-transfer-process)

¹³ [Disability assistance in Scotland: consultation - Scottish Government \(www.gov.scot\)](http://www.gov.scot/Disability-assistance-in-Scotland-consultation)

Scottish Government. On 24 August 2022, the Group shared advice on Pension Age Disability Payment,¹⁴ and Scottish Ministers responded on 1 March 2023.¹⁵ On 3 November 2022 officials met with DACBEAG to discuss case transfer, and DACBEAG provided further advice in December 2022 which was broadly supportive of the proposed case transfer process.

The views of people with lived experience have been captured through a range of ongoing user research and specific stakeholder engagement activities since 2022. This engagement has provided stakeholders the opportunity to feed into the development of Pension Age Disability Payment, including the Equality Impact Assessment and the drafting of regulations. Such engagement has also provided the Scottish Government with the opportunity to engage specifically with particular groups that would be impacted by the proposed policy.

Options

Option 1: Take no action

The Smith Commission set out that powers over Attendance Allowance in Scotland should be devolved to the Scottish Parliament. This transfer of power was legislated for through the Scotland Act 2016. The Scottish Parliament has also passed the 2018 Act which enables Scottish Ministers to introduce regulations to provide Pension Age Disability Payment, a form of disability assistance for those over State Pension age. Attendance Allowance is currently delivered in Scotland by the Department for Work and Pensions on behalf of the Scottish Government by way of an Agency Agreement.

Consequently, taking no action and therefore not taking over administrative responsibility from the Department for Work and Pensions is not considered to be a viable option. There are not considered to be any benefits of this option.

If the Department for Work and Pensions were to stop providing Attendance Allowance to people in Scotland, and the Scottish Government had not made provision for a replacement benefit, a significant number of people with an entitlement to Attendance Allowance would be worse off as they would no longer be receiving financial support.

Option 2: Introduce a Scottish Government replica of Attendance Allowance, including how it is delivered

The Scottish Government could have decided to replicate Attendance Allowance in its entirety, by making no changes to eligibility rules, the application process or the decision-making process. However, this would have been inconsistent with the Scottish social security principles, as set out in the 2018 Act.

¹⁴ [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: advice - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-advice-2022/pages/1-to-30.aspx)

¹⁵ [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: response from ministers - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers-2023/pages/1-to-30.aspx)

By taking this policy approach, the Scottish Government would have continued the delivery of a benefit that has not been designed with the people in Scotland who will use it. This approach would not be utilising the opportunity to seek continuous improvement through putting the needs of those who require assistance first, while advancing equality and non-discrimination.

This approach would fail to utilise the opportunity to improve on the current administration of Attendance Allowance, allowing unsuitable aspects to be delivered by the Scottish Government without reconsideration. For example, in the 2016 consultation, it was noted that some respondents, mainly individuals and local authority respondents, commented that the application process for Attendance Allowance was too complex and that the forms were too long, inaccessible for some, and daunting to complete.¹⁶ Similar findings have also been highlighted through user research undertaken by the Scottish Government in 2018 and 2023. This included those who have experience of the current social security system, including members of the Social Security Experience Panels, third sector organisations as well as family and friends that assisted individuals with the Attendance Allowance application process.

This approach would be inconsistent with Scottish Ministers' delivery of Child Disability Payment and Adult Disability Payment, whereby individuals benefit from improvements, such as an improved application process, the new Scottish Government definition of terminal illness and access to support through Short-term Assistance where eligible.

Option 3: Introduce Pension Age Disability Payment (recommended option)

The Scottish Government will introduce Pension Age Disability Payment as a form of disability assistance under the 2018 Act for people over State Pension age, with a number of practical and administrative improvements that will provide disabled people with a different experience when accessing the support that they are entitled to. The Scottish Government plans to introduce Pension Age Disability Payment with a pilot and phased approach in Autumn 2024 and national launch in early 2025.

Individuals with an award of Attendance Allowance will have their award transferred to Pension Age Disability Payment, administered by Social Security Scotland, under the safe and secure principles set out by Scottish Ministers.

Although there will not be fundamental changes to the existing Attendance Allowance eligibility criteria when delivering Pension Age Disability Payment, individuals will be able to make use of a number of improvements. These range from a choice of inclusive application channels, local delivery support, improved Special Rules for Terminal Illness provision and access to Short-term Assistance. 63% of respondents to the 2019 consultation agreed with the proposals for the eligibility criteria of Pension Age Disability Payment.¹⁷

¹⁶ [Analysis of Written Responses to the Consultation on Social Security in Scotland \(www.gov.scot\)](https://www.gov.scot/analysis/written-responses-consultation-social-security-scotland)

¹⁷ [A Consultation on Disability Assistance in Scotland: Analysis of Responses \(www.gov.scot\)](https://www.gov.scot/consultation/disability-assistance-scotland-analysis-responses)

Sectors and groups affected, benefits and costs

Option 1

Were the Scottish Government to take no action, it is anticipated that there could be a significant impact on individuals in Scotland who are entitled to Attendance Allowance. This would also impact third sector organisations, such as advice and advocacy services and other areas of the public sector, such as local government.

This is because Attendance Allowance is being delivered on the Scottish Government's behalf by the Department for Work and Pensions by way of an Agency Agreement. If the Scottish Government did not introduce a form of Disability Assistance for those over State Pension age in Scotland, the Agency Agreement would require further negotiation to ensure individuals in Scotland do not lose access to their awards of Attendance Allowance.

There are therefore not considered to be any benefits to this option, and the financial and social costs could be significant, as the Scottish Government may have to act in an unplanned manner to ensure disabled people over State Pension age continue to receive financial support.

Option 2

If the Scottish Government were to replicate Attendance Allowance in its entirety, it is anticipated that individuals entitled to support under the current system as well as third sector and public sector organisations would see no change, therefore having a neutral impact in the short term. However, the Scottish Government would have missed an opportunity to improve processes and systems to benefit both the individuals seeking financial support and the impacted sectors of the economy.

The financial cost of this option is likely to be largely similar to that of Option 3. The Scottish Government would be delivering a replica of Attendance Allowance under this option, however there would still be a requirement to budget for extensive system development, training of staff to administer this benefit and the delivery of a case transfer process.

Therefore, although this option would have a neutral impact on individuals and impacted sectors of the economy in the short term, there are not considered to be any benefits to this option which would see the Scottish Government deliver a benefit that is inconsistent with the social security principles. This option has a significant cost and would fail to deliver improvements like those delivered by the introduction of Child Disability Payment and Adult Disability Payment.

Option 3 (recommended option)

The impact of Pension Age Disability Payment will be dispersed across Scotland and sectors of the economy. Pension Age Disability Payment will have an impact on individuals over State Pension age who have a long-term condition or disability. This impact has been assessed through an Equalities Impact Assessment. The launch of Pension Age Disability Payment will have a short-term impact on advice and

advocacy services, as well as some aspects of the public sector, such as local government and the health service, while they adapt to the delivery of this benefit.

However, over the longer term, this initial impact will reduce and will be largely beneficial for individuals as well as the third and public sectors as there will be more consistency and efficiency in the delivery of disability benefits in Scotland than was the case previous to the Scottish Government’s delivery of disability assistance.

The Scottish Fiscal Commission provided a full costing for Pension Age Disability Payment in its December 2023 publication, with 2024-25 expenditure estimated to be £754.9 million, rising to £918.4 million by 2028-29.¹⁸ The Scottish Government receives a Block Grant Adjustment from the UK Government for Attendance Allowance, which is estimated to be £724.5 million in 2024-25, rising to £813.2 million by 2028-29. The difference between the two is the level of additional investment that must be funded from the overall Scottish Budget envelope.

The increase in forecast expenditure is due to both factors common across the UK, such as the increasing demand for disability payments and rises in payment rates due to inflation, and also the policy and delivery improvements that the Scottish Government is making, such as the introduction of the Scottish definition of terminal illness and provision of Short-term Assistance.

The Scottish Fiscal Commission’s December 2023 forecast of Pension Age Disability Payment expenditure, and the latest Attendance Allowance Block Grant Adjustment funding forecast are provided in the table below.

£ million	2024-25	2025-26	2026-27	2027-28	2028-29
Pension Age Disability Payment expenditure forecast	754.9	824.3	861.0	897.1	918.4
Attendance Allowance Block Grant Adjustment funding forecast	724.5	766.7	783.6	800.6	831.2
Additional investment funded from the Scottish Budget	30.4	57.6	77.4	96.5	87.1

Regulatory and EU alignment impacts

Intra-UK trade

Is this measure likely to impact on intra-UK trade? **No**

International trade

Is this measure likely to impact on international trade and investment? **No**

¹⁸ [Scotland’s Economic and Fiscal Forecasts – December 2023 – Scottish Fiscal Commission](#)

EU alignment

Is this measure likely to impact on the Scottish government's policy to maintain alignment with the EU? **No**

Scottish firms impact test

Scottish businesses, including the third sector, responded to the 'A New Future for Social Security' consultation in mid-2016. Responses were received from 14 private businesses and 5 business organisations all of which requested that their responses remain anonymous.

Stakeholder events were run in tandem with the Consultation on Disability Assistance between 5 March and 28 May 2019 to obtain as wide a view as possible on the forthcoming delivery of disability benefits in Scotland. Views were received from many different types of interested stakeholder organisations, such as Child Poverty Action Group in Scotland, Citizens Advice Scotland, the Scottish Association for Mental Health (SAMH), Engender, CEMVO Scotland, Rights Advice Scotland, LEAD Scotland, MND Scotland, National Deaf Children's Society, Royal Blind and Scottish War Blinded, the National Association of Welfare Rights Advisers, Down's Syndrome Scotland, Royal College of Paediatrics and Child Health Scotland, One Parent Families Scotland, Children's Hospices Across Scotland (CHAS), The Poverty Alliance, Epilepsy Scotland and Glasgow Disability Alliance.

Following the Consultation on Disability Assistance, the Scottish Government also engaged with stakeholders specifically on Pension Age Disability Payment. This involved engagement with the IHDBSRG in November 2022, seeking advice from DACBEAG and responding to their recommendations in March 2023, as well as holding stakeholder engagement sessions, such as for the development of the Equality Impact Assessment. Stakeholder organisations involved in engagement sessions included: MND Scotland, Mobility and Access Committee for Scotland, Scottish Pensioner's Forum, Scottish Women's Convention, Christians Against Poverty, BLESMA and Sight Scotland.

It is expected that the introduction of these regulations could cause additional requests for information and support from existing advice and advocacy services. As a new benefit that also includes a case transfer process, this may result in additional pressure on advice agencies as they become familiar with it. The Scottish Government will continue to engage with the advice services sector as the programme to implement social security provision in Scotland progresses.

The Scottish Government does not believe that the introduction of Pension Age Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally, including Europe and 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 Pension Age Disability Payment.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way that Social Security Scotland delivers Scottish Government 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 or enquiring about social security payments and should not require a significant change to their operations.

The 2018 Act sets out a duty on Scottish Ministers to promote the take-up of Scottish Government benefits. As Pension Age Disability Payment helps with the extra costs relating to an individual's care needs, an increase in benefit uptake is likely to have a positive impact on Scottish businesses and the economy. This is because individuals may use their payments to purchase a range of goods and services.

Competition assessment

The Scottish Government does not believe that Pension Age Disability Payment or the case transfer process will directly or indirectly limit the number of suppliers, nor will it limit the ability of suppliers to complete or reduce suppliers' incentives to compete vigorously.

Any procurement required to support the administration of Pension Age Disability Payment will be subject to the Procurement Reform (Scotland) Act 2014 and The Public Contracts (Scotland) Regulations 2015, which together provide a national legislative framework for sustainable public procurement, which supports Scotland's economic growth through improved procurement practice.

- Will the measure directly or indirectly limit the number or range of suppliers? **No**
- Will the measure limit the ability of suppliers to compete? **No**
- Will the measure limit suppliers' incentives to compete vigorously? **No**
- Will the measure limit the choices and information available to consumers? **No**

Consumer assessment

The Scottish Government does not believe that Pension Age Disability Payment, or the case transfer process, will have an adverse impact on either eligible people or any other consumer either within Scotland, the UK or internationally, including Europe and the rest of the world. Pension Age Disability Payment does not directly or indirectly limit the choices of consumers, nor does it limit the ability of consumers to compare the quality, availability or price of goods or services in the market. Furthermore, Pension Age Disability Payment will not impact a consumer's ability to understand their rights.

- Does the policy affect the quality, availability or price of any goods or services in a market? **No**
- Does the policy affect the essential services market, such as energy or water? **No**

- Does the policy involve storage or increased use of consumer data? **No**
- Does the policy increase opportunities for unscrupulous suppliers to target consumers? **No**
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these? **No**
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues? **No**

Test run of business forms

Pension Age Disability Payment will make use of a new application form, as well as shortened forms for applications under special rules for terminal illness, award reviews and change of circumstances. These forms have been developed by utilising user research from relevant stakeholder organisations and those with lived experience of the current social security system. The introduction of BASRiS forms in place of the existing DS1500 or SR1 forms for terminal illness applications is not a new business requirement, as this has already been rolled out with the introduction of Child Disability Payment and Adult Disability Payment.

Digital impact test

Scottish Ministers do not foresee that there will be any adverse impacts now, or in the future, of Pension Age Disability Payment in relation to its delivery in the current and future digital context.

Pension Age Disability Payment will be delivered alongside the Scottish Government's other disability benefits, Child Disability Payment and Adult Disability Payment, which already utilise digital processes for individuals where convenient, but does not exclude those that are unable to access these channels.

Those seeking to apply for Pension Age Disability Payment will be able to apply online, over the phone, in person or through a paper application form. Individuals will also be able to seek support through online webchat and digital guidance resources, including where they have an enquiry about the case transfer process. Case transfer will operate through a managed process and no re-applications will be required; therefore, it is anticipated that there will be no impact from case transfer processes.

However, whilst it is recognised that technological advances do mean that social security provision across the United Kingdom has already largely moved to a digital offering, it is important that the Scottish Government continues to support those who do not have access to, or knowledge of, the necessary digital channels to apply for and manage their payments.

Therefore, individuals will be able to seek support over the phone through Social Security Scotland's freephone number, in-person through the Local Delivery team

and through paper guidance resources. Social Security Scotland will continue to support individuals in an online and offline environment, ensuring that any future changes to Pension Age Disability Payment are mindful of the needs of the individual first and foremost.

Legal aid impact test

Individuals applying for Pension Age Disability Payment will have a right to request a re-determination of their entitlement by Social Security Scotland and subsequently will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

The right to appeal to the First-tier Tribunal (Social Security Chamber) is provided for under section 46 of the 2018 Act, and the First-tier Tribunal has the power to determine entitlement under section 49 of the 2018 Act. Currently, Civil Legal Aid or Assistance By Way of Representation (ABWOR) is not available for social security matters before the First-Tier Tribunal. Advice and Assistance is available to provide advice to a person in relation to social security matters, however legal aid funding for representation before the First-Tier Tribunal in relation to social security matters is not available.

Civil Legal Aid will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Session or Supreme Court.

It is therefore not envisaged that there will 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 subject to a financial eligibility test based on the 'disposable income' and 'disposable capital' of the individual.

The Scottish Government expects that the re-determination process will ensure most determinations are made correctly. If nevertheless someone remains dissatisfied and wishes to appeal to the First-tier Tribunal, Social Security Scotland will do all it can to help an individual with an appeal. This includes providing information about the process, providing the right form to make an appeal and signposting to organisations who can support the individual throughout the process.

Enforcement, sanctions and monitoring

Under section 97 of the 2018 Act, the Scottish Commission on Social Security (SCoSS) must prepare a report setting out its observations and recommendations in relation to the Scottish Government's proposals.

The Scottish Government will publish its formal response to this report when laying these regulations before the Scottish Parliament.

Ongoing stakeholder engagement with key organisations will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.

Our published evaluation strategy demonstrates our commitment to evaluating the impact of changes made in the devolution of all disability benefits and Communities Analysis Division within Scottish Government will consider the requirements for Pension Age Disability Payment in the development of evaluation plans post-2025.¹⁹

The 2018 Act 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 Scottish Ministers have done in that year to meet the expectations on them as set out in the Social Security Charter.

Implementation and delivery plan

The Scottish Government intends to begin accepting new applications for Pension Age Disability Payment as part of a pilot from Autumn 2024, with a national launch in early 2025. Existing awards of Attendance Allowance from the Department for Work and Pensions will transfer to Social Security Scotland without individuals having to make a new application.

A communications strategy will be developed in advance of the launch of Pension Age Disability Payment and the start of the case transfer process. This will aim to ensure that individuals, their families and carers, the third sector, local government, health sector and advice providers are aware of the introduction of Pension Age Disability Payment, and understand the eligibility criteria. A communications strategy will be developed so that it will be linked with wider Scottish Government initiatives for improving outcomes for disabled people and older people.

Post-implementation review

As outlined above, our published evaluation strategy demonstrates our commitment to evaluating the impact of changes made in the devolution of all disability benefits and Communities Analysis Division within Scottish Government will consider the requirements for Pension Age Disability Payment in the development of evaluation plans post-2025.

Summary and recommendations

In summary, the Scottish Government has identified evidence that the introduction of Pension Age Disability Payment will constitute an investment into the Scottish economy. It is anticipated that these funds will be used to pay for care, goods and services. Therefore, businesses could benefit from the introduction of Pension Age Disability Payment.

Any impact to businesses as a result of these regulations - including those relating to case transfer - should be positive or neutral in the long term. The Scottish Government has worked closely with stakeholders to develop the policy and will

¹⁹ [Devolution of disability benefits: evaluation strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/devolution-of-disability-benefits-evaluation-strategy/pages/11.aspx)

continue to do so when Pension Age Disability Payment opens for new applications, during the case transfer process and beyond.

Option 1

Total benefit per annum: - economic, environmental, social

No benefits have been identified from this option.

Total cost per annum: - economic, environmental, social - policy and administrative

This option could have a negative economic and social impact. If the Department for Work and Pensions were to stop providing Attendance Allowance to people in Scotland, and the Scottish Government had not made provision for a replacement benefit, a significant number of people with an entitlement to Attendance Allowance would be worse off as they would no longer be receiving financial support.

The Scottish Government would likely have to act in an unplanned manner to ensure disabled people over State Pension age continue to receive financial support.

This could also have a significant impact on third sector organisations, such as advice and advocacy services and other areas of the public sector, such as local government.

Option 2

Total benefit per annum: - economic, environmental, social

Although in the short term this option would have a neutral impact, the Scottish Government would have delivered a benefit that does not align with the social security principles. This would still have a significant budgetary impact, and deliver a benefit that has not been designed with people that have experience of the current system, therefore lacking in the improvements that the Scottish Government has delivered for Child Disability Payment and Adult Disability Payment.

Total cost per annum: - economic, environmental, social - policy and administrative

The cost of this option is likely to be similar to that of Option 3, as the Scottish Government would still need to budget for the delivery of new systems and a case transfer process as well as training staff.

Option 3 (recommended option)

Total benefit per annum: - economic, environmental, social

There will be a significant social benefit through this option, as individuals will be able to benefit from a number of improvements from Pension Age Disability Payment, ranging from a choice of inclusive application channels, local delivery

support, improved Special Rules for Terminal Illness provision and access to Short-term Assistance.

Total cost per annum: - economic, environmental, social - policy and administrative

For 2024-25, the Scottish Fiscal Commission have forecasted expenditure on Pension Age Disability to be £754.9 million; and the Scottish Government is expected to receive £724.5 million from the Block Grant Adjustment for Attendance Allowance.

The Scottish Fiscal Commission have forecasted expenditure on Pension Age Disability Payment to increase over future years to £918.4 million in 2028-29. In the same financial year, the Scottish Government is expected to receive £813.2 million from the Block Grant Adjustment for Attendance Allowance.

The reason for this increase in expenditure is due to both factors common across the UK, such as the increasing demand for disability payments and rises in payment rates due to inflation and also the policy and delivery improvements that the Scottish Government is making, such as the introduction of the Scottish definition of terminal illness and provision of Short-term Assistance.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that:

- (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
- (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 17 April 2024

Minister's name: Shirley-Anne Somerville MSP

Minister's title: Cabinet Secretary for Social Justice

Scottish Government Contact point: Joseph Scullion



© Crown copyright 2024



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 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: 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

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83601-111-8 (web only)

Published by The Scottish Government, April 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1433806 (04/24)

W W W . g o v . s c o t